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IN THE SUPREME COURT OF FLORIDA

ROBERT F. MILLIGAN,
Comptroller,
Florida Office of the Comptroller,
and Head of the Cepartment of
Banking and Finance,

Appellant,

vs.

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,
BURT AARONSON, Chairman,

Appellee.

FLORIDA S. CT. #91,533

4th DCA CASE #97-02927
L.T. CASE CL 97-3951 AE

Florida Bar #253456

AMICUS BRIEF BY ORANGE COUNTY

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PRELIMINARY STATEMENT

The Appellant is identified herein as "Comptroller," Palm Beach County is identified as "County."

STATEMENT OF THE CASE AND FACTS

Orange County would adopt the Statement of the Case and Facts submitted in Comptroller's Initial Brief.

SUMMARY OF THE ARGUMENTS

Florida law does not require a County to pay *anything* for attorneys fees, court costs or court fees unless specific provision is made by statute for such payment. There is no provision in the statutes or the constitution for the counties to pay at all for such an appellate fee. The comptroller is straining to find any provision, where this Court has stated that such a provision must be specified, not implied, even in cases where it concluded that there was a general duty on the part of the counties to front the money.

But in addition, the rules of civil procedure with regard to complaints in equity for mandamus add to the Comptroller's already heavy burden, since they require numerous specific allegations of fact in order to state a cause of action which the court below could hear at all.

Orange County cannot agree with the strained and far-fetched interpretation of the statutes that the comptroller has made anyway. There is nothing in his arguments which comes close to creating the kind of explicit provision required under this Courts interpretation of the law.

Even if this Court were to accept the Comptroller's arguments that the provisions of section 939.15, Fla. Stat. are somehow sufficiently explicit enough to require the entry of an order on writ of mandamus, it would be unconstitutional to require the counties to front such money for criminal appellants where no reimbursement could be expected from the state under the provisions of section 925.037, Fla. stat., i.e. unless this court were to order the court below to order the state to reimburse the county for its payment, as the state is required to do by statute, and required the court below only to order the county to pay, that would be in violation of the Florida constitution, specifically Article I, Article V, and Article VII.

ISSUE

THE TRIAL COURT DISMISSAL OF THE COMPLAINT FOR WRIT OF MANDAMUS WAS NOT IN ERROR, INTERPRETED THE STATUTORY LAW CORRECTLY, AND INDEED COULD HAVE GONE FURTHER, TO DECLARE THE MATTER UNCONSTITUTIONAL, BUT WAS NOT REQUIRED TO REACH THAT ISSUE.

I. APPELLANT HAD NO LEGAL RIGHT TO SUE AT ALL

Appellant begins by saying that the case below does not turn on facts, presumably because there was no specific criminal case around which a set of facts could coalesce. He then says he expects this case to be treated *de novo*. These two statements are far more revealing than one would imagine. In a specific criminal case, an attorney is representing (1) a specific defendant (2) who is requesting a payment(3) via a criminal court hearing, (4) who is somehow being denied some form of payment (5) to which he has a *right,* which the defendant's attorney will identify as either (6) flowing from the Constitution, or (7) from a statute, (8)from an entity which has a *duty to pay* it, which this Court has ruled (9) must be provided for by statute in *Board of County Commissioners, Pinellas County* v. *Tom F. Sawyer,* 620 So. 2d 757 (Fla. 1993) . Absent such a specific case, there is *no one identified* who has a right, nor anyone identified who is refusing a definable duty. Palm Beach County would have no duty to pay the *Comptroller* even if one could argue that the county had a duty to pay someone. The Comptroller is not acting on behalf of a criminal defendant. The comptroller is not acting on behalf of the District Court, and does not claim that. The Comptroller was not a party to any criminal case below. He is suing Palm Beach County out of the blue. He has cited nothing that would give him any more standing than a private citizen taken off the street would have, if that much.

There is no doubt that the Comptroller would very much like this matter to be considered *de novo.* But it is not an original action. He is appealing an unfavorable ruling. It is up to this Court to determine *not* the question he presents in the abstract, as if asking for an advisory opinion, but *whether the lower court abused its discretion,* particularly under the circumstances. It is those circumstances, whether one calls them "facts" or not, which were considered below, in addition to the law. The simple fact is that a third party, *not a defendant, and not an attorney asking to get paid by a county, either,* sued the Palm Beach County demanding the circuit court to issue a general order, unconnected to a specific criminal case or appeal, to them to start paying filing fees to the District Court, Those "legal" facts do exist. The ruling below does exist, and this Court should take both into account. If this Court does that, then it should be obvious that the Comptroller lacked standing by any standard.

The discordant note in this entire suit by the Comptroller is that he is trying to argue that section 939.15,(in concert with other provisions which he thinks require counties to assist *defendants),* requires counties to assist *defendants* by paying appellate filing fees. Its a false note because the Comptroller is not a defendant, and does not represent a defendant Such arguments simply are not properly made by a third party such as the Comptroller,

II. THE COMPTROLLER HAD *NO AUTHORITY* TO COMPEL SUCH PERFORMANCE IN THE FIRST PLACE

Nothing in sections 20.12, Fla. Stat. nor 2 15.32(1) Fla. Stat., cited by the Comptroller below, grants him any authority to require such a payment in the first place. Orange County, in reading the Comptroller's Brief from front to back, cannot find a single word in support of the Comptroller's authority or standing to have brought the case in the first place. Palm Beach County, in their motion

to dismiss, argued persuasively that the Comptroller had neither the standing nor authority under the law to do the things it was trying to do, and the court below had plenty of legal authority to use to dismiss the action. Now the Comptroller is not even trying to argue that the court below was mistaken in relying on that argument by Palm Beach County, and just wants this Court to address the issue it considers the underlying one, *without considering whether the Comptroller was the one with legal authority and standing to ask the court below to address the issue in the first place.* The Comptroller did not have standing or authority, and that fact should be considered.

This Court stated, in *State ex rel Jim Smith v. Jordanby*, 498 So. 2d 948 (Fla. 1986) that statutory authority permits representation by a public defender (and thereby indirectly a County) only in circumstances entailing *prosecution by the state threatening an indigent's liberty interest.* (That case involved a civil rights action by the public defender). This case presents no circumstance like that, to begin with.

III. THERE WAS NO CLEAR LEGAL RIGHT TO THE RELIEF SOUGHT

Palm Beach County was right in pointing out in the context of a mandamus action that the Comptroller had no clear legal right to relief, a necessary element in such a complaint. This not only because of the failure of standing and authority previously mentioned, but also because, first, the rationale that the county had acted to the determent of the General Revenue Fund, was absurd, since, as they pointed out, if the Comptroller prevailed it would be to the determent of the citizens of Palm Beach County by taking funds to which Palm Beach County, and certainly not the Comptroller, is legally entitled. But Palm Beach County also demonstrated that the statutes and arguments utilized by the Comptroller simply did not demonstrate a clear legal right, even if the Comptroller was

otherwise able to establish standing.

The Comptroller has analyzed the law from entirely the wrong direction, and based on a false assumption, He assumes that the entire analysis must take place from the standpoint of the defendant's right to a payment. He also assumes that if a defendant has a right, justified by a terrible need as well, then that need supports the idea that even a distant and debatable connection to a county would be enough to require a county to provide a given type of cost. The Comptroller, as did Wolfe, in *Wolfe v. Volusia* County, 1997 WL 182884 (Fla.), assumed also that counties pay any and all costs for indigent defendants unless a specific case eliminates that cost from the list of possible costs. The analysis that follows shows the opposite with regard to all three assumptions:

In Board of County Commissioners, Pinellas County v. Tom F. Sawyer, 620 So. 2d 757 (Fla. 1993) this Court, in reversing the finding that an acquitted defendant could recover investigative costs, held that

> [1] *Common law provided no mechanism whereby one party could be charged with the costs of the other. Cost provisions are a creature of statute and must be carefully construed This Court has held for over a century that costprovisions against the State must be expressly authorized:*
>
> *It may be premised that at common law neither party could be charged with the costs of the other, and it was only by statute that such a charge came to be allowed, but even after that in England and in this country the sovereign or the State was not chargeable with costs, either in civil or criminal cases, unless there was express provision of law to authorize it.*
>
> *Buckman v. Alenxander,* 24 Fla. 46, 49, 3 Do. 8 17 8 18 (1888).
>
> Contrary to the district court's finding of ambiguity, we find that section 939.06, Florida Statutes (1989), is unequivocal:

• • •

> $939.06, Fla. Stat. (1989). Given its plain meaning, the relevant portion of this statute simply says: No acquitted criminal defendant shall be liable for any court costs or court fees, any costs or fees of a ministerial government office, or any charges for subsistence, and that if such a defendant has paid any of these taxable costs he or she shall be reimbursed by the county. ***On its face, the statute does not authorize an acquitted defendant to be reimbursed for any additional disbursements. We hold that investigative costs are not taxable costs under the plain language of the statute.***
>
> Sawyer's mutuality claim is misplaced. Sections 939.01 and 939.06, Florida Statutes (1989), do not provide for mutuality of repayment. . . . ***Further, we observe that the Legislature has expressly authorized repayment under various circumstances and could easily have done so here if such were the legislative intent.***

(Emphasis added, Footnotes deleted).

The critical consideration in this case is that (1) there is ***no*** statute directly providing that counties will pay appellate filing fees , (2) there is no statute indirectly providing that counties will pay under any section which would require a public defender to represent the petitioner in an appeal, (3) there is no organic, per ***se constitutional*** right in such a case connected with even a rough and ready general statute which would require direct responsibility by the counties, as opposed to any other entity, and (4) ***Sawyer*** is not just eliminating investigative costs, but any cost not specifically provided for by statute.

IV. *RIGHT* TO SUPPORT VERSUS *SOURCE* OF SUPPORT

The citations of authority made by the attorney for Petitioner establish two basic requirements. First, indigent ***defendants*** have the right to have the necessary financial support to ***defend*** against the criminal charges. The second requirement is that counties are, generally, required to provide those funds for ***defendants.*** None of the statutes or case citations show that a ***county,*** as

opposed to some other entity, must provide funds for district court filing fees to assist an individual when he has completed his defense, at trial level. There are statutes which require counties to fund certain appellate costs, also. These statutes are very specific about the costs which the counties must pay or reimburse. None of them require counties to pay the appellate filing fees.

The Comptroller's main contention is as follows;

> Section 939.15, Florida Statutes (1995), requires the county, where a crime was committed, to pay indigent appellant or defendant costs, upon affidavit and proof of necessity or certification, as allowed by law, to the District
> Court of Appeal.
>
> 939.15
> Costs paid by county in cases of insolvency.-When the defendant in any criminal case pending in any circuit or county court, a district court of appeal, or the Supreme Court of the state has been adjudged insolvent by the circuit judge or the judge of the county court, upon *affidavit and proof* as required by s. 924.17 in cases of appeal, or when the defendant is discharged or the judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a *certified copy of the judgment of the court against such county for such* costs. However, this section does not apply to indigent defendants represented by the public defender. In such cases, costs incurred pursuant to s. 27.54(3) shall be paid by the county upon *certification by the public defender as being useful and necessary* in that preparation of a criminal defense, provided that the reasonableness of such expenses may be contested by the county in the criminal proceeding.

