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IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,698

MIGUEL PIREZ, JR.,

Petitioner,

vs.

GEORGE BRESCHER,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, FOURTH DISTRICT

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

Petitioner, MIGUEL PIREZ, JR., was the Appellant in the District Court of Appeal, and the Defendant/Cross-Plaintiff in the Circuit Court.

Respondent, GEORGE BRESCHER, was the Appellee in the District Court of Appeal and the Defendant/Cross-Defendant in the Circuit Court.

Since this appeal dealt solely with the dismissal of Petitioner's cross-complaint, the Petitioner will be referred to in this brief as the "Plaintiff" or as "Petitioner." Respondent will be referred to as "Defendant" or as "Respondent."

In this brief of Petitioner on the merits, all emphasis is supplied unless the contrary is indicated. The symbol "R" refers to the record on appeal.

STATEMENT OF THE CASE AND FACTS

On June 22nd, 1984, Plaintiff was in the driver's seat of his vehicle parked in the parking lot of an apartment complex in Lauderhill, Florida. While Plaintiff was behind the wheel of the vehicle several Broward Sheriff's deputies were dispatched to said location to investigate a possible burglary of a vehicle. (R. 233).

These deputies were working undercover and dressed in plainclothes. In investigating the burglary the deputies ran across the poorly lighted parking lot toward the Plaintiff's vehicle yelling and brandishing guns. (R. 233-234). The Plaintiff, failing to understand amidst the noise and confusion that the individuals were deputy sheriffs, started to drive away. (R. 234).

As the Plaintiff's vehicle moved away, the deputies fired into the vehicle wounding Plaintiff (R. 282) and killing Edgar Torres, the youth in the passenger seat. (R. 235).

On or about February 21st, 1985, Plaintiff served notice on the Broward County Attorney's Office of his intention to file suit against the individual deputies and the Broward County Sheriff's Department for assault, battery, trespass, and negligent hiring, supervision, and retention. This notice was given pursuant to Florida Statute 768.28. (R. 247).

Following the filing of a complaint (R. 1-9) then an amended complaint (R. 389-400) by Torres against both Plaintiff and Defendant, Plaintiff cross-claimed against the individual deputies and Plaintiff. (R. 179-187). This cross-claim was brought against the Sheriff for negligence and violations of 42 U.S.C. 1983, but did

not include any cause of action against the Sheriff for the actions of his deputies under a respondeat superior theory. (R. 179-187).

On or about March 27th, 1985, Counsel to the Sheriff (Appellee herein) answered and raised affirmative defenses to Plaintiff's cross-claim. (R. 28-32).

Thereafter, the estate of Torres filed a second amended complaint against Broward County Sheriff's Department, and the individual deputies (R. 94-102) to which Plaintiff answered and cross-claimed (R. 161-164). Torres thereafter filed a third amended complaint. (R. 232-239). The third amended complaint again named Plaintiff and Defendant as Sheriff as co-defendants (R. 232-239). Torres' third amended complaint was filed on or about May 12th, 1988 (R. 239), almost four (4) years after the incident itself. Plaintiff, as he had done following service upon him of Torres' amended complaint and second amended complaint, once again answered the complaint and cross-claimed against the deputies and Brescher as Sheriff. (R. 251-255).

On or about May 25th, 1988, the Broward County Sheriff's Department moved for summary judgment as to Plaintiff's second cross-claim (R. 245-246) and on or about June 15th, 1988, Defendant filed his motion to dismiss Plaintiff's third cross-claim due to insufficient notice pursuant to Florida Statute 768.28 (R. 259).

On July 7th, 1988, a hearing was held on Broward County Sheriff's Department motion for summary judgment as to Plaintiff's second cross-claim and Defendant's motion to dismiss Plaintiff's third cross-claim. (R. 308-388). The Court granted Defendant's motion to dismiss Plaintiff's third cross-claim and entered an order in

accordance with said ruling. (R. 270). [The Court also granted Broward Sheriff's Department motion for summary judgment and entered an order dismissing the second complaint. (R. 280). The Plaintiff does not appeal herein from this order dismissing Plaintiff's second cross-claim.] The Court predicated its rulings upon Plaintiff's alleged failure to satisfy the notice requirement of Florida Statute 768.28(6)(a). (R. 349-364).

