

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-1828

THOMAS ANTHONY WYATT,

Appellant,

v.

STATE OF FLORIDA

Appellee.

**ON APPEAL FOR THE CIRCUIT COURT
OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN RIVER COUNTY, STATE OF FLORIDA**

REPLY BRIEF OF APPELLANT

**MICHAEL P. REITER
Capital Collateral Counsel
Florida Bar No. 0320234**

**LINDA McDERMOTT
Assistant CCC-NR
Florida Bar No. 0102857**

**OFFICE OF THE CAPITAL
COLLATERAL COUNSEL
Northern Region of Florida
1533 S. Monroe Street**

Tallahassee, Florida 32301

PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's Order granting Appellee's motion for an *in camera* hearing with regard to the conflict that arose between Mr. Wyatt and his current counsel. The conflict was brought to the circuit court's attention through a certification of conflict.

The following abbreviations will be utilized to cite to the record in this cause, with the appropriate page number(s) following the abbreviation:

“R.” – record on appeal to this Court;

“Supp. R.” – supplemental record on appeal materials.

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	ii
ARGUMENT IN REPLY	1
CONCLUSION	20
CERTIFICATE OF SERVICE	20
CERTIFICATION OF TYPE SIZE AND STYLE	21

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Armstrong v. Harris,</u> 773 So. 2d 7, 11 (Fla. 2000)	1
<u>Blackwood v. State,</u> 755 So. 2d 699, 700-701 (Fla. 4 th DCA 1999)	4
<u>Guzman v. State,</u> 644 So. 2d 996, 999 (Fla. 1994)	4
<u>Huff v. State,</u> 762 So. 2d 476, 478-479 (Fla. 2000)	7
<u>Hunter v. State,</u> 770 So. 2d 232, 234 (Fla. 4 th DCA 2000)	5
<u>Moorman v. Threadgill,</u> 462 So. 2d 573, 574 (Fla. 2 nd DCA 1985)	12
<u>Remeta v. State,</u> 70 So. 2d 719 (Fla. 1998)	1
<u>Roberts v. State,</u> 670 So. 2d 1042, 1043-1044 (Fla. 4 th DCA 1996)	4
<u>Terry v. State,</u> 731 So. 2d 711 (Fla. 4 th DCA 1999)	4
<u>Valle v. State,</u> 763 So. 2d 1175, 1177 (Fla. 4 th DCA 2000)	4
<u>Ward v. State,</u> 753 So. 2d 705, 707 (Fla. 1 st DCA 2000)	3

STANDARD OF REVIEW

Appellee concedes that *de novo* review is required by this Court. Answer Brief at 7. However, Appellee then suggests that this Court should frame the conflict issue raised in the circuit court as a matter relating to the “course and conduct” of the court and apply an abuse of discretion standard in reviewing the circuit court’s order. Id. This is clearly not the case. At issue is the interpretation of Florida Statute § 27.703 regarding conflicts that arise between collateral counsel and their clients. As this is purely a legal issue a *de novo* review is required. See Remeta v. State, 70 So. 2d 719 (Fla. 1998); see also Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000).

ARGUMENT IN REPLY

On February 7, 2000, former Capital Collateral Counsel for the Northern Region, Gregory C. Smith, notified the circuit court that a conflict had arisen between he and his client, Thomas A. Wyatt. In that pleading, the CCC-NR informed the circuit court: “This certification is made pursuant to the laws of Florida, the U.S. and Florida constitutions, and **the Florida Rules of Professional Conduct.**” (R. 1)(emphasis added). According to Appellee’s argument, the circuit court was correct in treating the conflict issue as it would a

discovery matter and compelling Mr. Wyatt's collateral counsel to reveal, *in camera*, the conflict. (R. 10, 28-30). Appellee appears to base its argument on the fact that many times a defendant's counsel does reveal the basis for the conflict. Answer Brief at 11-12. Furthermore, Appellee argued to the circuit court and this Court that CCC-NR cannot be trusted and that collateral counsel's actions: "appear[] to be a ruse to obtain another delay where there is no basis for such." Answer Brief at 17-18.

