

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

Florida Association of Criminal  
Defense Lawyers, Inc.,

Petitioner,

v.

CASE NO. 2007-CA-2898

Florida Governor Charlie Crist,  
Ken Pruitt, as President of the  
Florida Senate, Kurt Browning, as  
Secretary of State, Jeffrey Lewis,  
Jackson Flyte, Joseph George, Jr.,  
Philip Massa and Jeffrey Dean,

Respondents.

FILED  
CIRCUIT CIVIL DIV  
88 JAN 11 PM 3:12  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

**ORDER GRANTING IN PART AND DENYING IN PART**  
**PETITIONER'S MOTION TO DECLARE AUTOMATIC STAY**  
**INAPPLICABLE OR, ALTERNATIVELY, DISSOLVE AUTOMATIC STAY**

Petitioner Florida Association of Criminal Defense Lawyers, Inc. seeks to dissolve the automatic stay provided by Rule 9.310, Florida Rules of Appellate Procedure by motion filed January 8, 2008. Alternatively, Petitioner sought a declaration from this Court that the automatic stay provision was inapplicable to this case.

The Court conducted an expedited hearing on January 9, 2008 because of the real and potential judicial upheaval this case has engendered statewide. Based upon the evidence presented at that hearing, the arguments of counsel, the Court makes the following legal conclusions and findings of fact:

IN COMPUTER  
P.H.

A. The automatic stay provision of Rule 9.310, Fla. R. App. P., is applicable to this proceeding. Each of the Respondents is acting in their official capacity to enforce a public right for the purposes of the notice of appeal filed December 20, 2007.

B. This Court has jurisdiction to dissolve the automatic stay. *Mitchell v. State*, 911 So. 2d 1211, 1216 (Fla. 2005).

C. In *Mitchell*, the Florida Supreme Court outlined the two principal considerations that courts must take into account when deciding whether to vacate a stay: ". . . the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits by the entity seeking to maintain the stay." 911 So. 2d at 1219. See also *Tampa Sports Authority v. Johnson*, 914 So.2d 1076, 1079 (Fla. 2d DCA 2005).

D. It has not been demonstrated that the Respondents have a likelihood of prevailing on their appeal. As detailed in the Court's earlier Order, the constitutional deficiencies of Chapter 2007-62, Laws of Fla. (May 24, 2007), are substantial, in the opinion of this Court.

E. If the stay is not dissolved, an increasingly significant amount of taxpayer money will continue to be spent by the five Criminal Conflict and Civil Regional Counsel (CCCRC) in purchasing office equipment, entering into building leases, paying the salaries of personnel, and miscellaneous other expenses, little of which may be recouped. Additionally, a constitutionally infirm,

administratively confusing, and financially profligate dual system will grow exponentially with the passage of time, with the real potential to impair the due process rights of Florida's criminal and civil litigants. 1 Thus, dissolving the automatic stay will preserve precious state and county resources, which Chapter 2007-62, ironically was intended to accomplish.

F. Of paramount concern to this Court, should the stay remain intact is that ultimately, and in short order, the due process rights of indigent criminal defendants and civil litigants will likely be compromised. There is no tolerance for this under our Constitutions - and there should be none. The harm in maintaining the stay in its present posture is both likely and irreparable.

G. Although lifting the stay certainly will create a degree of administrative uncertainty and judicial upheaval, the evidence presented at the hearing before this Court makes clear that harm, both real and potential, will increase over time as these offices receive new appointments.

H. In considering the wholesale dissolution of the stay as Petitioner requests, this Court recognizes other concerns which must be addressed. In addition to the rights of the

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1 The Court takes judicial notice that Florida's financial resources are finite. All levels of government are making tremendous cuts in budgets and services. The evidence demonstrated that the Justice Administrative Commission budget was cut for this fiscal year. The additional layer of bureaucracy necessary to implement Chapter 2007-62 significantly reduces the funds available to provide the legal counsel required by our Constitution.

potential clients of the OCCCRC, this Court must safeguard the due process rights of those Florida citizens *already* being represented by the OCCCRC, as well as protect the orderly operation of the State's courts while those cases proceed to their conclusion. Forcing the Respondents to immediately withdraw from all pending cases would potentially create the same problems which this Court is attempting to ameliorate by the relief fashioned in this Order.

Moreover, after further argument, and consideration by this Court, <sup>2</sup> immediately enjoining the OCCCRC from accepting *new* cases as previously announced at the conclusion of the January 9, 2008 hearing, is impractical from a court administration perspective.

I. Inasmuch, as private counsel appointed under the pre-existing conflict attorney system are not permitted to bill the state or the counties for costs related to office space, equipment, secretarial assistance or other overhead expenses, governmental resources which would be spent on such overhead for the OCCCRC if the stay is not lifted, will be preserved pending ultimate resolution by the Florida Supreme Court. <sup>3</sup>

J. Where there may be an insufficient number of registry attorneys to appoint to cases that previously would have been handled by the OCCCRC, Article V of the Florida Constitution

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<sup>2</sup> A supplemental hearing was conducted by telephone at 10:30 a.m. on January 11, 2008. The dates set forth in section (b) of the decretal portion of this Order were stipulated by counsel for the parties

<sup>3</sup> It should be noted that the vast majority of cases, criminal and civil, filed since the effective date of this legislation are currently being handled by counsel appointed under the pre-existing, conflict counsel, system.

gives judges the inherent authority to appoint qualified counsel (excluding the CCCRC pursuant to this Order) to protect the due process rights of the indigent Floridians affected herein. See Olive v. Maas, 811 So. 2d 644, 652 (Fla. 2002); Makemson v. Martin County, 491 So. 2d 1109, 1115 (Fla. 1990).

K. Finally, the immediate shutdown of the OCCRC would unfairly and severely impact those lawyers and staff who left other employment and took positions with the OCCRC with the good faith belief that such employment and its attendant benefits would be reasonably secure. The Court has an obligation to consider these state employees and their families when fashioning the appropriate relief in this controversy.

Based upon these findings and legal conclusions, it is,  
ORDERED AND ADJUDGED as follows:

The automatic stay is hereby dissolved and the Offices of Criminal Conflict and Civil Regional Counsel are hereby enjoined from continuing to operate and accept appointments subject to Chapter 2007-62, Laws of Florida, subject to the following limited exceptions:

a. The Offices of Criminal Conflict and Civil Regional Counsel may continue to represent those *criminal* clients to whom they may be appointed through January 18, 2008; and those *civil* clients to whom they may be appointed through January 31, 2008; and

b. The Offices are authorized to spend those state or county funds that are, in the discretion of each OCCRC, necessary to provide effective representation to those clients, including costs associated with due process, employment, furniture, equipment, and office supplies. However, those Respondents remain enjoined from hiring any new employees, entering into any new leases, expending funds for the purchase of major data processing or computer equipment or entering into service contracts for such equipment after January 9, 2008.

c. This Court reserves jurisdiction to consider and resolve any requests by the respective, Respondents Regional Counsel for specific relief from the injunction as it relates to unique circumstances.

DONE AND ORDERED, in Chambers, at Tallahassee, Leon County, Florida, this 11<sup>th</sup> day of January, 2008.

  
P. KEVIN DAVEY  
Circuit Judge