Section 939-15, Florida Statutes (emphasis added)

(Initial Brief, p. 2 and 3, emphasis in original.) Orange County, like Palm Beach County, can find nothing in that section, whether read "in pari materia" or not which would make counties responsible for indigent's filing fees in District Court. Orange County could hardly put it better than Palm Beach County did to the court below when it stated:

5. Plaintiff has alleged in paragraph 5 of its Compliant that COUNTY is "required by statute' to pay a filing fee to the District Court of Appeal for appeals filed by indigent defendants represented by the Public Defender. However, none of the statutes cited by plaintiff states that COUNTY has this duty.

6. Plaintiff at first relies on section 939.15, Florida Statutes. However, this section "does not apply to indigent defendants represented by the public defender," therefore, plaintiffs reliance on this section is misplaced. This statute creates no duty on behalf of COUNTY to pay appellate filing fees for defendants represented by the public defender since it specifically excludes defendants represented by that office.

7. Furthermore, this section addresses costs only as opposed to fees. The payment requested by the plaintiff is a "fee" not a "cost." Although the plaintiff has attempted to characterize this fee as a cost throughout its Complaint, it should not be able to do so in order to create a statutory duty where none exists-

> "Costs and fees" are altogether different in their nature generally. The one is an allowance to a party of expenses incurred in the successful transaction or defense of a suit, The other is compensation to an officer for services tendered in the progress of a cause.

Dade County v. Strauss, 246 So.2d 137, 141 (Fla. 3 DCA, 1971). The statute cited by the plaintiff addresses only "costs" and not "fees."

8. Plaintiff relies on section 27.54(3), Florida Statutes, in its attempt to find a duty for COUNTY to pay indigent appellate filing fees. This section lists approximately twelve types of expenses which COUNTY may be responsible for funding, however, appellate filing fees are not among them and are not listed anywhere in this section. Therefore, this section creates no duty on behalf of COUNTY to pay these fees.

9. In paragraph 17 of its Complaint, plaintiff has attempted to establish a duty for the COUNTY to pay these fees by stating that if five different sections of the Florida Statutes are read "in para materia" then it "creates the understanding requisite to see the legislative intent" that such a duty exists. The creation of a duty

by this method of statutory interpretation is simply too strained and remote to support a petition for writ of mandamus. Again, unless there is a "clear" and "indisputable" duty there should be no writ.

10. Even pursuant to plaintiffs complicated statutory analysis, there would be no duty on behalf of COUNTY to pay these fees since that duty is not stated anywhere in the *statutes cited* by plaintiff. The closest that any statute comes to addressing this issue is section 27.3455 (4)(d); however, this section creates only a duty to report on actual expenditures of appellate filing fees not a duty to actually pay appellate fees for defendants represented by the public defender's office. This section makes no reference whatsoever regarding defendants represented by the public defender.

11. In its petition, the plaintiff failed to cite section 924.17, Florida Statutes, which states that if a defendant is indigent, the appeal shall be "without payment of costs." Without payment of costs means exactly what it says under the plain language of the statute. It does not mean COUNTY shall pay the costs. Although this section may not be entirely consistent with section 939.15, Florida Statutes, it is clear that neither creates a duty for COUNTY to pay the requested filing fees.

12. For all of the above reasons, there is no "clear" and "indisputable" duty for COUNTY to comply with plaintiffs request, In the absence of such a duty, plaintiffs petition should be denied.

(Palm Beach County's amended motion to dismiss, pages 2 and 3, emphasis in original). Orange County could hardly agree more, and adopts the above arguments.

Section 939.15 does not require counties to pay appellate filing fees. Nothing in the cross referenced sections does either. Indeed to the extent they do anything, they add to the exemption stated in section 939.15 that counties do not pay such fees.

There are many cases concerning indigency and the right to financial support, some of which are cited by the attorney for the Petitioner, others not. Most cited by him do support the right to financial support as a general matter. In focusing on cases in which filing fees were addressed the

Comptroller stated;

> In *Bell v. State,* 281 So. 2d 361 (Fla. 2d DCA 1973), the court reversed the trial court's ruling that an indigent defendant be required, as a precondition to obtaining bond, to reimburse "costs" associated with transcript preparation, public defender fees, costs of trial and the cost of the *filing* fee necessary to take the appeal. In determining whether certain 'taxable costs' were to be recovered by the defendant, the *court* in *Warren v. Capuano,* 269 So. 2d 380 (Fla. 4th *DCA), affirmed* 282 So. 2d 873 (Fla. 1972), allowed recovery of *filing fees.* Rule 9.400, Fla. R. App. P., defines "taxable costs" to include *filing* fees. By way of analogy, as this citation deals with a reversal of a final judgment, *the court* in *Ferber v. State,* 380 So. 2d 1063 (Fla. 2nd DCA 1980), holds pursuant to section 939.15, Florida Statutes, "that the trial court erred in denying appellant the right to recover any costs incurred incident to his appeal.... We note that appellant is only entitled to recover those costs which are legally taxable." Id., at 1064.
>
> > There is both constitutional and statutory authority for the reimbursement of costs to an acquitted or discharged defendant. The determination of which costs may be taxed has been left to the courts,
> >
> > There are many expenses which one may incur because he is charged with a crime. Yet, only those items reasonably within the scope of statutory authority are taxable.
>
> *Doran v. State,* 296 So. 2d 86, 87 (Fla. 2 and DCA 1974). While the *Doran* court determined that there was no reason to burden the public wile with bail bond premiums, this Court has placed 'filing fees' within the rubric of 'taxable costs'.
>
> Rule 9.400, Fla. R. App.

As to *Bell, supra,* its completely unclear what Comptroller intends to point out with this quotation. The court merely refused to require an indigent to pay money at all for any fee or cost, regardless of the entity who would normally pay it. As a condition for access to the courts, it defeats

defendants rights under the Constitution. Orange County would heartily endorse such a decision. But it says absolutely nothing about who pays. It only says that defendant does not have to pay.

As to the ***Capuano, Ferber*** and *Doran* cases, *supra*, ***Sawyer*** and *Wolf* would most likely now overrule portions of the costs allowed in them. ***Theprinciple*** that acquitted defendants should be reimbursed for costs ***they*** have ***paid,*** so long as those costs are contemplated by the statute, still exists, but ***Sawyer*** makes it plain that the statutes are to be read more narrowly even than, for example, the ***Capuano*** court read them. It is virtually certain, under ***Sawyer and*** *Wolf,* that the deposition court reporter's fee would not be allowed, today, as the dissent in ***Capuano*** argued. But if it is argued that appellate filing fees are "costs," because counties are required to reimburse acquitted defendants who paid them, then that fact proves far too much. A nonindigent former defendant ***does*** have to pay the filing fees, Assuming that filing fees would pass muster under the holdings of ***Sawyer*** and *Wolf* and be considered costs within the statute, they would, in the case of a former non indigent defendant be sought on motion and order certifying costs. They then can be examined by the a county and if not agreed to, denied by the county. The former defendant can then file a lawsuit to collect, An unfavorable result can then be appealed. ***Orange County v. Davis,*** 414 So, 2d 278 (Fla. 5th DCA 1982). But no motion would be filed by an indigent defendant seeking payment of appellate filing fees, noticed to the county, heard by the judge, and appealed by either side, because the attorney, in checking the statute, determines that no payment is reauired. He might move for some other cost, such as a transcript of the hearings and trial, either before he pays them, or later in accordance with the statute, for reimbursement of his costs, but he would not have to pay the filing fee, and the issue would never arise as between him and the county. But in essence, ***Capuano*** is not applicable, because in that type of case, the defendant is asking for costs he paid

because he was originally required to pay them. In our case neither a defendant nor the county is required to pay.

As to rule 9.400, Fla. R. App. P., cited above, again the appellant is asking the court to require the nonprevailing party to reimburse the prevailing party for costs actually paid, because they were required to be paid. That is simply not our case.

As to the *Ferber* and *Doran* cases specifically, neither one addresses filing fees, and both relate to costs actually paid by a former defendant, not a situation like ours.

The Comptroller continued in his brief to strain to find a thread linking any statute to a requirement to pay filing fees as follows:

> This Court recently directed that it wasn't the county that was responsible for indigent costs related to court reporter fees for transcription for a Rule 3.850 petitioner represented by the Office of Capital Collateral in that "the legislature has determined that CCR is to bear this responsibility... Porter v. *State,* 22 Fla. L. Weekly S601 (Fla. September 25,1997), see *also, Hoffman v. Haddock; 695 So.* 2d 682 (Fla. 1997). *Sub judice,* there has been no such statement of legislative enactment as to the shifting of responsibility for payment of indigent appellant filing fees. Until the legislature does determine to revise its position, the county bears the responsibility of paying the fees incident to an indigent criminal appeal. This Court has stated "Article 11, section 3 of the Florida Constitution expressly sets forth the separation of powers doctrine: The powers of the state government shall be divided into the legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." *Coalition for Adequacy and Fairness in School Funding* v. *Chiles,* 680 So. 2d 400, 407 (Fla. 1 996). Appellant stresses that given the statutory directive that a county pay the indigent criminal appellant's filing fee and the rules dictating payment of the filing fee to the DCA clerk, that judicial intrusion into the legislative scheme is not warranted.

Here again the Comptroller misunderstands this Court, as to its basic position with regard

to the attorneys fees and costs paid by counties, This Court did not speak of legislative shifting of a burden from the counties to someone else. This Court has repeatedly ruled as to what the counties should pay based on what was in the statute or not in the statute requiring them to pay. It did not matter to this Court whether there was a statute requiring someone else to pay for something before this Court would refuse to require the counties to pay. What mattered was that there was nothing affmnatively requiring the counties to assume the burden. *See Sawyer* and *Wolf, supra,* and *Volusia County v. Carrin, 666 So.* 2d 603.(Fla. 5th DCA. 1996).

It is understandable that there could be confusion about this, because there often is an alternate statute that leads to another entity such as the CCR, as well as an absence of one placing the burden on the counties, in a given situation such *as* in *Hoffman v Haddock, supra.* But that must not lead to the assumption that where there is no statute specifying the responsible entity, there must immediately be an effort to find a golden thread from any statute anywhere leading to the counties.

As to the *Coalition* case *supra,* it should be pointed out that it also stated that the judicial branch was not precluded from enforcing a Constitutional provision that "adequate" provision be made for a uniform system of free public schools. *Coalition, supra,* at 408. It is nonsense to speak as the Comptroller does to imply that the judiciary cannot affect an outcome based on the separation of powers doctrine, when spoken of only generally, like that. Certainly it is the Comptroller who is asking for a Judicial intrusion. He just wants it limited to a superficial analysis of the statutes rather than an overall constitutional analysis. One may also look at *Chiles v. Children A, B, C, D, E,* and F, 589 So. 2d 260 (Fla. 1991), more fully analyzed below in the citation from John J. Copeland, Jr., and Edward G. Labrador, *Broken promises; The failure of the State to Adequately Fund a Uniform Court System,* 71 Fla. B.J. 30 (April, 1997) (Attached as exhibit 1) That citation would certainly

contradict Comptroller's concept, though it hardly matters, since this Court would not have to intrude in that way.

