

**IN THE SUPREME COURT OF FLORIDA**

**CHRISTOPHER JOHNSON,**

**Petitioner/Defendant,**

**v.**

**Case No.: SC09-1045  
Lower Case Nos.: 4D08-3090;  
07-10734 CF10B**

**STATE OF FLORIDA,**

**Respondent/Plaintiff.**

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**PETITIONER'S JURISDICTIONAL BRIEF**

**ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
FOURTH DISTRICT  
STATE OF FLORIDA**

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## **STATEMENT OF THE CASE AND FACTS**

On or about November 3, 2008, the Public Defender of the Fifteenth Judicial Circuit of Florida (“PD”) filed an Unopposed<sup>1</sup> Motion to Withdraw and Appoint the Office of Criminal Conflict and Civil Regional Counsel (“OCCCRC”) as Appellate Counsel with the Fourth District Court of Appeal (“4<sup>th</sup> DCA”), alleging a conflict of interest in representing Mr. Johnson because the PD currently represented a co-defendant, Mr. Mayfield.<sup>2</sup> In response, on November 10, 2008, the OCCCRC filed an objection to the motion arguing that a conflict at the trial court level did not automatically carry through to the appellate level and that an actual conflict of interest must be shown before the OCCCRC could be appointed to handle the appeal.

On November 19, 2008, the 4<sup>th</sup> DCA relinquished jurisdiction to the trial court for thirty (30) days to determine whether a conflict existed and to appoint counsel. However, the relinquishment period expired before the trial court could conduct the hearing on the adequacy of the PD’s representations regarding a conflict of interest. Thus, there was no order issued by the trial court for the 4<sup>th</sup> DCA to review.

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<sup>1</sup> The Attorney General did not oppose the PD’s motion. However, the PD never contacted the OCCCRC, the “opposing party,” pursuant to Florida Rule of Appellate Procedure 9.300(a).

<sup>2</sup> The PD withdrew at the trial court level from representing Mr. Johnson and Mr. Mayfield and conflict attorneys were appointed for both defendants.

On or about January 15, 2009, the PD filed a status report on the motion to withdraw and requested oral argument to “establish an appropriate procedure for further motions to withdraw” when the PD asserted a conflict of interest. The PD further alleged that a conflict of interest at the trial court level continued through to the appellate level and that there was no need for further review or fact finding by the trial court on the matter. The PD asserted, pursuant to Section 27.511(8), Florida Statutes (2008), that when the PD certified a conflict of interest on appeal, the OCCCRC shall be appointed without further investigation by the trial or appellate court.

In response, the OCCCRC filed an objection to the PD’s renewed motion to withdraw and request for oral argument seeking an advisory opinion on this matter from the 4<sup>th</sup> DCA.

The 4<sup>th</sup> DCA heard oral argument from both the OCCCRC and the PD on February 10, 2009.

On March 18, 2009, the 4<sup>th</sup> DCA issued an order: (1) denying the OCCCRC’s January 7, 2009, motion to extend the time of relinquishment of jurisdiction to the trial court; (2) granted the PD’s renewed motion to withdraw; (3) appointed the OCCCRC to handle the appeal; and (4) denied the PD’s motion to strike the OCCCRC’s notice of supplemental authority. The 4<sup>th</sup> DCA also issued a written opinion stating that the OCCCRC had no standing to oppose the PD’s

motion to withdraw due to a conflict of interest at either the trial court or the appellate court. (See Appendix A).

On April 1, 2009, the OCCCRC filed a motion for rehearing en banc, motion to vacate the 4<sup>th</sup> DCA's March 18, 2009 opinion, and request for oral argument.

On April 6, 2009, the OCCCRC also filed a motion to dismiss the March 18, 2009 opinion for lack of jurisdiction, arguing that the 4<sup>th</sup> DCA infringed upon the Florida Supreme Court's exclusive constitutional power to adopt rules of practice and procedure in all courts of Florida. On or about April 9, 2009, the PD filed its response.

On May 13, 2009, the 4<sup>th</sup> DCA: (1) denied the OCCCRC's motion for rehearing en banc and motion to vacate the March 18, 2009 opinion and motion for oral argument; and (2) denied the OCCCRC's motion to dismiss for lack of jurisdiction.<sup>3</sup> On June 2, 2009, the OCCCRC timely filed its notice to invoke the discretionary jurisdiction of this Court.

On May 13, 2009, the Third District Court of Appeal ("3<sup>rd</sup> DCA") issued State v. Public Defender, Eleventh Judicial Circuit, 34 Fla. L. Weekly D963 (Fla. 3d DCA May 13, 2009), which expressly and directly conflicts with the decision of

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<sup>3</sup> The 4<sup>th</sup> also denied the OCCCRC's March 30, 2009 motion for rehearing. However, the OCCCRC filed with the 4<sup>th</sup> DCA a notice of withdrawal of that specific pleading on April 1, 2009, and replaced it with the motion for rehearing en banc and motion to vacate March 18, 2009 opinion and request for oral argument, making the later motion dispositive.

this case on a state agency's standing to oppose a PD's motion.

