IN THE SUPREME COURT OF FLORIDA

ALAN H. SCHREIBER,
PUBLIC DEFENDER OF
THE SEVENTEENTH
JUDICIAL CIRCUIT OF
FLORIDA, AND RICHARD
L. JORDANBY, PUBLIC
DEFENDER OF THE
FIFTEENTH CIRCUIT OF
FLORIDA,

Petitioners,

v. CASE NO. 95,000

ROBERT W. ROWE,

Respondent.
_____/

AMICUS CURIAE BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF PETITIONERS

On Review of a Decision of the District
Court of Appeal, Fourth District

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Solicitor General
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on behalf of

ROBERT A. BUTTERWORTH,
Attorney General, and the
STATE OF FLORIDA

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LOUIS F. HUBENER

QUESTION PRESENTED

Plaintiff/Respondent, an indigent criminal defendant who alleges that he was wrongfully convicted and imprisoned, asserted five claims against the constitutional office of Public Defender. Four of those claims involve the administration and operation of the Public Defender office and allege: 1) negligent management of the resources of the office; 2) negligent hiring of an inexperienced assistant public defender; 3) negligent supervision; and 4) failing to ensure that the assistant public defender did not have an excessive case load. The fifth claim sought to hold the Public Defenders liable for the alleged legal malpractice of their assistants. The nature of these claims implicate the broader issue of immunity for the Office of Public Defender in the performance of official duties, which was raised in this case by affirmative defense, and, this same issue is pending before this court on a certified question in Wilcox v. Brummer, Case No. 96,475. Thus, even though the lower courts decided this case on other grounds, the State of Florida respectfully submits that immunity from suit goes to subject matter jurisdiction and presents here a question of great public importance, stated as follows:

AS PUBLICLY ELECTED CONSTITUTIONAL OFFICERS, ARE PUBLIC DEFENDERS IMMUNE FROM SUIT ARISING OUT THE PERFORMANCE OF THEIR OFFICIAL PUBLIC DUTIES UNDER FLORIDA STATUTES AND ARTICLE V OF THE FLORIDA CONSTITUTION?

INTEREST OF THE STATE OF FLORIDA AS AMICUS CURIAE

The State of Florida has an interest in protecting the Public Defender's critical and essential role in Florida's criminal

justice system. In fiscal year 1998-99, 170,936 felony cases were filed in the circuit courts of this state. Florida's Public Defenders represented indigent criminal defendants in 158,850 of those cases (approximately 93%). In addition, in that same fiscal year the Public Defenders of Leon, Polk, Dade, Palm Beach, and Volusia Counties represented indigent defendants in 4,467 criminal appeals to the District Courts of Appeal. Clearly, any serious interference with the Office Public Defender would cause the criminal justice system to grind to a halt.

Law suits against Public Defenders would constitute serious interference with those official public duties and a threat to the Judicial Branch. The cost of defense, settlement, and payment of adverse verdicts would necessarily create an additional burden on the already stressed budgets of the Public Defenders. An equally important consideration would be the negative impacts of the distractions, time, energies, and resources needed to deal with claims and litigation. Public Defenders, just like State Attorneys, must be free to use their discretion to organize and supervise their offices, allocate their resources, and perform their public duties, without the interference of private suits.

For the reasons set forth above, the decision in this case will substantially affect the offices of all twenty Public Defenders in this State and the functioning of the criminal justice system. Thus, the State of Florida respectfully submits that this case is not just one of "great public importance;" it involves fundamental constitutional issues regarding separation of powers and the role

of the Judicial Branch and its officers in the criminal justice system.