The Comptroller goes on as follows:

> A plain language approach to section 939.15, Florida Statutes, demonstrates that the county wherein a crime is committed is responsible for the costs of an indigent defendant's expenses, including expenses incurred pursuing rights of appeal. In *State v. Byrd, 378 So.* 2d 123 1 (Fla. 1979), this Court determined that section 939.15, Florida Statutes, does not bestow any rights on an indigent defendant, the right to payment of court costs having been previously granted in *Griffin v, Illinois,* 351 U.S. 12 (1956).
>
> > The requirement to pay court costs as a condition of probation is not precluded by the wording of section 939.15 which directs the county to pay the costs of indigents. The right of an indigent to have his court costs, including the cost of his transcript, paid for by the government is not dependent upon the existence of section 939.15.
>
> *Byrd,* at 1232. Rather, the *Byrd* holding specifies that the purpose of section 939.15, Florida Statutes, is to "prescribe which governmental entity in the State of Florida must pay the court costs of an indigent defendant in a criminal case.0 Id., at 1232. Moreover, the county is directed to pay the cost. An adjunct to *Griffin is Douglas v. California,* 372 U.S. 814 (1963), wherein the Court holds that where a state affords a first appeal of right, it must supply indigent appellants with an attorney... because under the doctrine of equal protection, indigent appellants must have the same ability to obtain meaningful appellate review as wealthy appellants." *In re, Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender,* 561 So. 2d 11 30, 1131 (Fla. 1990). The *Douglas* Court has endowed, indigent appellants with rights. Section 939.15, Florida Statutes, by incorporation of section 924.17, Florida Statutes, implements these indigent appellate rights.

The Comptroller continues to focus on the rights of the defendant, as opposed to any statute establishing duties on anyone, particularly the counties. The Byrd case, *supra,* and the others do nothing visible to attach any obligation through a "plain language" theory to the counties. They just continue to say that counties are generally required to assist indigent defendants, and do nothing to counter the County's interpretation of the plain language as we see it. Of course indigent appellants have rights. None of the counties would deny that. The counties just will not concede, in view of this Court's rulings, that counties have this particular duty.

The Comptroller further states:

> In 1989, section 939.15, Florida Statutes, was amended by removing those indigent defendants who are represented by the public defender from the dictates of the first sentence which demands county payment for insolvent appellants or in cases where a defendant is discharged or the judgment is reversed. The legislature added two sentences which refer to indigent defendants represented by the public defender. These last two sentences do not apply to indigent **appellants.** The 1989 amendment addresses the requirement for *certification* of necessity and use of the costs enumerated in section 27.54(3), Florida Statutes, *by the public defender.* Otherwise, in cases where an indigent defendant is not represented by a public defender or the defendant is discharged or the judgment reversed the costs are paid by the county when *the judge orders the county to pay.*

Having read this passage several times, it is impossible to see how it helps Comptroller's argument. It appears that Comptroller is agreeing with the counties that they do not have to pay for filing fees for indigents represented by the public defender. Its hard to see how the last two sentences do not refer to indigent *appellants,* since the section begins; "-When the *defendant in* any criminal case pending in any circuit or county *court, a district court of appeal, or the Supreme Court of the state* has been adjudged insolvent. . . ." Somehow it seems unlikely that the Comptroller is right about that.

The public defender is certainly required to certify the necessity and use of the costs, as Comptroller has stated, wherever he is required to *pay* a cost and be reimbursed, or is asking for costs in advance. However, he is not required to pay costs in the first place for filing fees, in accordance with the statute. (That is true also where an indigent defendant is not represented by the public defender and instead by a conflict counsel, *pro* bono attorney, or an attorney paid by others, where a defendant elects to go forward *pro* se, i.e. the defendant in those situations doesn't have to ask for payment through his attorney or directly, where *pro* se, from the counties by motion, *because he doesn 't have to pay in the first place).* With regard to acquitted defendants the County has, elsewhere in this brief, pointed out that an acquitted nonindigent defendant has *paid* something for which he wants reimbursement. In essence the above passage by comptroller makes no sense.

The Comptroller continues as follows:

> Notwithstanding section 939.15, Florida Statutes, reference to section 924.17, Florida Statutes, the payment of appellate costs incurred by indigent appellants no longer requires affidavit and proof as that provision was eliminated. Case law dictates the manner in which the status of insolvency remains with the defendant/appellant through the appeals process. *Amendments to the Florida Rules of Appellate Procedure, 685 So.* 2d 773 (Fla. 1996). Section 924.17, Florida Statutes, directs that indigent appeals are supersedeas, without prepayment of costs by the insolvent appellant.

As to the issue of whether affidavit and proof are still required, with regard to appellate costs in general are concerned, there is nothing whatsoever in section 924.17 one could "reference" which could possibly mean that affidavit and proof provisions are eliminated. It just says that *if* the court finds that the defendant is indigent, the appeal shall be supersedeas without payment of costs, How does the court find that fact? And again, what does this have to do with whether counties cover such costs?

Comptroller attempts to build a straw man and then knock it down again when he states as follows:

> Appellee would posit that here ends the appellant's contention that the county pay the filing fees, ergo, the filing fee is without cost and therefore the clerk of a district court of appeal provides the services of the clerk's office not only free of charge to an indigent criminal appellant, but without reimbursement for the expenses incurred. That the legislature did not intend this result is demonstrated by other references to payment of appellate filing fees elsewhere in the statutory scheme of expenditures, and are to be read *in pari materia*. "The principle of *in pari materia* requires that a law be construed together with any other law relating to the same purpose such that *they are* in harmony.' *State* v. *Cohen*, 1997 WL 36097 1 (Fla. 4th DCA 1997). 'A statutory phrase should also be viewed not only in its internal context within the section, but in harmony with interlocking statutes," *WFTV,* Inc. v. *Wilken,* 675 So. 2d 674, 679(Fla. 4th DCA 1996).

Comptroller puts words in the County's mouth when it says that County thinks the clerk of the district court should not be reimbursed. The County only said that no statute required a county to do the reimbursing. Whether the legislature intended a cross-subsidy, i.e. the payments from solvent appellants covering not only their own costs but those of the indigents, or intended something else, is problematic. The County's position is that whatever else the legislature's intent was, it was not to require counties to nav. As with all other claims made by Comptroller, he tries to say that counties are the responsible parties, if their is no other entity clearly responsible. That is not the law.

Comptroller goes on the state:

> Section 939.15, Florida Statutes, was amended by the Laws of Florida Chapter 89-129, an act relating to financial affairs. This act has five sections. Section 1 amends section 939.15, Florida Statutes, as noted-, section 2 amends a portion of section 27.56, Florida Statutes; section 3 incorporates the 1988 supplement section

> 27.3455, Florida Statutes; section 4 creates section 925.037, Florida Statutes and section 5 provides that the act becomes effective on July 1, 1989. inclusion of section 939.15, Florida Statutes, and section 27.3455, Florida Statutes, in the same act is significant in aiding this Court's understanding of appellant's position. Florida Constitution Article 111, section 6, requires an enactment to include one subject. That mandate is not meant to hinder an end goal, rather it is meant to avoid surprise and to prevent "hodgepodge, logrolling legislation."' Appellant herein maintains that the inclusion of section 939.15, Florida Statutes, and section 27.3455, Florida Statutes, in the same act mandates interpretation of these sections *in pun materia*.

The purpose of the above passage is apparently only meant to support the notion that the statutes should be read in pari materia with one another. However, there also seem to be an impression Comptroller is attempting to give that if the two statutes are read together, somehow that shows that counties are responsible for appellate filing fees. Whether the statutes were are were not passed in the same act is meaningless here. The two together still do not place the responsibility on the county.

A follow-on passage claims, among other things, that the counties are the payee under chapter 27, Fla Stat.:

> Section 939.15, Florida Statutes, denotes where the determination of insolvency originates; this provision, as noted above, also designates the county as the payee. Further proof that the legislature contemplated designation of the county as the payee is found in Chapter 27, Florida Statutes (1997):
>
> (1) Each county shall submit annually to the Comptroller and the Auditor General a statement of revenues and expenditures as set forth in this section. . . provided that such statement identify total county expenditures on:
>
> (c) Each of the services outlined in ss. 27,34(2) and 27.54(3).
>
> (d) Appellate filing fees in criminal cases in which

an indigent defendant appeals a judgment of a county or circuit court to a district court of appeal or the Florida Supreme Court.

(3) The priority for the allocation of funds collected pursuant to s. 938.05(l) shall be as follows:

(a) Reimbursement to the county for actual county expenditures incurred in providing the state attorney and public defender the services outlined in ss. 27.34(2) and 27.54(3), with the exception of office space, utilities, and custodial services.

(d) At the close of the local government fiscal year, funds remaining in the special trust fund after reimbursements made pursuant to paragraphs (a), (b), and (c) shall be used to reimburse the county for county costs incurred in the provision of . . . appellate filing fee[s] in criminal cases in which an indigent defendant appeals a judgment of a county or circuit court to a district court of appeal or the Florida Supreme Court . . . .

Sections 27.3455(l)(c) and (d) & (3)(a) and (d), Florida Statutes (1997)

This statute only provides that such costs as it mentions be reimbursed to the county where paid by them, and imposes no obligation. Further, it cross references Sections 27.54(3) and 27.34(2), both of which fail to include anything about filing fees. This statute is an accounting tool only.

The Comptroller goes on to ask (page 9, Initial Brief) why the legislature would reenact the above quoted statutes if the County were not expected to pay the filing fees. But why should they have done so? There was nothing unclear about what they had done before. The counties were not required to pay before, and or not, required to now.

The Comptroller references Rule 9.430 (Initial Brief, P 9). Nothing in the references leads to the presumption that counties are responsible for payment. "Prepayment" may well mean that the defendant is ultimately responsible for the costs of the filing fee, and may well mean that the clerk should be paid, though that is not necessarily so. But in any case, there is nothing there which

requires the counties to pay.

With regard to Comptroller's reference to Rule 2.040(b)(3) Fla. R. Jud. Admin, and Section 35.27(3), Fla. Stat., as stated above, they just refer to the District Courts right to collect, and the rights of others to be exempted. These statutes state nothing to make it a requirements that counties pay.

The Comptrollers analyses of *Fields v. Zimmon,* 394 So. 2d 1133 (Fla. 4th DCA 198 1) (Page 10, Initial Brief) says nothing about a county requirement. The defendants rights are the only matter referred to. The analyses of *In Re: Florida Rules of Judicial Administration* 391 So. 2d 214 (Fla. 1980) (Page 10, Initial Brief) speaks of authority to collect, but nothing specifying counties as the entity paying the amount.

The Court should note Comptroller's care in how he states subparagraph b, page 9, initial brief, in that he does not say "Florida law does not exempt counties." He says instead, "Florida law does not exempt the payment of filing fees." He expects this Court to infer from that, and the supporting arguments on page 9 and 11 of his brief, that (assuming he is right, for argument) if Florida law does exempt the payment, then surely the counties are elected to take the burden. That is not how this court interprets the law.