On or about July 19th, 1988, Plaintiff filed a motion for rehearing. (R. 271-273). On August 29th, 1988, the Court entered its order denying the relief sought by Plaintiff in his motion for rehearing and dismissing Defendant's May 31st, 1988 cross-claim (R. 281-282) with prejudice inasmuch as Plaintiff would effectively be barred by the statute of limitations from filing any amended cross-claim. (R. 281-282).

Plaintiff timely filed his notice of appeal (R. 284) from the Court's order dated August 29th, 1988, dismissing with prejudice his cross-claim against Brescher as Sheriff of Broward County. (R. 281-282).

On February 28, 1990, the Fourth District Court of Appeal reversed the trial court (Letts, J., dissents with opinion). See exhibit "A" attached hereto.

The Respondent timely filed a Motion for Rehearing.

On September 5th, 1990, the Court of Appeals granted rehearing, withdrew its opinion of February 28, 1990 and substituted the opinion appealed from herein. See exhibit "B" attached hereto. (Anstead, J., dissents with opinion).

This matter is before the Court upon a question certified to be of great public importance:

> Does notice given only to the Broward County Attorney's Office pursuant to Section 768.28(6)(a) suffice to support an action on a claim against the Sheriff's Office of Broward County?

SUMMARY OF ARGUMENT

Petitioner would submit that notice of intention to file a crossclaim against the Sheriff of Broward County is not necessary under Florida Statute 768.28(6)(a) where the underlying tort claimant provided timely and proper notice of the tort claim to the Sheriff and both the Defendant/Sheriff and the Defendant/Cross-Plaintiff (Petitioner herein) were defendants in the underlying litigation.

In the case sub judice the underlying claimant sued both the Petitioner and Respondent and gave proper notice. The Petitioner's cross-claim was a logical product of that suit. Requiring a second notice of intention to file a crossclaim in this instance would be a totally unwarranted elevation of form over substance.

Assuming arguendo that notice of Petitioner's intention to file a crossclaim is required, Petitioner would submit that this notice requirement was satisfied when Plaintiff timely noticed Broward County of his intention to sue the County Sheriff. This is so because the Sheriff is a county official and is an integral part of the county. To determine that notice to the county is not sufficient notice to their Sheriff would result in the creation of an artificial governmental entity for sheriffs and other named county officials not intended by Florida Statute 768.28(6)(a), or Article 8, Section 1 of the Florida Constitution. Timely notice to the County is, therefore, sufficient notice to file a crossclaim against the county sheriff.

ARGUMENT

NOTICE GIVEN TO BROWARD COUNTY BY SERVICE ON THE BROWARD COUNTY ATTORNEY'S OFFICE PURSUANT TO SECTION 768.28(6)(a) IS SUFFICIENT TO SUPPORT AN ACTION ON A CLAIM AGAINST THE SHERIFF OF BROWARD COUNTY.

The District Court of Appeal, Fourth District, has certified the following question to this Court:

> Does notice given only to the Broward County Attorney's Office, pursuant to Section 768.28(6)(a) suffice to support an action on a claim against the Sheriff's Office of Broward County?

Petitioner would submit that in light of the concession made by Respondent in the Circuit Court that the County was on notice of Petitioner's intention to file suit (R. 374), the certified question should be answered in the affirmative.

Of additional import is the fact that it is the "Sheriff" not the "Sheriff's Office" which Petitioner seeks to sue and upon whom Petitioner submits adequate notice was served.

The question as certified is at odds with the record which indicates, 1) Respondent's stipulation that the County was on notice (albeit through the County Attorney's Office), and, 2) Petitioner's cross-claim against the Sheriff (R. 251-255) (not the "Sheriff's Office").

Thus, in light of the concessions and proceedings below, the Petitioner would submit that the real question before this Court is whether timely notice to Broward County pursuant to Florida Statute 768.28(6)(a) is sufficient to support an action on a claim against the Sheriff of Broward County.

In dismissing the Petitioner's cross-claim against Respondent,

the Court below ruled in effect that the Petitioner's timely notice of intention to file suit as required by Florida Statute 768.28(6)(a) served on Broward County is not sufficient to serve notice on the Sheriff of said county.

