

047. D.A. 2-194

IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,782

**FILED**

SID J. WHITE

JAN 10 1994

CLERK, SUPREME COURT

By ~~\_\_\_\_\_~~  
Clerk Deputy Clerk

IN RE: CERTIFICATION OF CONFLICT  
IN MOTIONS TO WITHDRAW FILED BY  
PUBLIC DEFENDER OF THE TENTH  
JUDICIAL CIRCUIT

---

ON DISCRETIONARY REVIEW  
FROM THE FLORIDA DISTRICT COURT OF APPEAL  
SECOND DISTRICT

---

AMICUS CURIAE BRIEF

submitted by  
FLORIDA ASSOCIATION OF COUNTIES, INC.

---

**William J. Roberts**  
Florida Bar Number 67267  
**William Paul Huey**  
Florida Bar Number 936634  
ROBERTS & EGAN, P.A.  
217 South Adams Street  
Tallahassee, Florida 32301  
(904) 244-5169

TABLE OF CONTENTS

TABLE OF CITATIONS . . . . . ii  
STATEMENT OF THE CASE AND OF THE FACTS . . . . . 1  
ISSUES . . . . . 2  
SUMMARY OF ARGUMENT . . . . . 3  
ARGUMENT . . . . . 4-7

IN THIS PARTICULAR INSTANCE THE SECOND DISTRICT COURT OF APPEAL ACTED PROPERLY WHEN IT APPOINTED A COMMISSIONER TO CONDUCT AN EVIDENTIARY HEARING ON 25 MOTIONS FILED BY THE PUBLIC DEFENDER OF THE TENTH CIRCUIT TO WITHDRAW FROM THE REPRESENTATION OF 382 INDIGENT APPELLANTS WHOSE INITIAL APPELLANT BRIEFS WERE OVERDUE.

CONCLUSION . . . . . 8  
CERTIFICATE OF SERVICE . . . . . 9-10

TABLE OF CITATIONS

CASES

Baggett v. Wainwright,  
229 S.2d 239, 244 (Fla. 1969), abrogated in part not  
pertinent to this appeal, 569 So.2d 439 (Fla. 1990) . . . . . 4

Order on Motions to Withdraw Filed  
by Tenth Circuit Public Defender,  
622 So.2d 2 (Fla. 2d DCA 1993) (en banc) . . . . . 4

Rose v. Palm Beach County,  
361 So.2d 135 (Fla. 1978) . . . . . 5

Skitka v. State,  
579 So.2d 102 (Fla. 1991) . . . . . 5

Volk v. State,  
436 So.2d 1064, 1065-66 (Fla. 5th DCA 1983) . . . . . 6

STATUTES

Section 27.53(3), Florida Statutes . . . . . 6

Section 925.036, Florida Statutes . . . . . 6

## STATEMENT OF THE CASE AND OF THE FACTS

As provided by Rules 9.370, Florida Rules of Appellate Procedure, the Florida Association of Counties, Inc. (FAC), a not-for-profit corporation comprised of all 67 counties of the State of Florida, files this brief as amicus curiae in support of the Florida Second District Court of Appeal's appointment of a commissioner to conduct an evidentiary hearing into whether the Public Defender of the Tenth Judicial Circuit (PD) was entitled to withdraw from the representation of 382 appellants whose initial briefs were overdue.

Pursuant to Rule 9.210(c), Florida Rules of Appellate Procedure, FAC provides no additional statement of the case and of the facts and accepts the "Statement of the Case and Facts" presented in the Public Defender of the Tenth Judicial Circuit's "Brief on the Merits ..." filed with court.

## ISSUES

WHETHER THE SECOND DISTRICT COURT OF APPEAL ACTED PROPERLY WHEN IT APPOINTED A COMMISSIONER TO CONDUCT AN EVIDENTIARY HEARING ON 25 MOTIONS FILED BY THE PUBLIC DEFENDER OF THE TENTH CIRCUIT TO WITHDRAW FROM THE REPRESENTATION OF 382 INDIGENT APPELLANTS WHOSE INITIAL APPELLANT BRIEFS WERE OVERDUE.