Orange County does not disagree with the principle that indigent defendants have a right to financial support for their defense. Orange County does not even quarrel with the principle that the defendant has *by statute,* a right to financial support for motions for litigation expenses for appeals. Orange County simply takes the position that *no statute, rule or case requires any county to cover appellate filing fees for indigent criminal appellants. The only provisions for such fees, cited by appellant here, do not show that the counties should pay filing fees for indigents. To the extent that*

they show anything they show that counties might be required to reimburse taxable costs actually paid by former defendants, after acquittal.

In supporting the idea (initial brief, p. 3) that section 939.15 Fla. Stat. requires counties to pay appellate filing fees, the Comptroller stated:

> This provision delineates which entity is to certify, order, affirm or prove the necessity of the costs and that payment be made by the county. In *Cheney v. Rowel I,* 1 So, 2d 585 (Fla. 1943), the Court recognizes section 939.15, Florida Statutes, as the catalyst for certification of indigence. The requirement that the county, in which a crime was committed, be liable for the costs of an indigent person has been the law in Florida for at least 63 years.
>
> > Section 8489, C.G.L., section 6 175, R.G.S., provides that, in case the plaintiff in error in a criminal case shall be utterly unable to pay the costs of the cause, and shall establish satisfactorily to the court by competent evidence that he is utterly unable to pay the costs or give bond therefor, as required by section 8489 C. G. L., section 6154, R. G. S., in cases of appeal, the costs allowed by law shall be paid by the county in which the crime was committed. In *Rest v. State,* (77 Fla. 225, 81 So. 523), supra, the terms of the above statute were upheld and enforced by order of this court made in a proceeding similar to that now before us.
>
> *Rolle v. State, 1* 1 5 Fla. 64,66, 154 So. 892 (Fla. 1934).
>
> There has not been any indication that the legislature intended, or intends, to modify the county's responsibility.

Neither *Cheney* nor *Rolle* add anything. The whole statement just relates to the counties' general obligations, and these say nothing to support the contention that counties must pay indigent filing fees.

The critical issue is therefore not the indigency of a defendant. (No one has been found indigent in this case, anyway). The right to financial assistance is not the issue either, because there

has not been such a claim and counties would not contest it anyway. Even if there were a specific defendant with standing to make these arguments, the only issue is the source of the funds, not the right to receive them. One cannot just assume that a county is responsible for paying something for an indigent where no provision is made for that by statute.

V. THE REQUIREMENT TO PAY WOULD BE UNCONSTITUTIONAL WITHOUT A CONCURRENT REQUIREMENT FOR REIMBURSEMENT TO THE COUNTIES

The Comptroller has cited section 27.3455, Fla. Stat. If only the Comptroller were as zealous in requiring the State to reimburse the counties under that statute. or under section 925.037 as he is in trying to cite it for the purpose of requiring counties to pay filing fees!. But worse, by citing section 27.3455, the Comptroller is more than incidentally exposing the reimbursement provisions therein for this Court's inspection. Its important that this Court be made aware of the situation with regard to the so-called "reimbursements" supposedly payable to the counties, if they just submit the records required by the statutes. Orange County has attached two exhibits, one a law journal article, and the other a copy of a report sent to Orange County from FDLE. As will be demonstrated below, the current state of affairs involving payment by counties without reimbursement is unconstitutional as applied. Courts, in other words, should not require payments of any such costs without concurrently requiring that the state reimburse the counties, even if it is determined that the counties have a legal duty to pay such costs.

BACKGROUND

In 1972, the last round or iteration of

> Judicial reform finally succeeded with the voter approval of Amendment 1, a complete revision of Art. V, on March 14, 1972. The 1972 revision to Art. V reestablished the judiciary as a co-equal

branch of Florida's government by abolishing the municipal court system, 18 In addition, the revision also established a more effective means of judicial administration, consolidated a 'hodgepodge" of 14 different trial courts into a two-tiered uniform trial court system consisting of circuit courts and county courts, subjected all judges to the procedures of the Judicial Qualifications Commission and required judges to devote full time to their judicial responsibilities, and required the Governor to make judicial appointments from nominations made by judicial nominating commissions. 19

In an effort to avoid another rejection by voters, the 1972 revision was presented as a measure that would provide tax relief to property taxpayers. Florida voters were told in newspaper articles and political leaflets supporting the proposed Art. V revisions that the state would assume the responsibility of funding the court system and, thus, they would be relieved of the burden of funding the courts.20 Rep. D'Alemberte made similar statements in his many letters to local government leaders, judges, lawyers, and interested citizens.2 1

The promise of complete state funding for the new state court system was the cornerstone to obtaining voter approval, despite the absence of any provision within the 1972 revision expressly stating the state would be responsible for funding the entire judicial system. 22 This promise of full state funding has also been a source of controversy and debate among state and county leaders for over a quarter-century, as counties have tried unsuccessfully to persuade state lawmakers to assume all judiciary expenditures borne by counties .23

During the past 25 years, Florida's counties have sought to persuade the state to assume the funding responsibility for the state court system. However, this effort has met with little success. In fact, except for a handful of times where the legislature has approved state funds to reimburse counties for certain Art. V expenditures, 24 the legislature has completely ignored the plea of Florida's counties.

* * *

John J. Copeland, Jr., and Edward G. Labrador, *Broken promises; The failure of the State to Adequately Fund a* Uniform *Court System,* 71 Fla. B.J. 30 (April, 1997) (Attached as exhibit I)

Orange County's position is that the current scheme for funding the courts is unconstitutional, and that the Comptroller, in his attempt to find the speck in Palm Beach County's eye, has ignored the beam in his own eye. The Article V concerns could not be expressed better than Copeland and Labrador do it, below:

> Some of the more salient *legal* arguments for the state's funding of Art. V costs go to the heart of the definition of our uniform court system in Florida and to the guarantee of fundamental rights such as the Sixth Amendment right to counsel. A similar issue of uniform funding of a state court system has been the subject of litigation in the courts of the Commonwealth of Pennsylvania. In 1987, in County of *Allegheny v. Commonwealth of Pennsylvania,* 5 17 Pa. 65,534 A.2d 760 (Pa. 1987), the Supreme Court of Pennsylvania ruled that Art. V of the Pennsylvania State Constitution required a "unified judicial system" and that county funding of court costs and functions rendered the unity of the judiciary one of form as opposed to substance. The court in that case ordered the adoption of a statewide method of funding all of the courts and gave the legislature the opportunity to enact appropriate legislation. After 10 years of inaction by the Pennsylvania General Assembly, in 1996, in *Pennsylvania State Association* of County *Commissioners v. Commonwealth of Pennsylvania,* 68 1A.2d 699 (Pa. 1996), the Supreme Court entered an order appointing a master to recommend for Supreme Court consideration a state funding plan which, when implemented, will provide a measure of fiscal relief to the county governments.
>
> Just as in the Pennsylvania case, which addressed a unified court system, Florida voters approved a uniform court system in 1972. When the ballot question was framed for the voters in 1972, the revision of Art. V was presented as a constitutional revision to establish statewide uniform trial court system;
>
> **Revision of Article V**
>
> ***Judiciary*. Proposing a revision of the Judicial Article of the Florida Constitution; reorganizing the trial courts into *a uniform court system*; providing standards and procedures for the selection and discipline of all judges; and establishing a system of court administration.**

State funding is necessary to ensure uniformity in the court system, as our courts in Florida should not depend on the location of the court and the revenues of the local ad valorem taxpayers. Due to the constitutional limitations placed on local governments, the state is in a better position to use its tax base to fund the statewide court system on an equitable basis. A court system which is dependent on the tax base in a geographic location cannot provide for uniformity but, in essence, becomes return to "cash register" justice. Florida courts should use their inherent power to compel state funding of the court system. ***The lack of state funding of the court system threatens many of the rights guaranteed by the U.S. and Florida Constitutions.*** With over 20 counties currently at or near the 10 mill cap on taxes, it is doubtful that some counties will be able to continue to provide the funds necessary to adequately run the court system. Inadequate funding will then jeopardize defendants' right to counsel guaranteed by the Sixth Amendment, access to courts provided for in Art. 1, and the due process rights of the Fifth and Fourteenth Amendments. It is necessary for the courts to use their inherent power to compel state funding of the court system. The courts' power to compel funding has been found in cases where constitutional rights have been jeopardized due to inadequate funding.

In exercising their inherent power to protect constitutional rights, however, Florida courts to date have not followed the lead of the Supreme Court of Pennsylvania in mandating the state address the funding of the courts, but have only compelled additional funding from counties. Thus the issue in the present case would become whether the Supreme Court would construe the inherent power addressed in ***In Re Order on Prosecution of Criminal Appeals by the Tenth Judaica1 Circuit Public Defender,*** 561 So. 24 1130 (Fla. 1990), to the extent expressed in ***Allegheny.*** Relying on ***Dade County Classroom Teacher's Association v. Legislature,*** 269 So. 2d 684 (Fla. 1979), ***the court*** in ***In Re Order*** held that the judiciary cannot compel the legislature to exercise a purely legislative prerogative. However, the court's reliance on Dade County may be misplaced for two very important reasons. First, ***Dade County*** did not involve constitutional rights. As previously mentioned, courts may only use their inherent power where constitutional rights are involved. Additionally, the ***court*** in ***Dade*** County did not compel the legislature to act because it presumed that the legislature would correct the problem. However, in the absence at legislative action, the court held that it is the responsibility of the courts to correct the problem.

> The Florida Supreme Court was recently faced with a similar issue where a group of foster children alleged that budgetary reductions threatened their constitutional right of access to courts. In *Chiles v. Children* A, *B, C, D, E,* and F, 589 So. 2d 260 (Fla. 1991), the Supreme Court held that it was mindful of the difficult conditions which precipitated the budgetary reductions and recognized that such reductions were a good faith attempt to address the fiscal crisis which beset the state. However:
>
> [A]ny substantial reductions of the judicial budget can raise constitutional concerns of the highest order. The court has an independent duty and authority as a constitutional co-equal and coordinate branch of government of the State of Florida to guarantee the rights of the people to have access to a functioning and efficient judicial system. Art. 1, section 21 of the Florida Declaration of Rights provides that '[t]he courts *shall* be open to every person for redress of injury, and justice shall be administered without sale, denial or delay.' [emphasis in original].
>
> The *court* in *Chiles* recognized the difficult budgetary problems facing the state but was unwilling to wait until the budget difficulties subsided. By linking lack of state funding to constitutional rights, such as the right to counsel, access to courts, and due process, *Chiles* demonstrates that the Florida Supreme Court may not be willing to jeopardize constitutional rights and is likely to intercede similarly to the action of the Pennsylvania Supreme Court in *Allegheny*.

(Broken Promises, Supra at 34) (Emphasis added, except where noted) It is unconstitutional to require the counties to pay this or any cost or fee unless within the order to pay are included the provisions for reimbursement required under the statutes as part of such an order. Specifically, this Court should require, if it is going to issue any order requiring counties to pay such fees, (and here Orange County is not waiving the above stated objections to that whole process,) that the State of Florida reimburse Orange County in accordance with Sections 27.3455 and 925.037, Fla. Stat.