### **SUMMARY OF THE ARGUMENT**

The 4<sup>th</sup> DCA issued an opinion that expressly and negatively affects a class of constitutional or state officers, the OCCCRC. The 4<sup>th</sup> DCA also expressly and directly conflicts with the 3d DCA's opinion in State v. Public Defender, Eleventh Judicial Circuit, 34 Fla. L. Weekly D963 (Fla. 3d DCA May 13, 2009). The 3<sup>rd</sup> DCA held that a state agency had standing arising from its "status as a party to the criminal case," as well as from its statutory obligations, to oppose the PD's motions. The 4<sup>th</sup> DCA, however, held that the OCCCRC, a state agency, did not have standing to oppose the PD's motions to withdraw in *any court*.

### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that: (1) affects a class of constitutional or state officers; and/or (2) expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Art. V, §3(b)(3) Fla.Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iii)&(iv).

### **ARGUMENT**

#### **I. THE 4<sup>th</sup> DCA'S DECISION IN THIS CASE EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS, THE OCCCRC.**

The OCCCRC is a class of constitutional or state officers for the purposes of



article v, Section 3(b)(3) of the Florida Constitution.<sup>4</sup> The 4<sup>th</sup> DCA's written opinion in this case expressly affects the OCCCRC, 4<sup>th</sup> District, and by implication, all five regional conflict counsels throughout the state of Florida, by prohibiting the OCCCRC from challenging or opposing the PD's motions to withdraw due to a conflict in interest in both the trial and appellate courts. The 4<sup>th</sup> DCA also eliminated the OCCCRC's statutory right within Section 27.5303, Florida Statutes (2008), to challenge the PD's assertion of a conflict of interest prior to being appointed to the case. The 4<sup>th</sup> DCA concluded that Section 27.511(8), Florida Statutes (2008), controls the appellate courts and places the determination of the existence of a conflict solely in the hands of the PD, without any inquiry by an appellate court, or for that matter a trial court.<sup>5</sup> The 4<sup>th</sup> DCA solidified this fact when the court noted in its opinion that relinquishment of jurisdiction to the trial court on motions for inquiry in conflict of interest cases would no longer be permitted by the 4<sup>th</sup> DCA on appeal.

This Court has specifically concluded that both the PD and the State Attorney's Office are constitutional or state officers included in this Court's

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<sup>4</sup> Three requirements must be met for discretionary review under section 3(b)(3). The officer must: (1) qualify as a constitutional *or* state officer; (2) be a member of a class of like constitutional or state officers; and (3) the decision of the district court of appeal must expressly affect the class.

<sup>5</sup> Section 27.511(8), Florida Statutes (2008), specifically states that the criteria must be met within Section 27.5303, Florida Statutes (2008), before the OCCCRC shall be appointed to handle the appeal.

jurisdiction. See Behr v. Bell, 665 So. 2d 1055 (Fla. 1996) (on the PD’s classification); In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990) (on the PD’s classification); Jenny v. State, 447 So. 2d 1351 (Fla. 1984) (on the State Attorney’s classification); State v. Fitzpatrick, 464 So. 2d 1185 (Fla. 1985) (on the State Attorney’s classification).

In Crist v. Florida Association of Criminal Defense Lawyers, 978 So. 2d 134 (Fla. 2008), this Court noted in Sections 29.001(1) and 29.008(1), Florida Statutes (2007), that the Legislature defined the OCCCRC as “public defenders” for the purposes of funding. Id. at 144-45. In Section 29.001(1), this Court explained that the Legislature defined the offices of the public defenders “to include the enumerated elements of the . . . 20 public defenders’ offices and five offices of the criminal conflict and civil regional counsel.” Crist, 978 So. 2d at 145. Similarly, in Section 29.008(1), the Legislature states that “the term ‘public defenders’ offices’ include the offices of criminal conflict and civil regional counsel.” Id.

This Court further concluded in Crist that “there [were] no difference[s] between the types of criminal cases that are handled by the public defender and the OCCCRC.” Id. This Court further classified the OCCCRC in its written opinion as “government offices” with offices throughout the state of Florida. Id. at 146. Although the OCCCRC does not compete with the PD in criminal cases, it is a

“safety net” that shares the same Constitutional responsibilities that the PD has to defend an indigent criminal defendant once the PD asserts a conflict of interest.

For the reasons previously stated, the OCCCRC, like the State Attorney’s Office and the PD, are state officers for the purposes of article V, Section 3(b)(3) of the Florida Constitution, permitting this Court to exercise discretionary jurisdiction over this case on appeal.