STATEMENT OF THE CASE AND FACTS AND STATEMENT AS TO SUBJECT MATTER JURISDICTION

Plaintiff/Respondent, Robert W. Rowe ("Rowe"), an indigent criminal defendant, brought this action against Alan H. Schreiber ("Schreiber"), Public Defender of the Seventeenth Judicial Circuit, and Richard L. Jorandby ("Jorandby"), Public Defender of the Fifteenth Judicial Circuit, (and Bradley Stark, a private attorney who apparently represented Rowe while seeking post conviction relief). Rowe alleged that he was wrongfully convicted and imprisoned through the actions or inactions of the Defendants and asserted five claims against the constitutional offices of the two Public Defenders. Four of those claims were against Schreiber and alleged negligent administration and operation of the Public Defender office, to wit: 1) negligent management of the resources of the office; 2) negligent hiring of an inexperienced assistant public defender; 3) negligent supervision; and 4) failing to ensure that the assistant public defender did not have an excessive case load. The fifth claim sought to hold both Public Defenders liable for the alleged legal malpractice of their assistants.

The underlying facts are set forth in the opinion of the Fourth District Court of Appeal in the case below. Rowe v. Schreiber, 725 So.2d 1245 (4th DCA Fla. 1999). In 1984, Rowe was convicted of several counts of capital sexual battery and sentenced to four terms of life imprisonment. Affirmed, Rowe v. State, 523 So.2d 590

(Fla. 4th DCA 1988). Rowe timely moved for post-conviction relief, which was denied without an evidentiary hearing. The order denying post-conviction relief was reversed by the Fourth District Court of Appeal, which remanded the case for an evidentiary hearing "to determine the merits of the defendant's position." Rowe v. State, 588 So.2d 344 (Fla. 4th DCA 1991). The grounds asserted in the motion for post-conviction relief were that numerous errors committed at trial by Rowe's assistant public defender amounted to a violation of his constitutional right to effective assistance of counsel. In July of 1994, after an evidentiary hearing, the trial court granted Rowe's motion for post-conviction relief, (on the basis of ineffective assistance of trial counsel), and ordered a new trial. The state nolle prossed the charges against Rowe on May 15, 1995. Thus, there has been no final determination of Rowe's guilt or innocence.

In November of 1994, Rowe filed a legal malpractice suit against private attorney Bradley Stark. Through subsequent amendments, Rowe added Schreiber, whose office represented Rowe at his trial in 1984, and Jorandby, whose office handled the direct appeal from the 1984 conviction. Jorandby filed an answer and affirmative defenses, which among other things raised the defense of "qualified or absolute immunity". Schreiber and Jorandby also filed identical motions to dismiss on the ground that the actions were barred by the two year statute of limitations contained in section 95.11(4), Florida Statutes (1997). Apparently finding that the statute began to run from the date of the occurrence of the alleged malpractice,

the trial court granted the motions to dismiss. The Fourth District Court of Appeal reversed and held that the limitations period under section 95.11(4)(a), began to run when the trial court granted Rowe's motion for post-conviction relief based on ineffective assistance of counsel. Rowe v. Schreiber, 725 So.2d 1245 (4th DCA Fla. 1999). Using that date (July 1994), the actions against both Schreiber and Jorandby were timely. In this respect, the decision of the court below conflicts with Martin v. Pafford, 583 So.2d 736 (Fla. 1st DCA 1991). Thus, this case is before the court on conflict jurisdiction.

Recognizing that the broader issue of Public Defender immunity from suit is implicated in this case and goes directly to the subject matter jurisdiction of the trial court, and that the issue of judicial immunity for Public Defenders is the subject of a certified question of great public importance in another case pending before this court, (Wilcox v. Brummer, Case No. 96,745), the State of Florida filed a motion for permission to file an Amicus Curiae Brief on the issue of judicial immunity. That motion was granted by order dated November 3, 1999. This brief is in response to that order.

