



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

July 7, 2004

The Honorable Ronald V. Swanson
Circuit Judge
Santa Rosa County Courthouse
6865 Caroline Street
Milton, FL 32570

Re: Identical Motions for “Declaratory Judgment Awarding Fees in Excess of Statutory Cap or, Alternatively, To Withdraw,” filed by William R. Wade, Esq., in State v. Mason, Case No.03-796-CF; State v. Jones, Case No.03-129-CF; State v. Joyner, Case No.03-796-CF; State v. Sellers, Case No.03-0024.

Via Fax (850-983-1006) and U.S. Mail

Dear Judge Swanson:

This letter is sent to you on behalf of Tom Gallagher in his official capacities as Chief Financial Officer (“the CFO”) and agency head of the Department of Financial Services (“the Department”). Please consider this letter as a formal objection to an apparent attempt by William R. Wade, Esq., to enmesh Mr. Gallagher and the Department into several criminal cases currently pending before you.

Undersigned counsel has received four Notices of Hearing recently served on Mr. Gallagher by Mr. Wade. These Notices show that Mr. Wade plans to call up for hearing substantially identical motions in each of the above-captioned criminal cases in which he is court appointed counsel. Each of the motions is styled “Motion For Declaratory Judgment Awarding Fees in Excess of Statutory Cap or, Alternatively, To Withdraw.” All of these motions are to be heard at 2 PM on July 8, 2004. Neither Mr. Gallagher nor the Department is currently a party to any of these criminal cases. No sound jurisdictional basis exists under which either the CFO or the Department may be made a party to these cases.

In his omnibus motion, Mr. Wade appears to be seeking declaratory relief on his own behalf without reference to the established declaratory judgment procedures of Chapter 86, Florida Statutes. Declaratory judgment is a civil remedy rather than an exercise of the State’s police power in a criminal matter. If Mr. Wade desires to obtain a declaratory judgment against the CFO or the Department, he needs to file a proper complaint for declaratory judgment in Leon County and institute a valid declaratory judgment action that identifies the

CFO or the Department as defendant. In the event that the Department is properly served with a complaint for declaratory judgment, the Department will respond in accordance with the Florida Rules of Civil Procedure. We respectfully decline to appear before you on July 8, 2004, however, because neither the CFO nor the Department has any role to play in the Court's adjudication of the State's criminal complaints against Messrs, Mason, Jones, Joyner, or Sellers.

With respect to compensation for court-appointed counsel under the 2004 amendments to Chapter 27, Florida Statutes, the CFO's role is confined to the issuance of warrants for payment. Cf. Section 27.710(4), Fla. Stat. (2003) (capital collateral counsel enter into contract with CFO and CFO manages contract). Under the 2004 amendments, the substantive role in the contractual compensation of court-appointed counsel rests, in the first instance, with the Justice Administrative Commission ("the JAC") and, ultimately, with the trial court who appointed the counsel for the representation. See Section 27.5304(1-2), Fla. Stat. (Supp. 2004). To clarify the question of how the JAC should document any request for payment of attorney's fees to court-appointed counsel under the new amendments, on June 18, 2004, Mr. Gallagher issued 2003-2004 Chief Financial Officer Memorandum No. 4., entitled "Disbursements by the Justice Administrative Commission." A copy of this Memorandum is enclosed for ease of reference. It can also be found on the Department's website at the following URL: <http://www.dbf.state.fl.us/aadir/cmindex.html#0304>.

Both the CFO and the Department acknowledge the inherent authority of the trial courts of Florida, as recognized in the Makemson case and its progeny, to determine whether "as applied" constitutional considerations require that court-appointed counsel be compensated in excess of statutory caps. CFO Memorandum No. 4 reflects this acknowledgement. While the State's assumption of Article V funding has wrought a substantial alteration in the way court-appointed counsel are to be paid, we believe that the vitality of Makemson and its progeny is unaffected.

Thank you for your consideration of this letter.

Respectfully submitted,

Richard T. Donelan, Jr.

Assistant General Counsel

Enclosure

cc: William R. Wade, Esq.

Stephen Presnell, Esq.