Article V of the Florida Constitution requires a uniform system of Courts, not the hodgepodge of courts that existed before the most recent version of Article V was created in 1972.

This court needs no additional evidence to recognize that the counties in this state run from counties like Calhoun, with around 11,000 people to counties similar to Dade County in size. If this Court issues an order requiring the County to pay this fee, it violates the requirements of uniformity imbedded in Article V, in the absence of an order requiring the State to reimburse the County. If the State is not ordered to reimburse the County then the taxpayers of Palm Beach County would be paying more for such things than their counterparts in other counties, as will be more specifically shown below. That cannot be constitutional if the passage of the amendment to Article V means anything.

As shown in the above citation, the simple fact is that the State has not ever fully funded the costs by reimbursing the counties. If it should begin to do so, the county executive and legislative branches would not have nearly the level of concern one way or another over such payments. Counties would only need to show due diligence in defending the cases as they come along as to the propriety of the costs. As it is, undue pressure is placed on the Judges in the various circuits to keep the costs low for each county, just as if the Constitutional revision of 1972 had never happened. As noted in footnote 17 of the above citation:

> Municipal court judges, many of whom were not lawyers, were a subjected to intense pressure by the appointing city councils or mayors to raise revenues through the imposition of tines and forfeitures. State lawmakers felt this type of "cash register justice" could not be condoned and had to be eliminated, *Id.* See also Talbot D'Alemberte, *Judicial Reform-Now or Never,* 46 FLA, B.J. 68 (March 1972).

(*Id*, at 36) To the extent that the court-related budgets, including the budgets that are overseen by the Chief Judges, Public Defenders, State Attorneys and Clerks of Court are dependant on elected officials of the County, there is still the potential for pressure, and the incentive would continue to

exist for pressure from County officials, and for that matter, the voters, if there is no reimbursement by the State.

If this Court merely orders the County to pay, without ordering the State to reimburse the County, then the Court would be forcing the County to sue the State to obtain reimbursement. Article V and the provisions of section 27.3455 and 925.037 do not say, as some other sections do (see, for example, section 939.08, Fla. Stat.) and *Orange* County v. *Davis, Supra.* that any entity is supposed to pay and then if a reimbursing authority refuses to do so the entity is allowed to sue to obtain reimbursement. That way of looking at the provisions means that the counties are not to be reimbursed, but merely are allowed the right to sue. Logically, that would mean that the law is unconstitutional, as applied to the County, because the law would require a lawsuit to force an intended Constitutional result. The Constitution and the statute require that the counties be reimbursed, not just set up for a lawsuit.

If, for example, Palm Beach County thought, in advance, that it could not rely on matching funds from the Federal or State governments without having to sue to obtain them after it embarked upon a project for which matching funds were statutorily provided, then it would have the choice as to whether to go forward, and might not do so. The same, in reverse, could be said of funds withdrawn if the County did not do something required of it in order to continue to receive funds. But no one would do anything to force Palm Beach County to act if the County did not commence a project or program for which it might only receive funds if it sued to get them, other than to apply pressure from a political standpoint. But in this case, if no reimbursement is locked-in by this Court, the County would be forced to spend its taxpayers' money, knowing that no statutory reimbursement would be forthcoming absent a lawsuit, and perhaps not even then, despite the clear statutory

requirement that it be reimbursed in consonance with the Constitutional requirement for a uniform court system.

There is another reason that the requirement for payment of such fees, absent a concomitant requirement for reimbursement by the State, is unconstitutional. Article VII, section 1 of the Florida Constitution provides;

> **SECTION 1. Taxation; appropriations; state expenses; state revenue limitation.-**
>
> (a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.
>
> (b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.
>
> (c) No money shall be drawn from the treasury except in pursuance of appropriation made by law,
>
> (d) Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.

By failing to reimburse the County for its expenses in defending indigents, despite the clear statutory requirement that they do so, the State is effectively obtaining money from property taxpayers indirectly. This violates the provisions of Article VII, section one.

The current provisions would be violative of constitutional equal protection of the law, because the State has tried to adjust, partially, for the problem of poor and small counties, by reimbursing them and sometimes even paying them in advance for the costs they pay for indigent defendants in special cases, such as in Alachua County when the Danny Rolling case came about.

A special fund was established by the legislature to help distressed agencies through FDLE, under the violent crime emergency fund for police agencies and Counties which demonstrate a significant hardship. (See Sections 943.031 and 943.042, Fla. Stat., and rule 1 1N-1.001 thru 1.007 Fla. Adm. Code.) Orange County has obtained a listing from FDLE showing the payouts. (See attached exhibit 2) If, for example, the State were to reimburse or otherwise apportion as much money per person to, say, Orange County, population 758,962, as it did to Jefferson County, population 13,509, ***(see Broken Promises,*** attached, as Exhibit 1, page 37) for the single incident of the british tourist homicide, $116,654.27, (see Exhibit 2, p. 2) the amount to Orange County would have been $6,553,864.50. Paying out money to distressed counties is not in itself ignoble, but if distress is defined only as a lack of money in total, as opposed to a temporary shortfall, the effect of coverage of some counties' court related expenses is unconstitutional as applied as a violation of equal protection. See Article 1. Section 2, Florida Constitution. Why should one group of taxpayers be required to fund a court system and not another, simply because they live in a different county? Thus in essence, the State has in effect reimbursed some counties and not others in fairly recent times, though it never reimbursed more than a small percentage of the total costs incurred by the counties, overall.

Before any order issues concerning the filing fees, this court should consider these matters and rule on whether or not such an order would be constitutional.

CONCLUSION

Wherefore, for the reasons shown above, Orange County would respectfully request that this court affirm the decision of the Circuit Court below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been sent by U.S. Mail to Robert F. Milligan, Comptroller, State of Florida, Office of the Comptroller, 110 SE 6th Street #1400, Ft. Lauderdale, FL 33301-5000 and to Daniel P. Hyndman, Esq., Assistant County Attorney, Palm Beach County, P.O. Box 1989, West Palm Beach, FL 33402 on this 14th day of November, 1997.

George L. Dorsett, Esquire
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EXHIBIT 1

Broken Promises

The Failure of the State to Adequately Fund a Uniform State Court System

John J. Copelan, Jr.
Edward G. Labrador

One of the most critical issues facing the 1997-98 Constitution Revision Commission is the adequate funding of the state's uniform court system under Art. V of the Florida Constitution. The failure of the state to adequately fund the court system has led to a financial crisis of a statewide proportion, with $561,479,607 being absorbed by counties.[1] County ad valorem taxpayers have had to underwrite these Art. V costs to keep the court system afloat, and now county contributions constitute more than half of the funds which keep the courts operational. Fourteen counties out of 66 have already reached the maximum millage 10 mill cap,[2] and a further increase in Art. V costs will cause further reduction of other programs that must be funded by ad valorem tax dollars. As a result, social service programs and other benefits to citizens will suffer as Art. V costs rise. This county bail-out of the courts is certainly not the uniform state court system envisioned by the Art, V revision approved at the ballot box in 1972.

The subject of adequate funding for Art. V costs has been studied in several forums, including the Art. V subcommittee of the Florida Judicial Council in 1991,[3] the Article V Task Force created by the Florida Legislature in 1994,[4] and the Article V Roundtoble cosponsored in 1996 by The Florida Bar Government Lawyer Section and the Florida Association of Counties.[5]

This article will address those issues related to the Art. V funding crisis, tracing the legislative history of Art. V, setting forth legal arguments for state funding, and calling for the revision commission to solve the judiciary funding crisis with a plan shifting the burden from local ad valorem taxpayers to the state.

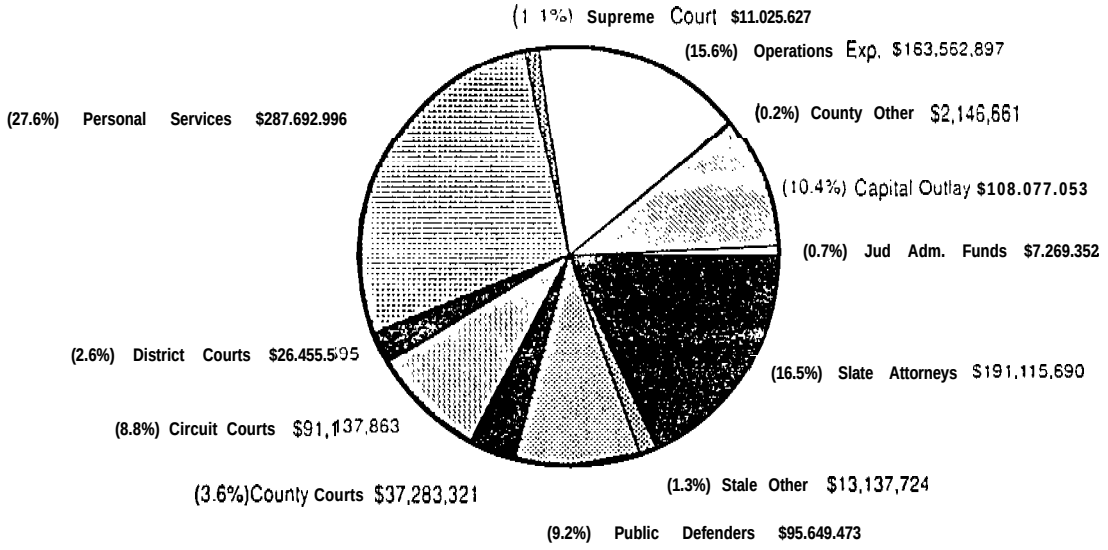
Funding Crisis

As the comparison of Art. V state versus county expenses shows in Chart I, the magnitude and level of the funding crisis continues to escalate each year. Interestingly, this chart shows that the burden for running the uniform state court system is being born by local ad valorem taxpayers and not the state. When examining county judicial expenses for 1994-95, we see that the total expenses for the county were $561,479,607, and state appropriations were $473,074,645, for a total cost of $1,034,554,252. A breakdown reflecting the state and counties' spending categories for these amounts is shown in Figure 1. Of the statistics reported since 1988-89, the state-funded portion has never exceeded the county expenditures. The fiscal impact on county budgets can be seen in the next chart, which shows a list of the top seven counties by judicial expense for county year 1994-95.

The statistics of county involvement show that since the 1972 revision of Art. V, the state has abdicated its constitutional duties to the county ad valorem taxpayer. In Dade County, for example, net Art. V-related costs incurred by the county have increased by 208 percent over the last 10 years ($37 million in 1983-84 to $114 million in 1994-95). During the same period of time, the Dade County general fund from which

EXHIBIT 1

1994-5 State and County Judicial Expenditure by Category



Information compiled by LCIR staff, John Dew, from county annual financial reports and 1994/95 state appropriations act.

the costs are paid has increased by only 6.5 percent annually.'

The tax and revenue structure for counties under our current constitution is not designed to have county budgets underwrite the foundation of our court system and access to our court services. Art. V costs are absorbing larger amounts of county budgets at the espensebf other local needs. In the larger counties, the numbers are staggering, while many of the smaller counties are already at the 10 mill cap. Simply put, we are in a financial crisis, and the Constitution Revision Commission needs to develop and mandate a plan for the state to directly fund and merge the state court system in a uniform manner as envisioned by the electors in 1972.