While Appellee appears to abandon the argument made in the circuit court, that the basis of the conflict was a discovery issue, Appellee for the first time advances the argument that defense counsel must be required to reveal conflicts so that the court can determine if a sufficient basis for the conflict exists. Appellee analogizes a certification of conflict to a motion containing allegations of judicial misconduct or a motion to disqualify a judge. Answer Brief at 13. However, Appellee's argument ignores the statute governing the procedure to be followed when conflicts arise and the particular circumstances surrounding this case.

Florida Statute, § 27.703 clearly states that CCC-NR makes the determination of whether a conflict of interest exists which requires withdrawal and from which cases to withdraw:

27.703 Conflict of interest and substitute counsel.

(1) If, at any time, during the representation of two or more persons, the capital collateral regional counsel determines that the interests of those persons are so adverse or hostile that they cannot all be counseled by the regional counsel or his or her staff without conflict of interest, the sentencing court shall, upon application by the regional counsel, designate another regional counsel and, only if a conflict exists with the other two counsels, appoint one or more members of the Florida Bar to represent one or more of such persons.

Fla. Stat. § 27.703 (emphasis added). The statute illustrates the recognition that conflicts can develop **at any time** and that the Capital Collateral Counsel is in the best position and therefore **must make the determination** that a conflict has arisen that requires withdrawal.

In addition, the statute governing conflicts arising between the Capital Collateral Counsels and their clients is substantially similar to the former statute governing public defenders and their clients.¹ See Initial Brief at 10-11. The former

¹ In interpreting Florida Statute § 27.53 (3), at least one court has held: “Public defenders are duty-bound to move to withdraw when the conflict between two or more clients is such that “they cannot all be counseled by the public defender or his or her staff without conflict of interest.” Ward v. State 753 So. 2d 705, 707 (Fla. 1st DCA 2000). Likewise, the statute governing conflicts between the CCCs and their clients requires withdrawal when a conflict arises between two or more clients. See

version of Florida Statute § 27.53(3) provided total discretion to public defenders to determine whether a conflict existed and the statute did not require counsel to disclose the conflict. As such, this Court and many others held that courts could not delve into the basis of the conflict. See Guzman v. State, 644 So. 2d 996, 999 (Fla. 1994) (“[O]nce a public defender moves to withdraw from the representation of a client based on a conflict due to adverse or hostile interests between the two clients . . . a trial court **must** grant separate representation.”)

(emphasis added); Terry v. State, 731 So. 2d 711 (Fla. 4th DCA 1999); Blackwood v. State, 755 So. 2d 699, 700-701 (Fla. 4th DCA 1999); Roberts v. State, 670 So. 2d 1042, 1043-1044 (Fla. 4th DCA 1996).

In 1999, the Florida Legislature amended the statute governing conflicts between public defenders and their clients and added the following language: “The court shall review and may inquire or conduct a hearing into the adequacy of the public defender’s representations regarding a conflict of interest **without requiring the disclosure of any confidential communications.**” Fla. Stat. §

27.53(3)(1999)(emphasis added). Thereafter, courts have interpreted the amendment to Florida Statute § 27.53(3) to allow circuit courts to inquire into the facts surrounding a conflict. Valle v. State, 763 So. 2d 1175, 1177 (Fla. 4th DCA

also Florida Rule of Professional Conduct 4-1.7.

2000)(“In Guzman our supreme court was construing section 27.53(3), Florida Statutes (1991), and that opinion left trial courts with no discretion when a public defender filed a motion to withdraw alleging conflict.”); see also Hunter v. State, 770 So. 2d 232, 234 (Fla. 4th DCA 2000)(holding that newly amended Florida Statute § 27.53(3) allows the circuit court to inquire into allegations of conflict). However, Florida Statute § 27.703, governing the Offices of the Capital Collateral Counsel, has not been amended to allow circuit judges to inquire into the circumstances of a conflict. Thus this Court, must interpret Florida Statute § 27.703 as it did Florida Statute § 27.53(3) before the Florida Legislature amended it and reverse the circuit court’s order compelling Mr. Wyatt’s counsel to disclose the conflict.