### SUMMARY OF ARGUMENT

A considerable body of case law has been promulgated by this court which authorizes the District Courts of Appeal to order inquiries into motions filed by public defenders seeking to withdraw from representation of indigent criminal appellants due to conflicts of interest. Relying on these cases, the Florida Association of Counties argues that the Second District Court of Appeal did not exceed its authority when it appointed a commissioner to conduct an evidentiary hearing on motions filed by the Public Defender of the Tenth Judicial Circuit to withdraw from representation of 382 indigent appellants whose initial appellant briefs were overdue.

## ARGUMENT

IN THIS PARTICULAR INSTANCE THE SECOND DISTRICT COURT OF APPEAL ACTED PROPERLY WHEN IT APPOINTED A COMMISSIONER TO CONDUCT AN EVIDENTIARY HEARING ON 25 MOTIONS FILED BY THE PUBLIC DEFENDER OF THE TENTH CIRCUIT TO WITHDRAW FROM THE REPRESENTATION OF 382 INDIGENT APPELLANTS WHOSE INITIAL APPELLANT BRIEFS WERE OVERDUE.

The Public Defender of the Tenth Judicial Circuit (PD) asserts that the Second District Court of Appeal (2d DCA) exceeded its authority when it ordered the appointment of a commissioner to conduct an evidentiary hearing on 25 motions filed by the PD to withdraw from the representation of 382 indigent appellants whose initial appellate briefs were overdue. This assertion is incorrect for the following reasons:

In Baggett v. Wainwright, 229 S.2d 239 (Fla. 1969) (concerning procedures in original habeas corpus proceedings), abrogated in part not pertinent to this appeal, 569 So.2d 439 (Fla. 1990), this court granted each District Court of Appeal the following power:

If factual determinations are deemed necessary, the appropriate district court needs merely ... appoint a commissioner to make the necessary factual determinations.

Id. at 244.

The Florida Association of Counties (FAC) asserts that it was both prudent and reasonable for the 2d DCA to give the above language a broad construction and to appoint a commissioner in response to the PD's request to withdraw. See, Order on Motions to Withdraw Filed by Tenth Circuit Public Defender, 622 So.2d 2, 3 (Fla. 2d DCA 1993) (en banc).

Even if this court were to disallow the application of Baggett to the case at hand, other case law gives the District Courts of Appeal broad authority to issue orders necessary for the proper administration of justice. For example, in Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978), this court stated:

Every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions.

Id. at 137.

As far as FAC has been able to determine, there is no provision in our state or federal constitution, no provision in our state or federal laws or statutes, and no ruling by any of our state or federal courts which invalidate the 2d DCA's reliance on Rose.

Finally, this court in Skitka v. State, 579 So. 2d 102 (Fla. 1991), stated:

We acknowledge the public defender's argument that the courts should not involve themselves in the management of public defender offices. At the same time, we do not believe the courts are obligated to permit the withdrawal automatically upon the filing of a certificate by the public defender reflecting a backlog in the prosecution of appeals.

Id. at 104.

FAC asserts that this language clearly implies that District Courts of Appeal are permitted to inquire into the factual sufficiency of a public defender's motion to withdraw from representation. FAC further asserts that when the 2d DCA appointed a com-



missioner to conduct an evidentiary on the PD's motions to withdraw, that court was merely exercising its legitimate authority as granted by Skitka.

In closing, FAC wishes to bring to this court's attention the fact that the statutory section which allows a public defender to withdraw from representation of indigent criminal defendants (i.e., section 27.53(3), Florida Statutes<sup>1</sup>) does not authorize a public defender to "batch" motions to withdraw from representation of indigent criminal defendants/appellants once the public defender determines that a conflict of interest exists. The fact that the 2d DCA issued a single order based on 25 motions filed by the PD to withdraw from the representation of 382 indigent appellants whose initial briefs were overdue is astounding.