When we look at these areas of funding, one item that leaps forward as a staggering example of the state shifting its burden is that of special court-appointed private counsel when public defenders have a conflict or overload. According to a study compiled by the Advisory Council on Intergovernmental Relations in 1994,[8] state appropriations for conflict and overload cases have completely shifted to the counties; from an annual appropriation in fiscal year 1982-83 of over $3 million to $2 million for years 1983 through 1989, $189,000 in 1990, and SO since 1991.[9] These special assistant public defender costs and fees are funded by each county depending upon the financing ability of a particular county and counsel are compensated in various ways depending upon the county. For example, in 1994-95, Dade County incurred expenses of roughly $3 million for 70 county-funded contracted special assistant public defenders (SAPDs), $8 million for private court-appointed counsel for conflict cases, and $2.9 million for public defender-related court costs such as court reporters, expert witnesses, and investigation fees.[10] In Broward County, it is estimated that special public defender costs alone for FY 1997 will be $4,310,620[11] while the *statewide* appropriation for special defender costs will be zero.

Historical Perspective

In 1968, the Constitution Revision Commission proposed important changes to Florida's executive and legislative branches of government but, because of fear ofjeopardizing the passage of these and other constitutional reforms, Art. V of the state Constitution was left untouched.[12] However, state lawmakers, judges, lawyers, and Florida's citizenry realized the need to modernize the near century old judicial system." In 1970, the Florida Legislature placed before the voters a revision to Art. V which for some went too fat and for others fell short ofexpectations. The proposal sought to establish a court system consisting of two- or three-tiered trial courts, depending upon a county's population.[14] But this proposal did nothing to prohibit inherent conflicts of interests resulting from part-time practitioners serving as part-time judges, and it failed to provide a sound administrative framework for the courts.[15] As stated by then-state Rep. Talbot "Sandy" D'Alemberte, House Judiciary Committee chair, "[i]n November 1970, the forces which wanted to see no change joined those which felt the proposal did not go far enough, and the people of Florida rejected the judicial amendment."[16]

Judicial reform finally succeeded with the voter approval of Amendment 1, a complete revision of Art. V, on March 14, 1972.[17] The 1972 revision to

Art. V reestablished the judiciary as a co-equal branch of Florida's government by abolishing the municipal court system.[18] In addition, the revision also established a more effective means of judicial administration, consolidated a "hodge-podge" of 14 different trial courts into a two-tiered uniform trial court system consisting of circuit courts and county courts, subjected all judges to the procedures of the Judicial Qualifications Commission and required judges to devote full time to their judicial responsibilities, and required the Governor to make judicial appointments from nominations made by judicial nominating commissions.[19]

In an effort to avoid another rejection by voters, the 1972 revision was presented as a measure that would provide tax relief to property taxpayers. Florida voters were told in newspaper articles and political leaflets supporting the proposed Art. V revisions that the state would assume the responsibility of funding the court system and, thus, they would be relieved of the burden of funding the courts.[20] Rep. D'Alemberte made similar statements in his many letters to local government leaders, judges, lawyers, and interested citizens.[21]

The promise of complete state funding for the new state court system was the cornerstone to obtaining voter approval, despite the absence of any provision within the 1972 revision expressly stating the state would be responsible for funding the entire judicial system.[22] This promise of full state funding has also been a source of controversy and debate among state and county leaders for over a quarter-century, as counties have tried unsuccessfully to persuade state lawmakers to assume all judiciary expenditures borne by counties.[23]

During the past 25 years, Florida's counties have sought to persuade the state to assume the funding responsibility for the state court system. However, this effort has met with little success. In fact, except for a handful of times where the legislature has approved state funds to reimburse counties for certain Art. V expenditures,[24] the legislature has completely ignored the plea of Florida's counties.

Legal Arguments

Some of the more salient legal arguments for the state's funding of Art. V costs go to the heart of the definition of our uniform court system in Florida and to the guarantee offundamental rights such as the Sixth Amendment right to counsel.

A similar issue of uniform funding of a state court system has been the subject of litigation in the courts of the Commonwealth of Pennsylvania. In 1987, in *County of Allegheny v. Commonwealth of Pennsylvania*, 517 Pa. 65, 534 A.2d 760 (Pa. 1987), the Supreme Court of Pennsylvania ruled that Art.

List of Top Seven Counties By Judicial Expense for County Year 1994/95[1]

County	Personal Services	Operating Expenses	Capital Outlay	Other	Total
Dade	$71,798,263	$46,202,076	$10,734,839	0	$128,735,178
Orange	$19,219,733	$6,406,357	$46,672,429	0	$72,398,519
Palm Beach	$21,970,977	$11,583,343	$12,179,682	0	$45,734,002
Pinellas	$16,648,357	$9,271,635	$15,605,671	0	$41,525,663
Broward	$27,354,000	$4,958,000	$3,551,000	$156,000	$36,019,000
Hillsborough	$24,888,037	$8,992,713	$1,887,682	0	$35,768,432
Duval	$10,041,427	$8,298,755	$921,625	0	$19,261,807
Total of Top 7 Counties	$191,920,794	$95,812,879	$91,552,928	$156,000	$379,442,601
Total of 60 Remaining Counties	$ 95,772,202	$67,750,018	$16,524,125	$1,990,661	$182,037,006

[1] County Year 1994/95 (October 1, 1994, through September 30, 1995) represents the most recent information available. Information compiled by LCIR staff, John Dew, December 6, 1996, from county annual financial reports.

V of the Pennsylvania State Constitution required a "unified judicial system" and that county funding of court costs and functions rendered the unity of the judiciary one of fortn as opposed to substance. The court in that case ordered the adoption of a statewide method of funding all of the courts and gave the legislature the opportunity to enact appropriate legislation. After 10 years of inaction by the Pennsylvania General Assembly, in 1996, in *Pennsylvania* State Association of *County Commissioners v. Commonwealth of Pennsylvania*, *681* A.2d 699 (Pa. 1996), the Supreme Court entered an order appointing a master to recommend fot Supreme Court consideration a state funding plan which, when implemented, will provide a measure of fiscal relief to the county governments.

Just as in the Pennsylvania case, which addressed a unified court system, Florida voters approved a uniform court system in 1972. When the ballot question was framed for the voters in 1972, the revision of Art. V was presented as a constitutional revision to establish a statewide uniform trial court system?

Revision of Article V

Judiciary. Proposing a revision of the Judicial Article of the Florida Constitution; reorganizing the trial courts into a uniform court system; providing standards and procedures for the selection and discipline of all judges; and establishing a system of court administration.

A court system which is dependent on the tax base in a geographic location cannot provide for uniformity but, in essence, becomes a return to "cash register" jus tice

State funding is necessary to ensure uniformity in the court system, as our courts in Florida should not depend on the location of the court and the revenue of the local ad valorem taxpayers. Due to the constitutional limitations placed on local governments, the state is in a better position to use its tax base to fund the statewide court system on an equitable basis. A court system which is dependent on the tax base in a geographic location cannot provide for uniformity but, in essence, becomes a return to "cash register" justice.

Florida courts should use their inherent power to compel state funding of the court system. The lack of state funding of the court system threatens many of the rights guaranteed by the U.S. and Florida Constitutions. With over 20 counties currently at or near the 10 mill cap on taxes, it is doubtful that some counties will be able to continue to provide the funds necessary to adequately run the court system. Inadequate funding will then jeopardize defendants' right to counsel guaranteed by the Sixth Amendment, access to courts provided for in Art. I, and the due process rights of the Fifth and Fourteenth Amendments. It is necessary for the courts to use their inherent power to compel state funding of the court system. The courts' power to compel funding has been found in cases where constitutional rights have been jeopardized due to inadequate funding.

In exercising their inherent power to protect constitutional rights, however, Florida courts to date have not followed the lead of the Supreme Court of Pennsylvania in mandating the state address the funding of the courts, but have only compelled additional funding from counties. Thus, the issue in the present

Article V - State Appropriations/County Expenses'

Fiscal Year[2]	State Appropriations	County Expenditures	Total
88/89	$342,743,411	$395,112,074	$737,855,485
89/90	$374,984,344	$442,502,364	$816,586,708
90/91	$407,027,831	$499,467,854	$906,495,685
91/92	$410,577,109	$527,272,715	$937,849,824
92/93	$417,136,562	$508,169,412	$925,305,974
93194	$442,675,759	$524,209,901	$966,885,660
94/95	$473,074,645	$561,479,607	$1,034,554,252
95/96	$512,939,129	Not Available	N'A
96/97	$544,887,729	Not Available	N/A

'The chart contains appropriations information for the stale and expenditure information for the counties
[2]The State Fiscal Year refers to the stale fiscal year of July 1 through June 30 while the County Fiscal Year refers to October 1 through September 30.

case would become whether the Supreme Court would construe the inherent power addressed in *In Re Order on Prosecution Criminal Appeals by the Tenth Judicial Circuit Public Defender,* 561 So. 2d 1130 (Fla. 1990), to the extent expressed in *Allegheny.* Relying on *Dade County Classroom Teacher's Association v. Legislature, 269 So.* 2d 634 (Fla. 1972), the court in *In Re Order* held that the judiciary cannot compel the legislature to exercise a purely legislative prerogative. However, the court's reliance on *Dade County* may be misplaced for two *very* important reasons. First, *Dade County* did not involve constitutional rights. As previously mentioned, courts may only use their inherent power where constitutional rights are involved. Additionally, the court in *Dade County* did not compel the legislature to act because it presumed that the legislature would correct the problem. However, in the absence of legislative action, the court held that it is the responsibility of the courts to correct the problem.

The Florida Supreme Court was recently faced with a similar issue where a group of foster children alleged that budgetary reductions threatened their constitutional right of access to courts. *In Chiles v. Children A, B, C, D, E, and F,* 589 So. 2d 260 (Fla. 1991), the Supreme Court held that it was mindful of the difficult conditions which precipitated the budgetary reductions and recognized that such reductions were a good faith attempt to address the fiscal crisis which beset the state. However:

> [A]ny substantial reductions of the judicial budget can raise constitutional concerns of the highest order. The court has an independent duty and authority as a constitutional co-equal and coordinate branch of government of the State of Florida to guarantee the rights of the people to have access to a functioning and efficient judicial system. Art. I, section 21 of the Florida Declaration of Rights provides that "[t]he courts *shall* be open to every person for redress of injury, and justice *shall* be administered without sale, denial or delay." [emphasis in original].