STATEMENT AS TO SUBJECT MATTER JURISDICTION

At least one of the defendants--Richard L. Jorandby--asserted "absolute immunity" and "qualified immunity" as a bar to this action. In ruling on the motions to dismiss, (which raised the statute of limitations defense), the courts below apparently did

not reach or consider the issue of immunity as a bar to this action. The State of Florida submits that judicial immunity goes to the subject matter jurisdiction of the courts and can be considered at any time. See, e.g., Department of Natural Resources v. Circuit Court of the Twelfth Judicial Circuit, 317 So.2d 772 (Fla. 2d DCA 1975), aff'd, 339 So.2d 1113 (Fla. 1976); Department of Transportation v. Bailey, 603 So.2d 1384 (Fla. 1st DCA 1992). This Court may take notice of a defect in its jurisdiction. See Polk County v. Sofka, 702 So.2d 1243 (Fla. 1997).

SUMMARY OF ARGUMENT

Under Article V of the Florida Constitution, Public Defenders, like State Attorneys, are constitutional officers of the Judicial Branch. Offices created by Article V are judicial or quasi-judicial in nature. In the performance of duties derived from Article V, the Public Defender, like the State Attorney, is entitled to quasi-judicial immunity from suit. This Court has held that State Attorneys are not liable for negligent acts committed in the course of deciding whether to prosecute or in prosecuting, since that is the State Attorney's constitutionally-derived duty. It is the Public Defender's constitutionally-derived duty to defend the accused, and in doing so he is entitled to the same quasi-judicial immunity.

The district courts of appeal have erred in failing to distinguish Public Defenders from privately retained defense counsel. Public Defenders are an integral and indispensable

component of the criminal justice system, responsible, literally, for hundreds of thousands of cases every year. Unlike privately retained attorneys, they do not have a contractual relationship with their clients. Their ability to perform their duties is essential to the functioning of the system and would be greatly impaired if made subject to malpractice and negligence claims. Indigent clients have little incentive not to pursue frivolous claims or tactics as part of their defense or to accuse the Public Defender of malpractice for not doing so.

In ruling that Public Defenders do not have immunity from suit, the district courts of appeal have overlooked the fact that Public Defenders are Article V officers who, in representing the indigent accused, are performing a constitutionally-derived duty. Furthermore, because their immunity is quasi-judicial it has not been waived by section 768.28, Florida Statutes.

Finally, those who have been wrongly convicted are not without remedies. They may pursue appeals, post-conviction relief and habeas corpus. In the case of manifest injustice, monetary compensation can be sought from the legislature in the form of a claims bill.

ARGUMENT

1. Public Defenders Are Entitled to Judicial Immunity From Suit Because They Are Publicly Elected Constitutional Officers Who Perform An Indispensable Role In Florida's Criminal Justice System Under Article V Of The Florida Constitution and Florida Statutes.

A. Public Defenders Are Quasi-Judicial Officers Under Article V Of The Florida Constitution.

Article V of the Florida Constitution provides for the organization and authority of Florida's Judicial Branch of Government. Along with State Attorneys, Public Defenders are expressly designated within each judicial circuit as constitutional officers of the Judicial Branch. See Article V, sections 17 and 18, Florida Constitution. The duties, qualifications and elections of the Public Defender's constitutional office are set forth in Chapter 27, Florida Statutes. Section 27.51 provides that each Public Defender **"shall"** represent **"any"** criminal defendant determined to be indigent and charged with the types of crimes or matters listed in the statute. According to statistics obtained from the Public Defenders' Association, this responsibility resulted in representation of indigent criminal defendants in almost 93% of the 170,000 felony cases filed in 1998-99. Due to their heavy public responsibilities, Public Defenders are prohibited from the private practice of law and must serve on a full time basis. See section 27.51, Florida Statutes. Thus, Public Defenders are on an equal constitutional footing and every bit as essential to the criminal justice systems as State Attorneys.

In an analogous case pertaining to State Attorneys, this Court has previously held that the offices created under Article V of the Florida Constitution are judicial or quasi-judicial in nature. In Office of the State Attorney v. Parrotino, 628 So.2d 1097, 1099 (Fla. 1993), this Court considered a wrongful death action brought against the Office of the State Attorney. It was alleged that assistants in that office had given assurances to a woman who had suffered repeated abuse at the hands of her boyfriend that they would seek a restraining order against him. They failed to take this action, however, and the woman was murdered by her boyfriend.