The sufficiency of Petitioner's notice to the County was conceded by the Respondent at the time of the hearing on Respondent's motion to dismiss. (R. 374). Having conceded that the County was put on notice timely, the threshold issue in this appeal is whether this notice is sufficient notice to the Sheriff of said County.

Florida Statute 768.28(6)(a) states in pertinent part:

> An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency...within 3 years after such claim accrues....

This subsection of Florida Statute 768 read in pari materia with the Florida Supreme Court's holding in Beard v. Hambrick, 396 So.2d 708 (1981) results in the inescapable conclusion that any notice the Defendant-Sheriff is entitled to would certainly be satisfied by placing the County on notice of intention to file suit against the Sheriff of said county.

In Beard, supra, this Court grappled with the issue of whether or not Florida Statute 768.28 applied to sheriffs. In determining that 768.28 is applicable to sheriffs the Court held that a sheriff falls within the parameters of 768.28 by virtue of the sheriffs status as "an official of a political subdivision of the state." Beard, at 711-712.

The syllogism applied by this Court is as follows: 1) 768.28

applies to the state, its agencies, or subdivisions; 2) the County is a political subdivision of the state; 3) the sheriff is a "county official," and, as such, is an integral part of the "county" as a "political subdivision," 4) conclusion: 768.28 is applicable to sheriffs as an official of a political subdivision of the state.

It is clear from Beard, supra, that the sheriffs inclusion within the penumbra of 768.28 is derived solely from the sheriff's status as an official of the political subdivision, to wit, the county.

In the case at bar, it is conceded that the Petitioner gave timely notice to the political subdivision i.e. Broward County. (R. 374). The Respondent and the Court below have taken the dichotomous position of claiming that the Respondent as sheriff is entitled to notice as mandated by Florida Statute 768.28(6)(a) but that the notice served on the political subdivision i.e. county of which the Respondent-Sheriff is an "integral part" by virtue of the status as "county official," is not adequate notice.

Petitioner would submit that the Respondent cannot "have it both ways." If the sheriff is totally separate and distinct from the county (political subdivision), then he is entitled to none of the notice requirement protection of 768.28(6)(a). This rationale has already been considered and rejected by the Supreme Court in Beard, supra.

On the other hand, if the Respondent-Sheriff does falls within 768.28 (as held by the Court in Beard, supra), then the notice requirement of 768.28(6)(a) would be satisfied by timely notice served upon the political subdivision i.e. county of which the Respondent-Sheriff is an "integral part" as a "county official."

Whichever approach this Court wishes to adopt the conclusion remains the same - the Court below erred in dismissing Petitioner's cross-claim due to failure to meet the requirement of 768.28(6)(a). The Respondent-Sheriff was either entitled to no notice whatsoever because of its totally separate and distinct identity independent of the political subdivision (the position rejected by the Supreme Court in Beard, supra) or the Respondent-Sheriff was entitled to notice by virtue of his status as a county official (the holding of the Court in Beard, supra).

Plaintiff would submit that the Respondent-Sheriff received all the notice he was statutorily entitled to when the political subdivision of which the Respondent-Sheriff is an official - Broward County - received timely notice pursuant to Florida Statute 768.28(6)(a) of Petitioner's intention to file suit.

The District Court of Appeals juxtaposes language by this Court in Beard to suggest that Beard "may be equivocal" on the notice issue raised in this appeal.

In Beard, this Court held that "a sheriff is a county official and, as such, is an integral part of the county as a political subdivision and that 768.28 is applicable to sheriffs as a separate entity or agency of a political subdivision. (at 711).

The District Court's majority implies that these two premises; 1) that the sheriff is a county official and an integral part of the County, and 2) that Sheriffs are a separate entity or agency are at odds such that the opinion may or may not be construed to mean that notice to the County is sufficient for notice to the Sheriff of the County.

Petitioner would suggest that any ambiguity which may arise in Beard is clearly laid to rest by this Court's discussion of Article 8, Section 1 of the Florida Constitution. This Court stated:

> In our opinion, there is no reasonable way to construe article 8, section 1, other than to include sheriffs as well as other named county officers as part of a county and, as such, within the definition of a political subdivision as used in subsection (a) of this section [768.28(6)(a)]. To hold otherwise creates an artificial governmental entity for sheriffs and other named county officials that was not intended by either the legislature or the framers of our constitution. (at 711).