The court in *Chiles* recognized the difficult budgetary problems facing the state but was unwilling to wait until the budget difficulties subsided. By linking lack of state funding to constitutional rights, such as the right to counsel, access to *courts,* and due process, *Chiles* demonstrates that the Florida Supreme Court may not bc willing to jeopardize constitutional rights and is likely to intercede similarly to the action of the Pennsylvania Supreme Court in *Allegheny.*

Article V Assumption Plan

The legislature's reluctance to relieve counties of their Art. V cost burden, while unacceptable, is understandable when one considers competing budget priorities and Florida citizens' revolt against any new taxes while expecting increasing levels of government services. One essential element in developing a successful assumption plan involves identifying those costs to be assumed by the state. In a review of Florida's Art. V costs and revenues, the Art. V subcommittee of the Florida Judicial Council placed Art. V costs into one of the following three categories: 1)

Counties at 10 Mill Cap

County -at 10 mill cap for County Year 1995	County Judicial Expense—CY 94195'
Calhoun	$3,718
Dixie	$ 258,413
Gadsden	$1,518,267
Gilchrist	$484,858
Glades	$420,276
Hamilton	$368,834
Hardee	$1,141,656
Jefferson	$329,649
Lafayette	$43,018
Liberty	$329,538
Madison	$294,260
Sumter	$641,126
Union	$434,278
Washington	$378,244

'Information extracted by LCIR staff from County Annual Expenditure reports as submitted to the State Comptroller's Office for county Year 1994/95. Compiled by LCIR staff, December 6, 1996. John Dew (904)488-9627.

costs associated with the organizational entities of the state court system, *i.e.*, the Supreme Court, district courts of appeal, circuit and county courts; 2) costs associated with executive branch offices created under Art. V, such as the state attorney and public defender offices; and 3) costs associated with court-related agencies created by Art. V, which arc the judicial nominating commissions and the Judicial Qualifications Commission.[26] All costs associated with this last category arc borne by the state.[27] While the state pays all costs relating to the Florida Supreme Court and the district courts of appeal, it only pays for a limited number ofcircuit and county court expenditures.[28] The remaining expenditures are paid by counties as mandated by current law, including circuit and county expenditures not paid by the state, many operational costs associated with the offices of state attorneys and public defenders, court facilities, and court personnel.[29]

Additionally, any plan calling for the state to assume over $561 million in county-related Art. V costs must be based on accurately reported cost information. Likewise. there must be consideration of whether the assumption should be a one-time or phase-in assumption. Lastly, a plan must identify potential revenue sources to accomplish such a plan of assumption,

Accurate Data Reporting

Over the years, one reason given fot the legislature's reluctance to assutnc funding for the courts or reimburse counties for Art. V costs has been the lack ofuniform comprehensive accounting data on such expenditures.[30] In its July 1991 report, theArt. V subcommittee of the Florida Judicial Council recommended the establishment of a uniform chart of accounts that would allow detailed court-related expenses to be reported and compared among Florida's counties.[31] In response, the legislature passed Senate Bill 1372 which created a lo-member Uniform Chart of Accounts Development Committee to analyze the requirements for implementing a uniform chart of accounts.[32] Working with an end-user group authorized by the same bill,[33] the committee developed a detailed chart of accounts for reporting court-related expenses. This new chart of accounts was implemented by the Comptroller's office effective July 1, 1996, and should now be used by counties in reporting all county expenditures for Art. V costs.[34] Therefore, this important element for a successful plan has been accomplished and should begin yielding results in the near future.

One-time or Phase-in Assumption

An important consideration in securing an approvable assumption plan involves the method by which the assumption of costs is to be accomplished. While counties have sought for the state to fully fund all costs related to the judicial system, how and when to achieve full funding has been less than clear. One method of assuming all costs is on a one-time basis, Under this scenario, the legislature would appropriate sufficient monies to pay for all the Art. V costs now incurred by Florida's counties. This method allows the parties to reduce the period of pain involved with a phase-in approach and avoid political backtracking in future periods.[""] Furthermore, the one-time assumption method forces the interested pnrtics to confront the realities of the problem while making "it impossible to defer definitive decisions on the financial and personnel administration of the court system."[36]

A more palatable method for the state's assumption of countyArt. V costs is the phase-in approach. A "phase-in" involves setting a timetable for achieving full assumption by the state. In its July 1991 report, which considered several proposals for financing the state court system, the Art. V subcommittee recommended a phase-in approach over a three- to five-year period.[37] A phase-in approach is preferable because it reduces the immediate budgetary impact to the state while providing some relief to the counties.[38] In addition, a phase-in approach will provide the flexibility to achieve needed legislative changes to current statutes, prioritize the phase-in relief, if appropriate, and implement any changes as to how the courts will be managed in light of the cost assumption.[39]

Funding Revenue

Any plan developed for the state's assumption of county Art. V costs must identify one or more potential sources of revenue. Currently, counties fund theirArt. V costs in part through statutorily authorized and collected filing fees, surcharges, and fines. However, the primary source of revenue for county funding of the courts is local property taxes. If the state were to assume the costs now incurred by counties, local property taxes would be eliminated as a source of funding those costs. Therefore, the legislature must identify and itnplcment revenue sources to substitute for local property taxes. One such source is the sates tax. A half-penny sales tax is estimated to raise approximately $1 billion.[40] The state would need about one-third of the half-cent to pay for net costs currently covered by local property taxes.[41] The state's assumption of all revenues from fines, fees, and surcharges would complete the difference to fund the current court operations. However, increasing the sales tax is not the only means of raising the revenue needed for the state to assume all costs related to our court system.[42] The legislature must be willing to consider all nonlocal sources of revenue if any assumption plan is to succeed.

Conclusion

The funding of Florida's judicial system is at a crisis level and counties cannot afford to continue to absorb the costs. The intent of the voters in 1972 was to establish a uniform court system, and the current lack offunding by the state violates the Constitution's requirement that the judicial system be unified. Fully funding the state court system must be a state responsibility. and state leaders should work with county officials to develop and implement a phased assumption plan. However, we are at a crossroad, and if the state fails to take action, then eithet the Supreme Court must exercise its inherent power to preserve the necessary funding of the judicial system, or the Constitution must be revised again to implement the state's fiscal responsibility for adequately funding Art. V costs. For instance, the Constitution Revision Commission could recommend revision language reflecting, "The Judicial system of this state shall be financed fully by the legislature in a single budget" be added to $1 of Art. V of the state Constitution.[43] The adoption of this or similar language is consistent with the intent that the state fund all the costs of our state court system.❑

[1] This figure is for FY94/95; the current data for 95/96 has not been assembled. John Dew Chart titled "Article V-State Appropriations/County Expenses."

[2] Calhoun, Dixie, Gadsden, Gilchrist, Glades, Hamilton, Hnrdee, Jefferson, Lafayette, Liberty, Madison. Sumter. Union. Washington.

[3] ARTICLE V SUBCOMMITTEE of THE FLORIDA JUDICIAL COUNCIL, A REPORT OF THE JUDICIAL COUNCIL OF FLORIDA, A REVIEW OF ARTICLE V COSTS AND REVENUES (July 1991) (hereafter ARTICLE V SUBCOMMITTEE OF THE FLORIDA JUDICIAL COUNCIL).

[4] Billy Buzzett, *The Article V Task Force: A Mini-Constitutional Revision Commission*, 69 FLA. B.J. 46 (July/Aug. 1995).

[5] Article V Roundtable Program, co-sponsored by the Government Lawyer Section of The Florida Bar and the Florida Association of Counties.

[6] Testimony Before the Senate Judicial Committee, George M. Burgess, assistant director, Office of Management and Budget, Metropolitan Dade County, Feb. 7, 1996 (Updated).

[7] ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, COURT APPOINTMENT OF OUTSIDE OR PRIVATE COUNSEL: IMPLEMENTATION OF RELEVANT STATUTORY AUTHORITY, PROCEDURE, AND RELATED COUNTY COSTS 94-3, Feb. 1994.

[8] The initial budget considered by the House Appropriations Committee during the 1996 legislative session contained a $10 million appropriation for countyhrt. V costs, but such funds were wiped away during the subcommittee process in light of budget cuts in other critical areas.

[9] Testimony Before the Senate Judicial Committee, George M. Burgess, assistant director, Office of Management and Budget, Metropolitan Dade County, Feb. 7. 1996 (Updated).

[10] Broward County Office of Budget and Management Policy.

[11] ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS. ART, V FUNDING: HISTORICAL PERSPECTIVE, LEGAL QUESTIONS, AND LOCAL REPORTING SYSTEMS, REPORT No. 93-2, March 1995 (hereinafter ACIR 95-2).

[12] See *generally* Florida Department of State, Division of Archives, Tallahassee, series 18, box 302 and series 19, boxes 191-194 (containing correspondence, memoranda, and other written documents of the House of Representatives' Judiciary Committee) (hereinafter State Archives).

[13] State Archives series 19, box 191; ACIR 95-2, supra note 11, at 2.

[14] ***Id,***

[15] ACIR 95-2, *supra* note 11, at 2-3.

[16] Fla. Laws, Senate Joint Resolution No. 52-D (Dec. 11, 1971).

[17] Id. State Archives, Series 19, box 191. Municipal courtjudges, many of whom were not lawyers, were subjected to intense pressure by the appointing city councils or mayors to raise revenues through the imposition of fines and forfeitures. State lawmakers felt this type of "cash register justice" could not be condoned and had to be eliminated. *Id*. See also Talbot D'Alemberte, *Judicial Reform-Now or Never*, 46 FLA. B.J. 68 (March 1972).

[18] Id.

[19] State Archives, Series 19, box 191. In describing to voters how the proposed 1972 revision to Art. V would provide more local revenue, a League of Women Voter5 of Florida leaflet stated: "[t]he *new* article provides for total state funding of the courts, thus relieving local property taxpayers from this burden and releasing more money for local services."

[20] State Archives, Series 19, box 191. In a letter to Tampa Mayor Dick Greco, Jr., dated August 27, 1971, concerning the proposed revision, Rep. D'Alemberte wrote "[u]nder this proposal, cities would continue to receive the proceeds from fines and forfeitures. However, the state would assume the cost of the court system."

[21] Nonetheless, this promise of full state funding for Florida's courts is part of the spirit of Art. V. A spirit that is as "obligatory as the written word." *See Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1979). The Florida Judicial Council's Art. V subcommittee appears to also agree the state was to assume responsibility for fully funding the *new* state court system. See ARTICLE V SUBCOMMITTEE OF THE FLORIDA JUDICIAL COUNCIL, supra note 3, at 3.

[22] ACIR 95-2, *supra* note 11, at 4.

[23] *Id*. at 18.

[24] *Id*, at 7.

[25] ARTICLE V SUBCOMMITTEE OF THE FLORIDA JUDICIAL COUNCIL, *supra* note 3, at 6-7.

[26] ***Id.*** **at 7.**

[27] Id. at 7-8. These costs include judicial salaries for judges, judicial assistants, a limited number of court personnel positions, limited travel and educational expenses, limited computer automation system expenses, and certain program expenses.

[28] See FLA. STAT. §27.34(2), §27.54(3), $34.171, and $43.28 (1995). in-addition; counties also bear the costs associated with the clerk of the courts, who administers the record5 of the courts. *See* ARTICLE V TASK FORCE, FINAL REPORT at 124-125 (Dec. 1995).

[29] ARTICLE V SUBCOMMITTEE FOR THE FLORIDA JUDICIAL COUNCIL, *supra* note 3, at 20.

[30] *Id*. at *21*.

[31] See Fla. Laws ch. 95-400, § 1.