In addressing the issue of whether the State Attorney could claim immunity from suit, this Court discussed the historic common law immunity of judges, noting that it came to be shared by prosecutors and that judicial immunity and sovereign immunity were not coextensive. In fact, judicial immunity in Florida had long existed apart from sovereign immunity, had an independent basis in law and policy, was necessary to preserve the effectiveness of judicial and quasi-judicial offices, and had not been waived. Id. at 1098-99. The Court then turned to the Florida Constitution:

> Article V of the Florida Constitution creates the judicial branch of this state, deliberately separating it from and making it coequal to the other branches of government. **Article V also creates the office of State Attorney, implying what is obvious--the State Attorneys are quasi-judicial officers.**

Id. (emphasis added).

In a footnote to the quoted passage, the opinion went on to state that "[immunity from suit [for the state attorney]...arises

from the quasi-judicial nature of the office." Id. at 1099 n.2. The opinion further stated that the legislature could not waive immunity for Florida's judicial and quasi-judicial offices because to do so would violate the doctrine of separation of powers expressed in Article II, Section 3 of the Florida Constitution:

> [S]ubjecting the judiciary and the state's quasi-judicial officers to punitive lawsuits for official actions would obviously fall into [this] category, because it would impinge upon the independence of these offices.

Id. at 1099.

For exactly these reasons, the Public Defender is also entitled to judicial immunity from suits based on his official actions. As the function of the State Attorney as a constitutional officer of the Judicial Branch is to prosecute criminal cases, so the function of the Public Defender as a constitutional officer of that branch is to defend them. In fact, the Supreme Court has compared the Public Defender to English barristers who, like the public defenders, were not free to pick and choose their clients. According to the Court, English barristers enjoyed in the nineteenth century and enjoy today "a broad immunity from liability for negligent misconduct." See Tower v. Glover, 467 U.S. 914, 921 (1984).

The public defenders, like the state attorneys and clerks of court, have certain constitutionally-derived functions for which, as an arm of the court, they are entitled to immunity. In Times Publishing Co. v. Ake, 660 So.2d 255 (Fla. 1995), this Court "fully approved" the opinion of the district court of appeal which held

that "[t]he clerk [of court], **when acting in the exercise of his duties derived from article V is acting as an arm of the court** and, as such,... is immune from the supervisory authority of the legislature...." Id. at 257 (emphasis added). Thus, for the State Attorneys, judicial immunity should extend to all actions and inactions, see Parrotino, supra, related to the prosecution of a case. For Public Defenders, immunity should cover at least those Article V-derived duties relating to the supervisory and administrative functions of their office and the representation and defense of their clients. For clerks of court, it would also cover all duties "derived from Article V." As Parrotino and Ake underscore, all of these officers act as an arm of the court in performing the duties derived from Article V. They thus share absolute judicial immunity in the performance of those duties.

B. Public Defenders Perform A Critical Role In The Criminal Justice System That Goes Beyond The Attorney/Client Relationship.

The successful functioning of Florida's criminal justice system depends just as much on the Public Defender as it does the State Attorney and the courts. As previously stated, the Public Defenders of this state are responsible for hundreds of thousands of cases. Without effectively functioning Public Defender offices, the system would collapse. Given these responsibilities and the constitutional basis for the office, the narrow view taken by two district courts of appeal that the Public Defender's role is one

that "does not differ from that of privately retained counsel" is clearly wrong. See Wilcox v. Brummer, 739 So.2d 1282, 1283 (Fla. 3d DCA 1999) (quoting Windsor v. Gibson, 424 So.2d 888, 889 (Fla. 1st DCA 1982)). Private counsel have neither the caseloads nor the responsibility to the criminal justice system that Public Defenders, as elected constitutional officers, bear. Furthermore, private counsel and their clients voluntarily enter into contracts through arm's length negotiations, consideration, and mutual assent. The liability of private attorneys to their clients for legal malpractice arises our of this voluntary contractual relationship and the consideration paid for their services. Public defenders have no such contractual relationship with their clients; they are charged by law with the duty to represent indigent criminal defendants. Although the Windsor court cited certain decisions to support its rationale,[1] it overlooked this distinction between private attorneys and Public Defenders and the fact that Public Defenders are officers under Article V, functioning as an indispensable part of the judicial system.