Clearly, this Court in Beard construed article 8, section 1 of the Constitution to include sheriffs as part of the county.

Inasmuch as sheriffs are part of the County, Petitioner submits that sheriffs cannot at the same time be separate and distinct from the County. What the Respondent in this cause has attempted to do from the outset is to separate the Sheriff from his county therein attempting to create the very same "artificial governmental entity" which (as pointed out by this Court in Beard) was not intended by either the legislature or the framers of our constitution.

In his dissenting opinion Judge Anstead interprets the notice statute in a common sense fashion which Petitioner would submit is also consistent with Beard.

Since the Sheriff is an official of county government, service of notice on the county should constitute sufficient notice to the county official.

Indeed, Petitioner would submit that this Court need not address the certified question in order to reverse the Court below. This

Court's opinion in Orange County v. Gipson, 548 So.2d 658 (Fla. 1989) dictates that in the instant case no notice whatsoever is required of Petitioner.

In Gipson, supra, this Court held that a cross claimant for contribution against a governmental entity is not required to provide notice of cross claim to the Department of Insurance where the underlying tort claimants provided timely and proper notice of tort claims and both the governmental entity and the cross claimant were defendants in the litigation at the time such notice was provided.

As in Gipson, both the Petitioner and Respondent sub judice were defendants at the time the underlying tort claim brought by Torres was filed. Timely notice of intention to file suit by Torres had been served on the Respondent (R. 312) at the time Petitioner and Respondent were originally served with Torres' underlying complaint.

In Gipson, involving a cross-claim for contribution by the City of Orlando against Orange County, the County contended that because the City had not complied with the notice requirement by noticing the Insurance Department its claim for contribution should have been barred.

In holding that notice of the cross-claim was not required, this Court eschewed the strict construction of 768.28(6)(a) urged by the County. The Court agreed that the elementary principle of statutory construction that statutes will not be interpreted so as to yield an absured result was applicable. Beard, at 660; William v. State, 492 So.2d 1051 (Fla. 1986). Inasmuch as the crossclaim for contribution was "part and parcel" of the original action against a state agency notice of filing the crossclaim was not necessary.

Finding that the City's crossclaim was a "logical product" of the original Plaintiff's suit against both the City and County, this Court rejected the argument that a second notice was required as being "a totally unwarranted elevation of form over substance." (Gipson, at 660).

Petitioner would submit that the same analysis in Gipson be applied sub judice inasmuch as the parallels of the two cases are striking. As in Gipson, both the Petitioner and Respondent herein were party defendants to the underlying complaint and the Respondent herein received timely notice of the underlying Plaintiff's intention to file suit. Petitioner suggests that the crossclaim sub judice is no less "part and parcel" of Torres' original action than Gipson's crossclaim for contribution.

The Respondent herein, like the County in Gipson, urges the Court to require a second notice. It would be no less "a totally unwarranted elevation of form over substance" to require such notice in the instant case.

Indeed, Respondent urges the Court to interpret 768.28(6)(a) so as to yield the "absurd result" that despite the fact that Broward County is on notice of intention to sue its Sheriff, the Sheriff may not be sued because the Sheriff himself received no notice.

Petitioner submits that it is absurd to read 768.28(6)(a) such that notice to the County of intention to sue the Sheriff is insufficient for suit against the Sheriff of the County.

Judge Anstead's "common sense" interpretation of the notice statute represents nothing more than his refusal to "elevate form over substance" and interpret 768.28(6)(a) so as to yield an "absurd

result." Neither the framers of the Constitution in Article 8, Section 1, nor this Court in Beard and Gipson dictate that the Respondent is entitled to separate notice of intention to file a crossclaim. If any notice whatsoever was required for the crossclaim herein (which it was not according to Gipson), this notice was certainly satisfied when the County was put on notice of Petitioner's intention to sue their Sheriff.

CONCLUSION

Based on the foregoing facts, authorities and arguments, Petitioner respectfully submits that the Respondent was entitled to no notice of Petitioner's crossclaim and that the decision of the District Court be reversed on this basis alone. In the alternative, Petitioner submits that the question certified by the District Court be answered in the affirmative, and that the decision of the District Court be reversed.