Furthermore, even if the Legislature had amended the statute governing the CCCs to reflect the change to the statute governing public defender conflicts, the Legislature made it clear that courts could not **require the disclosure of any confidential communications**.

In Moorman v. Threadgill, the Second District Court of Appeals confronted a situation in which the public defender alleged a conflict and refused to reveal the basis of the conflict because to do so would violate the attorney/client privilege. 462 So. 2d 573, 574 (Fla. 2nd DCA 1985). In the circuit court, the State

successfully argued that the public defender must reveal the conflict or that “no actual conflict ha[d] been demonstrated”. Id. The reviewing court held:

Furthermore, to describe the actual matters which cause the possible conflict would, according to the allegations of the Public Defender, violate the attorney-client privilege. **In such circumstances, the representations of the Public Defender must be accepted.**

Id.(emphasis added). As in Moorman, Mr. Wyatt, through counsel informed the circuit court that a conflict had developed and that counsel was unable to reveal the conflict because to do so would violate attorney/client confidences. Under both the caselaw and statute governing conflicts between CCC-NR and it’s clients, the circuit court’s order must be reversed.

Appellee’s argument also ignores the realities of representing clients.

Appellee disregards the fact that conflicts may arise throughout the course of a client’s representation. Appellee bases it’s argument that CCC-NR’s certification is untimely on this Court’s proposed amendment to Rule 3.851(b)(2) which states:

(b) Appointment of Postconviction Counsel.

(2) Within 30 days of the issuance of mandate, the Capital Collateral Regional Counsel shall file a notice of appearance in the trial court or a motion to withdraw based on a conflict of interest or some other legal ground.

Amendments to Florida Rules of Criminal Procedure 3.851, 3.852, and 3.993 and

Florida Rule of Judicial Administration 2.050, 26 Fla. L. Weekly S494 (Fla. July 12, 2001). Certainly this Court did not mean to prohibit collateral counsel from withdrawing from the representation of a client when a conflict arises, simply because it arises more than thirty (30) days after representing a client. Such an interpretation would lead to the absurd result that if a conflict arose thirty-one (31) days after representing a client, the lawyer would be required to violate his/her ethical obligation and continue to represent that client even if to do so would be “directly adverse to the interests of another client.” Fla. R. of Prof. Conduct 4-1.7(a).

Moreover, Appellee suggests that because CCC-NR has represented Mr. Wyatt for the last four (4) years withdrawal is inappropriate. Again, Appellee ignores the fact that the length of time an attorney has represented a client has no bearing on whether or not a conflict arises which may require withdrawal under the Rules of Professional Conduct. Conflicts arise that require counsel to withdraw from the representation of clients despite having represented those clients for several years. See Huff v. State, 762 So. 2d 476, 478-479 (Fla. 2000).

Similarly, in State v. Kokal, Duval County Case No. 83-8975, a conflict arose in 1996. The Capital Collateral Representative (CCR), filed a two-page motion to withdraw, citing Florida Rule of Professional Conduct 4-1.7. Appendix - Tab 1. At

the time the conflict arose, CCR had represented Mr. Kokal for approximately ten (10) years and the case had been set for an evidentiary hearing on Mr. Kokal's amended Rule 3.850 motion. The State objected to the motion to withdraw, and like Appellee, argued that CCR must divulge the basis of the conflict, regardless of the attorney/client privilege and that the delay caused by the withdrawal should be weighed against the basis of the conflict. Appendix - Tab 2. An off-the-record hearing was held on October, 2, 1996. Following the hearing, CCR sent a letter to the circuit judge re-emphasizing the authority for withdrawal and reasserting the position that CCR could not reveal the conflict. Appendix - Tab 3. As to the State's insinuations regarding counsel's motive to withdraw, CCR counsel stated:

Also not relevant is any consideration of the procedural history of this case. A conflict of interest of this nature mandates withdrawal at the time it arises. I have made an assertion as an officer of this Court and as an attorney licensed by the State of Florida that the conflict existing in Mr. Kokal's case mandates withdrawal and that I believe I should not reveal any more than I have regarding the actual circumstances of the conflict as it involves privileged information. It is obvious that [the assistant state attorney] does not believe these assertions, and is suggesting that my assertions are made for the purposes of delay. I am dismayed by [the assistant state attorney's] willingness to make such insinuations regarding my truthfulness to this Court and by his apparent desire to push this case forward regardless of clear violations of Mr. Kokal's statutory and constitutional rights.

Appendix - Tab 4. In October, 1996, the circuit court entered an order allowing CCR to withdraw and appointing conflict-free counsel. Appendix - Tab 5.

Likewise, the circuit court in Mr. Wyatt's case should have granted his motion for conflict and appointed conflict-free counsel without forcing CCC-NR to disclose attorney/client confidences.

Appellee also disregards the particular circumstances surrounding Mr. Wyatt's case. From the outset, CCC-NR maintained that the basis for the conflict could not be disclosed under any circumstances due to the fact that revealing the conflict would force counsel to reveal attorney/client confidences. On March 20, 2000, a hearing was scheduled on CCC-NR's Certification of Conflict. At the beginning of the hearing, the circuit court judge cancelled the hearing because Mr. Wyatt was present by phone and not in person. (Supp. R. 877). Collateral counsel urged the court to hold the hearing and informed the court that the basis of the conflict could not be divulged "due to client confidentiality." (Supp. R. 878). Over collateral counsel's urging that Mr. Wyatt's presence would make no difference to the outcome of the issue, the circuit court cancelled the hearing. (Supp. R. 878-879).

On August 8, 2000, another hearing was held. At that hearing, collateral

counsel reiterated that a conflict had arisen between CCC-NR and Mr. Wyatt that affected the representation of Mr. Wyatt as well as other clients represented by CCC-NR. (R. 18). Collateral counsel informed the court that continued representation of Mr. Wyatt violated the rules of professional conduct, specifically Florida Rule of Professional Conduct 4-1.7. Id. Collateral counsel informed the court that he could not divulge the basis for the conflict because to do so would violate the attorney/client privilege. (R. 19). Collateral counsel summed up the situation for the court:

I haven't looked at [Brooks] yet, your Honor, but I have a feeling that that case does not deal with where the basis of the conflict comes from confidential information that was gained from the representation of the client and that's what puts us in a position here where we cannot tell you the facts . . .

* * *

Now Mr. Smith, our agency head, and myself who've taken [an oath] to the Florida Bar are here to tell you there is a conflict of interest based on 4-1.7. We can't tell you anything else. Even in-camera that does nothing.

* * *

There's nothing that's suppose to be able to disturb attorney/client confidences unless it fits one of those two categories.

(R. 21-22). Despite CCC-NR's explanation to the court and authority for its position that it could not reveal the basis of the conflict, the circuit court ordered CCC-NR to disclose attorney/client communications. (R. 10, 29-30).