The better view of the Public Defender's role was stated in Scott v. City of Niagara Falls, 407 N.Y.S.2d. 103 (N.Y. Sup.Ct. 1978):

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[1]One case cited, Spring v. Constantino, 168 Conn. 563, 362 A.2d. 871 (1975), denying immunity to public defenders, appears to have been superseded by Lemoine v. McCann, 637 A.2d. 115 (Conn. App. 1996), holding that an appointed special assistant public defender was a "state officer or employee" for purposes of the protection of sovereign immunity in a legal malpractice action.

> [The Public Defender's] responsibility is to **ensure that justice is achieved** within the context of our adversary system.
>
> Although the orientation of the Public Defender is toward a particular assigned client, by fulfilling that role he permits the judicial system to function in a manner which increases the probability that justice will prevail. To this extent, a public defender **serves the public as much as he serves his particular assigned client or clients. The effectiveness and respect generated by a judicial system will be weakened or strengthened in direct proportion to the achievement of justice on a case by case basis.**

Id. at 105 (emphasis added). The court in Scott also recognized that public defenders need as much freedom to exercise their professional discretion as prosecutors do in their pre-trial, trial and post-trial obligations, agreeing with the Third Circuit Court of Appeals that there was "no valid reason" to extend immunity to prosecutors and withhold it from state-appointed defenders. *Id.* at 105-106 (quoting Brown v. Joseph, 463 F.2d. 1046 (3d Cir. 1972)). Indeed, in Ferri v. Ackerman, 444 U.S. 193, 197 (1979), the Supreme Court recognized that states were free to confer immunity from state law-based malpractice claims on appointed defenders.

The view of the New York court is echoed in the decision of the Minnesota Supreme Court in Dziubak v. Mott, 503 N.W. 2d. 771 (Minn. 1993), which accords public defenders immunity from suit in malpractice actions. That decision notes the "essential role" of the public defender as part of a courtroom triumvirate of the judge, prosecutor and defender. The role of the public defender "is that of an adversary to the prosecutor--**not an adversary of the system but an integral part of it.**" Id. at 777 (quoting Stephen L.

Millich, Public Defender Malpractice Liability in California, 11 Whittier L.Rev. 535, 537-38 (1989) (emphasis added)). This "courtroom triumvirate" is reflected in Article V of the Florida Constitution which creates the offices of the State Attorney and the Public Defender as well as the judiciary.

The decisions in Scott v. City of Niagara Falls and Dziubak v. Mott articulate the numerous policy considerations favoring the extension of immunity to public defenders. Fundamentally, immunity exists to free government officials from the burdensome consequences of litigation, not just liability from damages. Substantial time, money and energy can be consumed in discovery alone, to the detriment of other obligations. Mott, supra, 503 N.W. 2d. at 776. It is just as important to conserve the time and other limited resources of the Public Defender as it is to conserve those of the judiciary and the State Attorney.