[32] *Id*. The end-user group is composed of representatives from the legislature, Governor's office, the Supreme Court, ACIR, and other criminal justice-related agencies.

[33] See UNIFORM ACCOUNTING SYSTEM MANUAL, ch. 3, at 10-14, and ch. 4, at 12-24.

[34] NATIONAL CENTER FOR STATE COURTS, STATUS OF STATE FINANCING OF COURTS - 1988 at 22 (May 1988).

[35] *Id*.

[36] ARTICLE V SUBCOMMITTEE OF THE FLORIDA JUDICIAL COUNCIL, *supra* note 3, at 23-25.

[37] NATIONAL CENTER—1988, *supra* note 34, at 22.

[38] ARTICLE V SUBCOMMITTEE OF THE FLORIDA JUDICIAL COUNCIL, *supra* note 3, at 24-25. See *also* NATIONAL CENTER—1988, *supra* note 34, at 22-23.

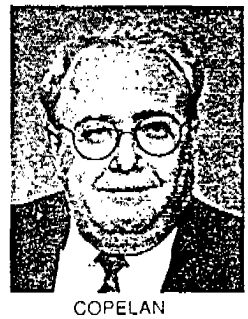
[39] 1995 FLORIDA TAX HANDBOOK 75. This represents the approximate amount distributed to local governments under Half-Cent Sales Tax Program.

[40] Sen. Ron Silver from Dade County stated at the "Article V Roundtable" sponsored by the Government Lawyer Section of The Florida Bar and the Florida Association of Counties held during the January 1996 mid-year meeting in Orlando, that about one-third of a half-cent sales tax would pay for the Art V costs currently paid by counties.

[41] *See generally* 1995 FLORIDA TAX HANDBOOK a; 167-176. Other revenue sources may also include implementing a services tax or a special statewide supplemental tax for the courts It is important to note, however, all these potential revenue sources require statutory or constitutional changes which may indeed be difficult, if not impossible, to authorize, given the recent voter approval of the two-thirds vote amendment for any new state taxes and fees imposed on or after Nov. 8, 1995. *See* Art. 11, §7 of the state Constitution.

[42] The Constitutional Revision Commission can also schedule the financing of the court5 to provide for a phase-in assumption of those costs now borne by counties.

AUTHORS



COPELAN

John J. Copelan, Jr., has been the county attorney of Broward County since 1989, and prior to that, was deputy city attorney for the City of Miami. He received his B.A. from Mercer University; M.P.A. from Florida Atlantic University; and J.D. from Walter F. George School of Lat. He is board certified in city, county, and local government law. Mr. Copelan is past chair of the Government Lawyer Section and the Local Government Law Section.

Edward G. Labrador, assistant county attorney for Broward County, graduated from Cumberland School of Law, Samford University, in 1999. He was formerly staff attorney for the State of Florida House Insurance Co-imission, and now acts as staff liaison and designated attorney for legislative matters.

This article is cosponsored by the Government Lawyer Section, Thomas D. Hall, chair, and the Criminc! Law Section, Anthony C. Musto, chair.

	County	April 1, 1995 Population Estimates	County Gov't 1995 Operating Millage
1	Calhoun	11,988	10.0000
2	Dixie	12,416	10.0000
3	Gadsden	44,734	**10.0000**
4	Gilchrist	11,888	10.0000
5	Glades	8,551	10.0000
6	Hamilton	12,487	**10.0000**
7	Hardee	22,885	10.0000
8	Jefferson	**13,509**	**10.0000**
9	Layfayette	6,516	10.0000
10	Liberty	6,873	10.0000
11	Madison	18,344	10.0000
12	Sumter	36,458	**10.0000**
13	**Union**	12,647	**10.0000**
14	Washington	19,010	10.0000
15	Okeechobee	32,855	9.7500
16	Baker	20,275	9.3300
17	Alachua	198,261	9.2500
18	Wakulla	17,005	9.2500
19	Pasco	305,576	9.2340
20	Suwannee	30,534	9.0500
21	**Levy**	**29,843**	**9.0000**
22	Hendry	29,497	8.9000
23	Franklin	10,236	8.8838
24	Escambia	282,742	8.7890
25	Columbia	50,387	8.7260
26	Leon	217,533	8.6400
27	Highlands	77,270	8.5000
28	Holmes	17,385	8.4900
29	DeSoto	26,640	8.4800
30	Clay	120,896	8.4585
31	Putnam	69,516	8.4000
32	Jackson	46,577	8.2740
33	Taylor	18,322	8.0760
34	Polk	443,153	7.9770
35	Hillsborough	892,874	7.9048
36	Hernando	117,895	7.8580
37	Gulf	13,271	7.8190
38	St. Lucie	171,160	7.4795
39	Bradford	24,336	7.3770
40	Broward	1,364,168	7.3311
41	Manatee	233,160	7.3180
42	Citrus	105,468	7.2390
43	Nassau	49,127	7.2053
44	Santa Rosa	96,091	6.9720
45	Dade	2,013,821	6.9200
46	Walton	33,415	6.8100
47	St. Johns	98,188	6.3120
48	Volusia	402,970	6.1720
49	Monroe	83,401	6.0983
50	Osceola	136,627	5.9945
51	Bay	139,173	5.8152
52	Lee	376,702	5.3769
53	Pinellas	876,200	5.3690
54	Orange	758,962	5.2889
55	Marion	224,612	5.2200
56	Seminole	324,130	5.1638
57	Martin	112,036	5.1040
58	Lake	176,931	4.9270
59	Flagler	36,997	4.6768
60	Okaloosa	162,707	4.5280
61	Charlotte	127,646	4.4983
62	Indian River	100,261	4.2999
63	Brevard	444,992	4.2812
64	Palm Beach	962,802	4.2177
65	Sarasota	301,528	3.8424
66	Collier	185,504	3.4889
		13,430,962	

Note: **The consolidated** Duval County/Jacksonville government **had an operating** millage **of 11.1120.**

EXHIBIT 2

FDLE

Florida Department of Law Enforcement
Post Office Box 1489 James T. Moore, Commissioner
Tallahassee, Florida 32302-1489

Investigations & Forensic Science Program
(850) 487-1806
Fax #(850) 488-8213

FACSIMILE COVER SHEET

TO: George Dorsett FAX # 407-836-5888

AGENCY:

FROM: Jennifer McCord

SUBJECT: UCC Trial Expense Requests

NUMBER OF PAGES (Including Cover Sheet): 10

ROUTINE: ☐ URGENT: ☐ CONFIRM RECEIPT: ☐

COMMENTS:

EXHIBIT 2

Tampa Bay Region

St. Pete PD 6/21/94	$100,000.00
Sebring PD 6/15/95	$6,718.23
Haines City PD 1/11/96	$1,933.08
Haines City PD 1/11/96	$1,532.36
St. Pete PD 1/11/96	$76,844.80
Pinellas County Sheriff 1/11/96	$35,105.65
Tampa PD 4/4/96	$6,430.00
Temple Terrace PD 4/4/96	$5,199.99
Collier County Sheriff 4/4/96	$7,140.35
Collier County Sheriff 4/4/96	$21,035.57
Palm Bay P.D. 7127196	$10,384.00
Charlotte County S.O. 7/27/96	$69,490.22
North Port P.D. 7/27/96	$17,348.45
Clearwater P.D. 11/4/96	$8,683.26
Pinellas County S.O. 11/4/96	$46,638.25
Collier County S.O. 3/26/97	$10,855.13 *Cracker Barrell Trial Expenses*
Collier Co. Board of Co. Comm.	$30,707.10 *Cracker* Barrel *Trial Expenses (6/10/97)*
	$456,046.44

Orlando Region

Martin County 3/10/94	$34,077.18
South Daytona PD 1/11/96	$9,060.02
Osceola County Sheriff 1/11/96	$52,550.76
Port St. Lucie PD 414196	$8,627.87
Osceola County Sheriff 4/4/96	$9,408.40
Titusville PD 4/4/96	$7,712.00
Palm Bay PD 4/4/96	$17,820.13
Kissimmee PD 7/27/96	$4,875.00
Orange County S 0. 3126197	$11,633.53
Ocoee P.D. 3126197	$3,074.25
Orlando P.D. 6/10/97	$16,000.00
Palm Bay P.D. 9/18/97	$12,459.48
Cocoa Beach P.D. 9118197	$1,200.00
	$188,498.62

Tallahassee/Pensacola

Jefferson County 3/10/94	$16,654.27 *British Tourist Homicide*
Jefferson County 10/4/94	$100,000.00 *British Tourist Homicide*
Hamilton County Clerk 6/15/95	$37,458.00
Hamilton County Sheriff 6/15/95	$7,826.07
Pensacola PD 10/12/95	$22,356.98
Panama City PD 4/4/96	$14,212.50
Jefferson County	$3,829.09
Graceville P.D. 3/26/97	$2,755.99
Gadsden County SO. 9/18/97	$17,948.48
Leon County S.O. 9/18/97	$13,952.39
Tallahassee P.D. 9/18/97	$16,388.00

Chattahoochee P.D. 9/18/97	$802.78
Wakulla County S.O. 9/18/97	$1,194.66
Gretna P.D. 9/18/97	$135.10
Midway P.D. 9/18/97	$863.00
Quincy P.D. 9/18/97	$662.23
	$257,039.54

Miami Region

Miami PD 6/21/94	$12,359.00
Miami PD 3/21/95	$20,268.00
Metro-Dade PD 3/21/95	$100,000.00
Metro-Dade PD 3/21/95	$54,661 .00
Metro-Dade PD 6/15/95	$22,171.93
North Miami PD 10/12/95	$19,738.19
Metro-Dade PD I/I 1196	$100,000.00
Metro-Dade PD 1/11/96	$100,000.00
Palm Beach Sheriff 1/1 1196	$11,934.00
Miami PD 4/4/96	$20,563.43
Ft. Lauderdale PD 4/4/96	$52,479.67
Metro Dade 7/27/96	$45,309.00
Miami P.D. 7/27/96	$66,487.50
S.A. Office, 1 lth Circuit 1114196	$3,000.00
Metro-Dade P.D. 3/26/97	$25,529.36
Cooper City P.D. 3/26/97	$7,805.66
Miami **P.D. 3126197**	$10,606.08
Miami P.D. 3/26/97	$11,278.87
Metro -Dade P.D. 6/10/97	$23,801.45
Miramar P.D. 6/10/97	$34,785.50
Miami P.D. 6/10/97	$13,677.27
Miami P.D. 9/18/97	$13,611.11
Miami Beach P.D. 9/18/97	$38,808.87
Metro-Dade P.D. 9/18/97	$15,030.60
Miramar P.D. 9/18/97	$11,532.45
	$835,438.94

Jacksonville Region

Alachua County '93	$612,315.46 *Serial Killer - Gainesville Murders*
Gainesville P.D. 3/21/95	$43,658.90
Putnam County Sheriff 6/15/95	$7,237.83
Gainesville P.D. 3/26/97	$9,957.50
St. John's County S.O. 6/10/97	$9,120.14
Jacksonville Beach P.D. 6/10/97	$13,626.16
	$695,915.99