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**FILED**

SID J. WHITE

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
CASE NO.: 82,782

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

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AMICUS CURIAE BRIEF BY PALM BEACH COUNTY

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**ARGUMENT  
POINT I**

IT IS WITHIN THE INHERENT AUTHORITY OF THE COURT TO CONDUCT AN EVIDENTIARY HEARING WHEN A PUBLIC DEFENDER SEEKS TO WITHDRAW FROM REPRESENTATION OF A PUBLIC DEFENDER CLIENT

At the outset, Palm Beach County agrees with the Florida Public Defender Association, Inc. when it states that there "is no necessary, judicial difference between traditional conflicts of interest and those that are caused by an excessive case load. All conflicts arise from the attorney relationship to individual clients." (Brief of the Florida Public Defender Association, Inc. as Amicus Curiae at page 13).

Throughout the briefs submitted by the Public Defender of the Tenth Judicial Circuit and the Florida Public Defender Association, Inc., the concept of "certification" is repeatedly invoked. That is, these parties repeatedly suggest that once a public defender makes a "certification" or "certifies" that a conflict exists, a court may only assess the "facial sufficiency" of the certification and thereafter proceed diligently to appoint substitute counsel unconnected with the public defender's office.

Palm Beach County concedes that, at one time, such a "certification" may have been all that was necessary for a public defender to withdraw. However, the Florida legislature enacted a substantial amendment to the applicable statute in 1981. Chapter 81-273, Laws of Florida.

Prior to the enactment of Chapter 81-273, Laws of Florida, Section, 27.53(3) Florida Statutes provided, in pertinent part as follows:

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 all be counseled by the public defender... it shall be his duty to certify such fact to the court, and the court shall appoint one or more members of The Florida Bar... (emphasis added)

The 1981 Florida legislature amended this statutory provision and specifically eliminated the words "certify such fact to the court" and further deleted the word "shall" as it related to the court's duty once the public defender issued such a certification. After the 1981 legislature amended this statutory provision, it read (and continues to read) as follows:

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 all be counseled by the public defender... it shall be his duty to move the court to appoint other counsel. The court may appoint one or more members of The Florida Bar... (emphasis added)

Accordingly, Palm Beach County would respectfully suggest that "certificates of conflict" no longer exist. Because of the 1981 amendments to this statutory provision, the public defender must now "move" (i.e. file a motion) the court for permission to withdraw. And, as this court stated in Skitka v. State, 579 So.2d 102 (Fla. 1991):

[W]e 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. Skitka at 104.

The Second District Court of Appeal in Order On Motions To Withdraw Filed By Tenth Circuit Public Defender, 622 So. 2d 2 (Fla. 2nd 1993) succinctly stated the profound problem of automatically granting requests from a public defender to withdraw:

We have concluded that we can no longer resolve these motions without an adequate factual record. The issues raised by these motions are too complex to be resolved summarily. The result we will ultimately reach will affect too many people and the fiscal affairs of too many governments. The appellants in these cases are constitutionally entitled to timely appeals.

\* \* \*

The counties on the other hand want this problem solved without additional demand on already overburdened budgets. Order On Motions to Withdraw at 3.

In the instant case, the Second District Court of Appeal properly exercised its inherent authority to inquiry into the sufficiency of the public defender's motion to withdraw. An additional basis for the court's authority was clearly enunciated by this court in Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978) which 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. Rose at 137.

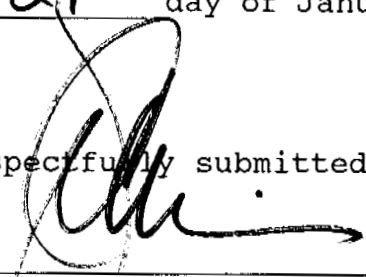
CONCLUSION

Because of the Florida Legislature's 1981 amendment to Section 27.53(3), Florida Statutes, "certificates of conflict" no longer exist within this state. When a public defender believes that a conflict situation exists, he must "move" (i.e. file a motion) the court, among other things, to withdraw. Upon receipt of such a motion, the court has the inherent authority to make further inquiry if the court believes that it needs an "adequate factual record" or if the issues raised by the motions are "too complex to be resolved summarily." For these reasons, Palm Beach County respectfully submits that the Second District Court of Appeal's requirement of an evidentiary hearing in response to the public defender's motion to withdraw was proper and within its inherent authority.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail this 21<sup>st</sup> day of January, 1994 to the attached list of counsel.

Respectfully submitted,



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