Furthermore, as both cases note, clients of the Public Defender, unlike clients of private defense counsel, have no economic or other incentive not to pursue frivolous claims, tactics or defenses. The Public Defender's clients may frequently be difficult, suspicious, unreliable and litigious. Public defenders, however, generally cannot reject a client and must contend with exceedingly high caseloads and limited funding. They must be free therefore to allocate their limited resources and to decide what course of action has a realistic chance of success. See, e.g., Minns. v. Paul, 542 F.2d 1046, 1049 (3d Cir. 1972) (public defender needs to be able to "decline to press the frivolous, to assign

priorities between indigent litigants, and to make strategic decisions with regard to a single litigant as to how his interests may be advanced"), cert. denied, 429 U.S. 1102 (1977). The office should not be subject to suit for malpractice by every defendant who thinks his attorney was negligent or did not expend all the money, time and other resources that the client believes should have been expended.[2]

2. The Decisions in Wilcox v. Brummer, 739 So.2d 1282 (Fla. 3d DCA 1999), and Windsor v. Gibson, 424 So.2d 888 (Fla. 1st DCA 1982), Failed to Consider the Public Defender as an Article V Officer and the Implications for the Separation of Powers Doctrine.

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[2]Public defenders in Florida must also cope with excessive caseloads. The problem is particularly acute at the appellate level and appears to be chronic in the Tenth Judicial Circuit. See, e.g., In re Public Defender's Certification of Conflict and Motion to Withdraw Due to Excessive Caseload, 709 So.2d 101 (Fla. 1998); In re Certification of Conflict and Motions to Withdraw filed by Public Defender of Tenth Judicial Circuit, 636 So.2d 18 (Fla. 1994); In re Certification of Conflict and Motions to Withdraw, 632 So.2d 74 (Fla. 2d DCA 1993); Green v. State, 620 So.2d 188 (Fla. 1993); In re Order on Motions to Withdraw, 612 So.2d 597 (Fla. 2d DCA 1992); Hatten v. State, 561 So.2d 562 (Fla. 1990); In re Order on Prosecution of Criminal Appeals, 561 So.2d 1130 (Fla. 1990); In re Order on Prosecution of Criminal Appeals, 504 So.2d 1349 (Fla. 2d DCA 1987); Haggins v. State, 498 So.2d 953 (Fla. 2d DCA 1986). Other judicial circuits under the First District Court of Appeal have been affected. *See* Denmark v. State, 616 So.2d 1104 (Fla. 1st DCA 1993); Bennett v. State, 605 So.2d 552 (Fla. 1st DCA 1992); Woods v. State, 595 So.2d 264 (Fla. 1st DCA 1992); Young v. State, 580 So.2d 301 (Fla. 1st DCA 1991); Day v. State, 570 So.2d 1003 (Fla. 1st DCA 1990); Kiernan v. State, 485 So.2d 460 (Fla. 1st DCA 1986); Escambia County v. Behr, 384 So.2d 147 (Fla. 1980) (First and Eleventh Judicial Circuits). Other decisions reflect excessive caseloads at the trial level. See, e.g., Schwarz v. Cianca, 495 So.2d 1208 (Fla. 4th DCA 1986) (Nineteenth Judicial Circuit).

In deciding Wilcox v. Brummer, the Third District Court of Appeal relied solely on the decision in Windsor v. Gibson in denying immunity to the Office of the Public Defender. In that case, however, the First District Court of Appeal did not have the benefit of this Court's later decision in Parrotino, supra, and it did not consider that the Office of the Public Defender is created by Article V, or the implications of the doctrine of separation of powers for Article V offices.

The First District in its Windsor decision also recognized no significant distinction between judicial immunity and sovereign immunity. In its later decision in Parrotino v. City of Jacksonville, 612 So.2d 586, 591 and n. 2 (Fla. 1st DCA 1992), rev'd sub. nom., Office of the State Attorney v. Parrotino, 628 So.2d. 1097 (Fla. 1998), that court simply assumed that section 768.28, Florida Statutes, had waived the "common law immunity of prosecutors" for all but discretionary decisions, citing as an example of a discretionary decision a prosecutor's failure to prosecute a person as a multiple offender. For "operational" acts involving the practice of law, such as the negligent failure to obtain the restraining order, the State Attorney retained no immunity. In reviewing and reversing that decision, (Office of the State Attorney v. Parrotino, Id.), this Court paid no heed to the First District's distinction between discretionary and operational acts and made it clear that judicial immunity was based on Article V of the Florida Constitution, and firmly stated that judicial

immunity could not be abrogated by the Legislature without doing violence to the separation of powers doctrine.

