

IN THE FLORIDA SUPREME COURT

O/A  
10-3-95

JACK BEHR,

Petitioner,

Case No. 85,024

v.

FRANK L. BELL,  
as Circuit Judge of the  
1st Judicial Circuit,  
Respondent.

**FILED**

SID J. WHITE

AUG 9 1995

CLERK, SUPREME COURT

By

Chief Deputy Clerk

PETITIONER'S REPLY BRIEF ON THE MERITS

JACK BEHR  
PUBLIC DEFENDER  
FIRST JUDICIAL CIRCUIT

EARL D. LOVELESS  
FBN: 243183  
CHIEF ASSISTANT PUBLIC DEFENDER

ATTORNEY FOR PETITIONER

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TABLE OF CITATIONS

CASES

GIDEON V. WAINWRIGHT, 372 U.S. 335; 83 Sct 792; 9LEd 2d 799

## ARGUMENT

In spite of the argument presented by the state in their answer brief, the main issue continues to be whether or not Chapter 27 of the Florida Statutes permits the appointment of the public defender as "standby counsel" in any case. It is for that reason that the definition of the word "represent" is important. The legislature did not establish the office of the public defender to counsel or advise defendants except during the course of representation in criminal cases. It also did not establish that office to act as a "go-between" for an unruly defendant who is exercising his right of self-representation. It established the office, in response to Gideon v. Wainwright, 372 U.S. 806; to try to ensure that all persons charged with serious crimes in the state of Florida would receive due process of law by equalizing both sides of our adversarial system.

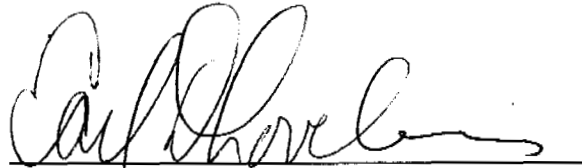
Petitioner agrees with the apparent conclusion of the state as expressed in the final sentence. "It should be made clear that the appointment of standby counsel is largely an ineffectual and wasteful undertaking which should be resorted to only under very limited circumstances." In these situations, if it becomes necessary to terminate a defendant's self-representation, for whatever reason, the court can and should declare a mistrial, appoint counsel, and reset the case for an appropriate trial date. It would be necessary for the court to find that the defendant had either voluntarily given up the right to self-representation or had forfeited that right by the actions that necessitated the mistrial.

**CONCLUSION**

The decision of the district court should be reversed.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by mail to Mr. James Rogers, Senior Assistant Attorney General, Tallahassee, Florida on this 8<sup>th</sup> day of August, 1995.



EARL D. LOVELESS  
CHIEF ASSISTANT PUBLIC DEFENDER