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CLERK, SUPREME COURT

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Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
CASE NUMBER 74,574

IN RE: ORDER ON PROSECUTION OF CRIMINAL APPEALS BY THE TENTH
JUDICIAL CIRCUIT PUBLIC DEFENDER

PETITIONER LEE COUNTY, JOINING PINELLAS COUNTY -
AMENDED BRIEF ON JURISDICTION

ON APPEAL FROM THE
SECOND DISTRICT COURT OF APPEAL

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TABLE OF CITATIONS

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Kiernan vs. State of Florida.
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School Board of Pinellas County vs.
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467 So.2d 985 (Fla. 1985) 4

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Terry vs. State.
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CONSTITUTIONAL PROVISIONS AND STATUTES:

Article V. §3(b)(3),
Florida Constitution (1968) 2

Article V. §18,
Florida Constitution (1968) 4

§27.51(4)(b), Florida Statutes 4

COURT RULES:

Florida Rules of Appellate Procedure.
9.030(2)(A)(iii), (iv) 2

STATEMENT OF THE CASE AND FACTS

Based upon a letter to the Second District Court of Appeals dated March 24, 1989, from the Public Defender of the Tenth Judicial Circuit, the Second District Court of Appeals, without a motion or hearing, entered an Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender dated May 12, 1989. Counsel for Pinellas County, Sarasota County, Manatee County, Hillsborough County, Charlotte County, Pasco County, and the Petitioner, LEE COUNTY, filed Motions for Rehearing which were denied July 20, 1989.

The Second District Court's Order discharges the Public Defender of the Tenth Judicial Circuit from his statutory duty of handling all appeals except those from the Tenth Judicial Circuit in which the Notice of Appeal is filed in the trial court after May 22, 1989. Petitioner's, LEE COUNTY, Notice to Invoke the Discretionary Jurisdiction of this court was timely filed on August 21, 1989. Petitioner, LEE COUNTY, also timely filed a Notice to Join as a party on August 23, 1989, in the appeal proceedings filed by Pinellas County on August 14, 1989 (Supreme Court of Florida Case Number 74,574).

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly affects a class of constitutional or state officers or that expressly and directly conflicts with another District Court of Appeal on the same question of law. Article V. §3(b)(3), Florida Constitution (1968); Florida Rules of Appellate Procedure 9.030(2)(A)(iii), (iv)

SUMMARY OF ARGUMENT

The Public Defenders of the circuits composing the Second District are a class of constitutional officers expressly affected by the order of the Second District Court of Appeals. Said order imposes a duty of appellate representation upon each Public Defender of each circuit in contravention to statutory mandate which places the duty to represent capital appeals in the Second District on the Public Defender of the Tenth Judicial Circuit only.

Further, the order of the Second District granting the Public Defender carte blanche authority to withdraw from all future appeals in the Sixth, Twelfth, Thirteenth, and Twentieth Judicial Circuits expressly and directly conflicts with decisions in the First and Fourth Districts. In both of these districts, the Appellate Courts have refused to allow a carte blanche withdrawal by the Public Defender. Motions for withdrawal from appellate representation by the Public Defender are heard on a case by case basis in the First and Fourth Districts.

ARGUMENT

I. THE PRESENT DECISION EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.

The Second District is composed of the Sixth, Tenth, Twelfth, Thirteenth, and Twentieth Judicial Circuits. The Florida Constitution provides for the election of a Public Defender in each judicial circuit. Article V, §18, Florida Constitution (1968). One of the statutory duties of the Public Defender of the Tenth Judicial Circuit is to handle all felony appeals within the district of the Second District Court of Appeals if requested by any Public Defender within the district. Florida Statutes §27.51(4)(b).

Clearly, by virtue of their creation, the Public Defenders of the Sixth, Tenth, Twelfth, Thirteenth, and Twentieth Judicial Circuits are Constitutional Officers. The term "**expressly**" means within the written District Court opinion. School Board of Pinellas County v. District Court of Appeal, 467 So.2d 985 (FL 1985). The order appealed affects the Public Defenders of the Sixth, Twelfth, Thirteenth, and Twentieth Judicial Circuits in that said decision orders the Circuit Judges within each circuit to appoint the Public Defender of that circuit to handle all appeals in which the Notice of Appeal is filed after May 22, 1989. The order thus imposes a

duty upon the Public Defenders of these circuits which the legislature has statutorily placed on the Public Defender of the Tenth Judicial Circuit only. Said order expressly affects all Public Defenders within the Second Judicial Circuit.

The order abrogates the duty of the Public Defender of the Tenth Judicial Circuit to handle any further appeals and imposes the duty upon the Public Defender of each circuit. Such order expressly affects a class of constitutional officers within the Second District.