Thus, the immunity accorded the State Attorney covered not just fundamental decisions about whether and how to prosecute, but also the alleged negligent failure to take a simple action that was promised and then forgotten. Here, the Public Defenders are being sued for more than just legal malpractice (negligent management of resources, hiring, supervision, and allocation of case loads). There is no good reason for according immunity to the State Attorney but not the Public Defender under these essentially similar circumstances involving the exercise of their Article-V derived duties.

The Third District thus erred in relying on Windsor. Neither its decision nor Windsor takes into account the doctrine of separation of powers and the fact that public defenders hold an Article V office.

3. The Legislature Cannot Waive Sovereign Immunity For Public Defenders in the Performance Of Their Official Acts and Public Duties.

Section 768.28(2), Florida Statutes, includes within its definition of those entities covered by the waiver of sovereign immunity "the judicial branch (including public defenders)." This Court's decision in Parrotino plainly states, however, that the judicial branch and the quasi-judicial offices created in Article V are entitled to judicial immunity that the legislature may not abrogate. We submit, as argued above, that this immunity applies

to those duties derived from Article V. This being so, the waiver of sovereign immunity in section 768.28 provides no legal foundation for this action.

In view of this Court's decision in Parrotino and Ake, First American Title Ins. Co. v. Dixon, 603 So.2d 562 (Fla. 4th DCA 1992), is likely not good law. That decision, relying on the waiver of sovereign immunity in section 768.28, Florida Statutes, and the distinction between operational and planning level functions, held that a clerk of court could not assert sovereign immunity as a bar to a claim for negligently indexing an interest in property. It did not consider judicial immunity and the fact that the clerk's duty to manage records is derived from Article V. It is clear from Parrotino that section 768.28 cannot waive judicial immunity.

4. The Legislative Claims Process Provides An Avenue of Relief For Persons Adversely Affected by the Official Actions of Public Officers.

It does not follow that if public defenders have immunity from malpractice actions that clients are bereft of remedies. The Legislature has provided a process for the filing and evaluation of claims bills on behalf of citizens who may have been injured by the actions of state of local government protected by sovereign immunity. Under this claims bill process, monetary payments are authorized to compensate citizens for their damages. In recent times, at least five such claims bills, compensating citizens who were wrongfully convicted and imprisoned, have passed the

legislature and become law. See, e.g., Chap. 98-431, Laws of Florida (Relief of Freddie Lee Pitts and Wilbert Lee in the amount of 1,250,000 as potential compensation for their allegations of wrongful conviction and incarceration); Chap. 76-309, Laws of Florida (Relief for M. Burbank in the amount of $15,000 as compensation for incarceration resulting from a wrongful conviction); Chap. 67-913, Laws of Florida (Relief of R.L. Watson in the amount of $15,000 as compensation for his erroneous conviction and sentence and for the severe and permanent emotional damage to his wife and children); Chap. 67-910, Laws of Florida (Relief of J. Shea in the amount of $45,000 as compensation for his unlawful conviction, imprisonment, and deprivation of military rank and pay); Chap. 14541, Laws of Florida (Relief of J.B. Brown in the amount of $2,292 as compensation for his wrongful imprisonment and physical disablement as a result of his wrongful incarceration). While the issue in this case involves judicial immunity, not sovereign immunity, it cannot be said that there is no remedy for citizens of this state who may be wronged by the actions or inactions of their government: including actions or inactions by State Attorneys and Public Defenders.

CONCLUSION

Public defenders, as Article V officers, are entitled to judicial immunity in the performance of their constitutionally-derived duties. The decision of the court below should be vacated and this action remanded to the trial court with directions to dismiss it for lack of subject matter jurisdiction.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to the persons listed below this _____ day of November 1999.

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