Since the OCCCRC’s standing to challenge the PD’s motion to withdraw in both the trial court and appellate court has been eliminated by the 4<sup>th</sup> DCA in its March 18, 2009 opinion, the OCCCRC respectfully requests that this Court accept discretionary review of this case and quash the 4<sup>th</sup> DCA’s opinion.

**II. THE 4<sup>TH</sup> DCA’S DECISION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE 3<sup>RD</sup> DCA IN STATE V. PUBLIC DEFENDER, ELEVENTH JUDICIAL CIRCUIT, 34 FLA. L. WEEKLY D963 (FLA. 3D DCA MAY 13, 2009).**

The 4<sup>th</sup> DCA concluded that the OCCCRC had no standing to oppose the PD’s motion to withdraw due to a conflict of interest because the Legislature did not explicitly provide in any statute that created the OCCCRC standing to object to the PD’s motion to withdraw in *any court*. As explained below, the 4<sup>th</sup> DCA’s decision conflicts with the 3<sup>rd</sup> DCA decision that concluded: (1) a state agency had standing arising from its “status as a party to the criminal case,” as well as from its statutory obligations, to oppose the PD’s motions; and (2) the OCCCRC had

implied standing to oppose the PD's motions as well when the 3<sup>rd</sup> DCA affirmed the trial court's denial of the OCCCRC's motion to intervene as untimely.<sup>6</sup> The OCCCRC respectfully submits that this Court should grant discretionary review and resolve the conflict by quashing the 4<sup>th</sup> DCA's March 18, 2009 decision.

In the 4<sup>th</sup> DCA's March 18, 2009 opinion, reported as Johnson v. State, 34 Fla. L. Weekly D596 (Fla. 4<sup>th</sup> DCA March 18, 2009) (Appendix A), the court concluded that the OCCCRC had no standing to object to the PD's motion to withdraw because the Legislature did not explicitly provide in any statute that created the OCCCRC standing to object to the PD's motion to withdraw in *any court*. The 4<sup>th</sup> DCA concluded that Section 27.511, Florida Statutes (2008), was meant to control the appellate court when multiple defendants were involved in appeals after a trial court had found a conflict. The 4<sup>th</sup> DCA further concluded that Section 27.511(8), Florida Statutes (2008), placed the determination of the existence of a conflict solely in the hands of the PD without permitting any inquiry by an appellate court or giving the OCCCRC standing to object unless the OCCCRC certified its own conflict after appointment to the appeal.

The 4<sup>th</sup> DCA also compared the wording of Section 27.5303(1)(a), Florida Statutes (2003), to the current version of Section 27.5303(1)(a), Florida Statutes

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<sup>6</sup> The 3<sup>rd</sup> DCA noted in footnote 3 of its opinion, "We affirm the trial court's denial of Regional Counsel's motion to intervene as it was filed eight days after the trial judge's order, which is the subject of this appeal."

(2007), and concluded that the Legislature did not intend for the OCCCRC to have standing to object the PD's motion to withdraw because the Legislature had initially given standing to the Justice Administrative Commission on this very issue in 2003 and took it away in 2007, without giving it to the OCCCRC.

The 3<sup>rd</sup> DCA, however, in State v. Public, Eleventh Judicial Circuit, 34 Fla. L. Weekly D963 (Fla. 3d DCA May 13, 2009), is in direct conflict with the decision of the 4<sup>th</sup> DCA because the 3<sup>rd</sup> DCA stated that another state agency, the State Attorney's Office, had direct standing to oppose the PD's motions arising from its "status as a party to the criminal case," as well as from its statutory obligations. See also Hayes v. Guardianship of Thompson, 952 So. 2d 498, 505 (Fla. 2006) (noting that standing "requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly."). The 3<sup>rd</sup> DCA also implied that the OCCCRC, specifically, had direct standing to oppose the PD's motions when the court affirmed the trial court's denial of the OCCCRC's motion to intervene as untimely, rather than concluding the OCCCRC had no standing.

The 3<sup>rd</sup> DCA correctly concluded that a state agency has direct standing to oppose the PD's motions arising from its "status as a party to the criminal case," as well as from its statutory obligations. The OCCCRC respectfully requests that this Court reaffirm the 3<sup>rd</sup> DCA's interpretation by accepting discretionary review and

quashing the contrary decision of the 4<sup>th</sup> DCA.

### **CONCLUSION**

This Court has discretionary jurisdiction to review the 4<sup>th</sup> DCA's decision in this case, and this Court should exercise that jurisdiction to consider the merits of the OCCCRC's arguments.

Respectfully Submitted:

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### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing  
**Petitioner's Jurisdictional Brief** has been furnished by United States Mail this  
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**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief complies with the font requirements  
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