II. THE PRESENT DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEALS IN KIERNAN v. STATE, 485 So.2d 460 (1st DCA 1986), IN GKUBE V. STATE, 529 So.2d 789 (1st DCA 1988). AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEALS IN SCHWARZ v. CIANCA, 495 So.2d 1208 (4th DCA 1986) ON THE SAME QUESTION OF LAW.

The Second District Court of Appeals is ordering the Tenth Judicial Circuit Public Defender to refuse all future assignments of appeals except within the Tenth Circuit. Those appeals are now to be handled by the Public Defender of each respective circuit or appointed private counsel.

In Kiernan vs. State, 485 So.2d 460 (1st DCA 1986), the Public Defender of the Second Judicial Circuit filed two motions, one to establish briefing schedules and the other to withdraw from future appeals. There the court referenced a previous order stating:

"On October 8, 1985, an order was entered approving the briefing schedule. The order denied the motion for blanket authorization to withdraw from 100 cases, but informed the parties that motions to withdraw would be considered on a case by case basis . . ."

Therefore, in the First District, the Court has refused to allow blanket withdrawal in future cases. The First District, since Kiernan, has not allowed for the blanket withdrawal in future cases. Only on a case by case basis will the court entertain motions to withdraw. Grube vs. State, 529 So.2d 789 (1st DCA 1988). in accord, Terry vs. State, 14 F.L.W. 1913, August 25, 1989 (1st DCA 1989). As stated in Grube, Id. at 790:

"This court will entertain Motions to Withdraw in up to 100 new cases and, on granting of those motions, jurisdiction will be relinquished to the trial court for appointment of alternative appellate counsel."

The First District thus will "entertain" motions, but no blanket authority to withdraw was granted as has been done by the Second District's order.

This same refusal to grant blanket authority to withdraw is also the law in the Fourth District. Schwarz v. Cianca, 495 So.2d 1208. There the Public Defender sought to withdraw from pending juvenile and misdemeanor cases as well as all future 1986 filings of misdemeanor, juvenile, and mental health matters. The trial judge denied the requested relief. The

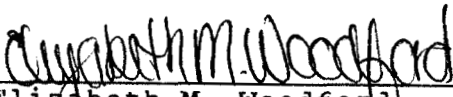
Fourth District stated it had only jurisdiction to review the order as it relates to pending cases. There is no authority in the Fourth District for withdrawal by the Public Defender in future cases.

In the present order, the Second District has allowed the Public Defender to withdraw in all future cases. The order of the Second District giving blanket authority to the Public Defender of the Tenth Judicial Circuit to withdraw from future appeals conflicts with the First District's decisions of Kiernan v. State, 485 So.2d 460 (1st DCA 1986). Grube vs. State, 529 So.2d 789 (1st DCA 1988), and Terry vs. State, 14 F.L.W. 1913, August 25, 1989 (1st DCA 1989), all of which refused to grant the Public Defender's motion to withdraw in future appeals. The Second District's order also conflicts with the Fourth District's decision in Schwarz v. Cianca, 495 So.2d 1209 (4th DCA 1986). There the Fourth District found it lacked jurisdiction as to withdrawal on future cases.

The Second District's decision allowing blanket withdrawal on future appeals should be quashed by this court by its acceptance of discretionary review. The withdrawal by the Tenth Judicial Public Defender should be determined on a case by case basis in conformity with the First and Fourth Districts.

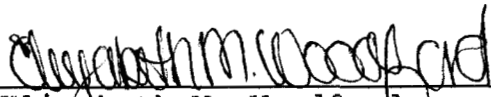
CONCLUSION

This Court has discretionary jurisdiction to review the order below because it expressly affects a class of constitutional officers and it also conflicts with the decisions of the First District and the Fourth District on the same question of law. Petitioner, LEE COUNTY, respectfully requests this Court to exercise that jurisdiction and consider the merits of this case.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a **copy** of the foregoing Jurisdictional Brief has been furnished to JOHN E. SCHAEFER, ASSISTANT COUNTY ATTORNEY, Pinellas County Attorney's Office, 315 Court Street, Clearwater, FL 34616; H. HAMILTON RICE, JR., MANATEE COUNTY ATTORNEY, Post Office Box 1000, Bradenton, FL 34206; CHARLES H. WEBB, ASSISTANT COUNTY ATTORNEY, Charlotte County Attorney's Office, 18500 Murdock Circle, Port Charlotte, FL 33948; and to FREDERICK B. KARL, HILLSBOROUGH COUNTY ATTORNEY, Post Office Box 1110, Tampa, FL 33601, by US Mail this 29th **day** of August, 1989.


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