FAC believes that section 27.53(3) imposes on every public defender "a duty to move the court to appoint other counsel" as soon as the public defender determines a conflict of interest exists! Furthermore, because case law holds that an assistant

---

<sup>1</sup>The relevant language to which FAC refers is contained in the first sentence of section 27.53(3), Florida Statutes, and reads as follows:

(3) If at any time during the representation of two or more indigents the public defender shall determine that the interests of those accused are so adverse or hostile that they cannot be counseled by the public defender or his staff without conflict of interest, or that none can be counseled by the public defender or his staff because of conflict of interest, it shall be his duty to move the court to appoint other counsel.

court to appoint other counsel (Volk v. State, 436 So.2d 1064, 1065-66 (Fla. 5th DCA 1983) (statute does not distinguish between elected public defender and his/her staff)), logic dictates that this statutory duty extends to all assistant public defenders as well.

If this court agrees with FAC's construction of section 27.53(3), then FAC respectfully suggests that as a matter of public policy this court should henceforth require every public defender and every assistant public defender under its jurisdiction to promptly certify and move the appropriate court to appoint other counsel when a conflict is discovered. It should also require each court receiving such a motion to act on that motion as promptly as possible. To require otherwise would be unfair and unjust to those indigent criminal defendants awaiting disposition of their causes and would place an unanticipated and unnecessarily heavy financial burden on the counties who, under section 925.036, Florida Statutes, are required to pay for court-appointed counsel.

## CONCLUSION

The Florida Association of Counties recognizes that the state's public defenders are woefully underfinanced and, consequently, must sometime withdraw from representing indigents accused of crimes. However, in the case presently before this court it is clear that the Second District Court of Appeal exercised its legal authority when it appointed a commissioner to hold an evidentiary hearing on the factual basis underlying 25 motions filed by the Public Defender of the Tenth Judicial Circuit to withdraw from the representation of 382 indigent criminal appellants whose initial briefs were overdue.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amicus Curiae Brief submitted on behalf of the Florida Association of Counties, Inc. was furnished by U.S. Mail to the following:

**John Beranek**

Aurell Radey Hinkle Thomas & Beranek  
P.O. Drawer 11307  
Tallahassee, FL 32302

**Bennett H. Brummer and  
Louis Campbell**

Office of the Public Defender  
Eleventh Judicial Circuit  
1320 N.W. 14th Street  
Miami, FL 33125

**William P. Buztrey**

Office of the Hillsborough County Attorney  
P.O. Box 1110  
Tampa, FL 33601

**Mark F. Carpanini**

Polk County Attorney  
P.O. Box 60  
Bartow, FL 33830

**J. C. Cheatwood**

412 Fern Cliff Avenue  
Temple Terrace, FL 33617

**Susan H. Churuti and**

**Suzanne T. Smith**  
Office of the Pinellas County Attorney  
315 Court Street  
Clearwater, FL 34616

**Cory Ciklin**

Office of the Palm Beach County Attorney  
P.O. Box 1989  
West Palm Beach, FL 33402

**Nancy Daniels**

Public Defender  
Second Judicial Circuit  
P.O. Drawer 12666  
Pensacola, FL 32574

**Richard A. Doran**  
Appellate Division  
Office of the Attorney General  
The Capitol  
Tallahassee, FL 32399

**James B. Gibson**  
Public Defender  
Seventh Judicial Circuit  
P.O. Drawer 1206  
Lake City, FL 32056

**Richard L. Jorandby**  
Public Defender  
Fifteenth Judicial Circuit  
330 East Bay Street - Room 408  
Jacksonville, FL 32202

**J. Marion Moorman**  
Public Defender  
Tenth Judicial Circuit  
P.O. Box 9000-Drawer PD  
Bartow, FL 33830

**H. Hamilton Rice, Jr. and  
Paul Bangle**  
Office of the Manatee County Attorney  
Paul Bangle  
P.O. Box 1000  
Bradenton, FL 34206

**Gary A. Vorbeck and  
Fredrick A. Bechtold**  
Attorneys for DeSoto and Hardee Counties  
207 East Magnolia Street  
Arcadia, FL 33821

this 10th day of January, 1994.

ROBERTS AND EGAN, P.A.  
217 South Adams Street  
Tallahassee, FL 32301  
(904) 224-5169  
Attorneys and Counsel for Florida Association of Counties, Inc.

By: William Paul Huey  
William Paul Huey  
Florida Bar Number 936634