Respectfully submitted,

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By: _____
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this 2nd day of November, 1990 to: Fred Parker, Esq., Parker, Skelding, Labasky & Corry, P.O. Box 669, Tallahassee, Florida, 32302; and to Louis F. Hubener, Esq., Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida, 32399-1050.

DAVID J. FINGER, ESQ.
Attorney for Petitioner

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1990

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

MIGUEL PIREZ, JR.,

Appellant,

v.

GEORGE BRESCHER, as Sheriff of Broward County,

Appellee.

CASE NO. 88-2424.

Opinion filed February 28, 1990

Appeal from the Circuit Court for Broward County; Robert C. Abel, Jr., Judge.

David J. Finger of Levine & Finger, Miami, for appellant.

Richard A. Purdy of Shailer, Purdy & Jolly, P.A., Fort Lauderdale, for appellee.

PER CURIAM.

This is an appeal from an order dismissing an action against a county sheriff on the grounds that the notice furnished to the county about the action under the pre-suit notice requirements of section 768.28(6)(a), Florida Statutes, was insufficient notice to the sheriff. We reverse and remand for further proceedings on the authority of Beard v. Hambrick, 396 So.2d 708 (Fla. 1981).

Under Hambrick, a sheriff is deemed to be an official of county government. Hence, service of notice on the county should constitute sufficient notice to a county official. We believe this holding is consistent with a practical

interpretation of the notice requirement, since there are a myriad of county officials whose precise legal relationship with the county is unclear and possibly unknown to the general public. We also certify this issue as one of great public importance so that the parties may have the issue settled by the Florida Supreme Court.

DOWNEY and ANSTEAD, JJ., concur.
LETTS, J., dissents with opinion.

LETTS, J., dissenting.

The question presented is whether notice to the county attorney's office suffices under section 768.28(6)(a), Florida Statutes (1987), when a lawsuit is filed against the Broward County Sheriff's Office and the county is not named as a defendant. In my opinion, it does not.

In the case at bar, both sides rely on Beard v. Hambrick, 396 So.2d 708 (Fla. 1981). At one point in Beard, our supreme court opined that "a sheriff is a county official and, as such, is an integral part of the county," which statement would support the notion that the notice given in the case at bar was adequate. On the other hand, Beard also noted that "section 768.28 is applicable to sheriffs as a separate entity or agency of a political subdivision." This latter language would suggest that the notice given was inadequate. The point at issue here is

not the same as it was in Beard, where the issue involved the question of whether the sheriff was subject to the waiver of sovereign immunity. Sub judice, sovereign immunity is not in question.

It is uncontroverted that the Broward County attorney's office does not represent the sheriff. Likewise, under Article VIII § 1(d), Fla. Const., it appears to me to be erroneous to suppose if one sues the tax collector, the property appraiser, the supervisor of elections or the clerk of the circuit court (many of whom retain their own counsel), that notice to the county attorney's office would suffice, especially where the county is not even named as a defendant.

At oral argument, in response to a question on why the sheriff's department itself was not given notice, the explanation was given that the sheriff's employees were also being sued personally. So what?

The purpose of the statute is to insure that proper notice is given to the appropriate entity. In Broward County, the sheriff is an elected constitutional officer who retains his own counsel. In my judgment, it is the sheriff's department that should have been given notice. Clearly, the case of Orange County v. Gipson, 548 So.2d 658 (Fla. 1989) does not support the appellant's position. In Gipson, the supreme court merely held that a cross-claim did not require separate notice under the statute because it was part and parcel of the original action. The present case is a far cry from that scenario. Sheriffs in most counties are elected constitutional officers operating their

own bandwagons, even taking out their own insurance out of their own budgets to safeguard them against claims such as the one before us now. I simply cannot agree that notice to the county attorney's office, when it does not represent the sheriff and when the county is not even named as a defendant, satisfies the intent of the legislature.

Parenthetically, I would note that both Beard and Gipson involved notice actually given to the sheriff.

I would affirm.

EXHIBIT "A" 4/4

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1990

MIGUEL PIREZ, JR.,

Appellant,

v.

GEORGE BRESCHER, as Sheriff of Broward County,

Appellee.

CASE NO. 88-2424.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed September 5, 1990

Appeal from the Circuit Court for Broward County; Robert C. Abel, Jr., Judge.

David J. Finger of Levine & Finger, Miami, for appellant.

Richard A. Purdy of Shailer, Purdy & Jolly, P.A., Fort Lauderdale, for appellee.

ON MOTION FOR REHEARING

PER CURIAM.

The motion for rehearing is granted. The opinion of February 28, 1990 is withdrawn and the following opinion is substituted:

The question presented is whether notice given only to the county attorney's office suffices under section 768.28(6)(a), Florida Statutes (1987), when a lawsuit is filed against the Broward County Sheriff's Office and the county is not named as a defendant. The trial judge deemed the notice insufficient and we agree.

In the case at bar, both sides rely on Beard v. Hambrick, 396 So.2d 708 (Fla. 1981). At one point in Beard, our supreme court opined that "a sheriff is a county official and, as such, is an integral part of the county," which statement would support the notion that the notice given in the case at bar was adequate. On the other hand, Beard also noted that "section 768.28 is applicable to sheriffs as a separate entity or agency of a political subdivision." This latter language would suggest that the notice given was inadequate. The point at issue here is not the same as it was in Beard, where the issue involved the question of whether the sheriff was subject to the waiver of sovereign immunity. Sub judice, sovereign immunity is not in question.

It is uncontroverted that the Broward County attorney's office does not represent the sheriff. Likewise, under Article VIII § 1(d), Fla. Const., it appears to us to be erroneous to suppose if one sues the tax collector, the property appraiser, the supervisor of elections or the clerk of the circuit court (many of whom retain their own counsel), that notice to the county attorney's office would suffice, especially where the county is not even named as a defendant.

At oral argument, in response to a question on why the sheriff's department itself was not given notice, the explanation was given that the sheriff's employees were also being sued personally. So what?

The purpose of the statute is to insure that proper notice is given to the appropriate entity. In Broward County,

the sheriff is an elected constitutional officer who retains his own counsel. In our judgment, it is the sheriff's department that should have been given notice. Clearly, the case of Orange County v. Gipson, 548 So.2d 658 (Fla. 1989) does not support the appellant's position. In Gipson, the supreme court merely held that a cross-claim did not require separate notice under the statute because it was part and parcel of the original action. The present case is a far cry from that scenario. Sheriffs in most counties are elected constitutional officers operating their own bandwagons, even taking out their own insurance out of their own budgets to safeguard them against claims such as the one before us now. We do not agree that notice to the county attorney's office, when it does not represent the sheriff and when the county is not even named as a defendant, satisfies the intent of the legislature.

Parenthetically, we would note that both Beard and Gipson involved notice actually given to the sheriff.

In conclusion, we repeat our earlier thought that the Beard case may be equivocal on this issue. Moreover, the matter is obviously of great public importance. Consequently, we hereby certify the following question to our supreme court.

> DOES NOTICE GIVEN ONLY TO THE BROWARD COUNTY ATTORNEY'S OFFICE PURSUANT TO SECTION 768.28(6)(a) SUFFICE TO SUPPORT AN ACTION ON A CLAIM AGAINST THE SHERIFF'S OFFICE OF BROWARD COUNTY?

AFFIRMED.

DOWNEY and LETTS, JJ., concur.
ANSTEAD, J., dissents with opinion.

EXHIBIT "B" 3/4

ANSTEAD, J., dissenting.

Although I agree that the issue is close, and that the question should be certified, I would adhere to our original opinion. The Beard v. Hambrick decision holds that a sheriff is an officer of a political subdivision of the state, to wit a county. Under the notice statute, service of notice is to be made upon the political subdivision involved. In this case that is the county. I think we should interpret the notice statute in a common sense fashion. The sheriff is an officer of county government. His budget is part of the county government budget. His jurisdiction is coextensive with the county boundaries. In this case, the county attorney is even authorized to represent the sheriff. I agree with the statement in our original opinion of February 28, 1990:

> Under Hambrick, a sheriff is deemed to be an official of county government. Hence, service of notice on the county should constitute sufficient notice to a county official. We believe this holding is consistent with a practical interpretation of the notice requirement, since there are a myriad of county officials whose precise legal relationship with the county is unclear and possibly unknown to the general public.

EXHIBIT "B" 4/4