The circuit court erred in ruling that collateral counsel reveal attorney/client confidences *in camera*. As collateral counsel informed the circuit court, attorney/client confidences cannot be divulged unless the client consents or the information falls into one of the exceptions provided in Florida Rule of Professional Conduct 4-1.6. See Initial Brief at 12-13. In Myles v. State, this Court recognized the sanctity of the attorney/client privilege: "While the Florida Evidence Code creates a broad statutory attorney-client privilege . . . some aspects of the attorney-client relationship take on a constitutional dimension in the criminal trial setting." 602 So. 2d 1278, 1280 (1992). Furthermore, CCC-NR is prohibited from revealing the basis for the conflict by Florida Rule of Professional Conduct 4-1.6. "A lawyer shall not reveal information relating to the representation of a client except as stated in subdivisions (b), (c), and (d), unless the client consents after disclosure to the client." Fla. R. of Prof. Conduct 4-1.6(a). In fact the comment following the rule makes clear that CCC-NR must not reveal the basis for the conflict:

The attorney-client privilege applies in judicial and other

proceedings in which a lawyer may be called as a witness or otherwise be required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through the compulsion of law.

Comment to Fla. R. of Prof. Conduct 4-1.6. See also *Moorman v. Threadgill*, 462 So. 2d 573, 574 (Fla. 2nd DCA 1985); Comment to Fla. R. Prof. Conduct 4-1.16 - Mandatory Withdrawal, “The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. **The lawyer’s statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.**” (emphasis added).

Moreover, Appellee’s reliance on cases where the basis of the conflict was revealed to the court, see Answer Brief at 11-12, is misplaced. None of the conflicts asserted in the cases Appellee cited concerned information obtained from the client and protected by the attorney/client privilege.

Appellee also argued to the circuit court and now argues to this Court that CCC-NR should be required to reveal the conflict because Appellee suspects that the conflict is a ruse to obtain a delay in Mr. Wyatt’s case. Appellee declares: “Appellant’s position is nothing short of contemptuous, given this Court’s as well as other branches of government, express concern over the delay in capital cases.”

Answer Brief at 14. Additionally after reciting the procedural history in Mr. Wyatt's case, Appellee states: "Given such factors, it is somewhat inconceivable that a conflict would suddenly develop. Yet, without any explanation, CCRC-North demands to withdraw from this case. This Court must view this proposition with great skepticism." Id.

Appellee's suspicions are, at a minimum, offensive and more importantly, belied by the record in this case and CCC-NR's course of conduct throughout its existence. Appellee suggests that because Mr. Wyatt requested extensions of time to file his Rule 3.850 motion the conflict should be viewed with a jaundiced eye as another delay tactic. Answer Brief at 14. Appellee's argument distorts the procedural history of Mr. Wyatt's case. See Initial Brief at 1-5. From the outset, the representation of Mr. Wyatt was plagued by problems with obtaining public records, the under staffing and under funding of the former Office of the Capital Collateral Representative (CCR), the abolition of CCR and creation of three Regional Counsels and the accompanying transition issues and the effect of new rules . This Court is well aware of the problems affecting the former CCR and CCC-NR; the problems have been documented in numerous pleadings to this Court and have resulted in this Court's orders halting the public records proceedings and extending the time limitations of Rule 3.851 in Mr. Wyatt's case.

In fact, Mr. Wyatt was able to seek public records for only two months between October, 1996, until October 1998, due to the stay of the current and predecessor Rule 3.852.

Perhaps most telling about the merit of Appellee's argument that the procedural history of Mr. Wyatt's case demonstrates false allegations of a conflict and sinister motives by Mr. Wyatt and CCC-NR is the following: In its Answer Brief Appellee states:

On October 25, 1999, collateral counsel filed a motion for an extension of time to file the amended postconviction motion. That motion was denied. Unhappy with the trial court's denial, on November 22, 1999, Wyatt filed *pro se*, "Emergency Motion to Dismiss Ineffective Appellate Counsel." Therein Wyatt alleged, "[a]s a result of this Honorable Court's denial of Defendant's Appellate Counsel's Motion To Continue Dates For Filing Of Amended Rule 3.850 Motion, this Honorable Court has in effect, rendered Defendant's Appellate Counsel Ineffective, moreover, creating a Conflict of Interest, in that Defendant cannot, in good conscience or faith, sign verification of Amended 3.850 Motions." Collateral counsel was ultimately granted an additional sixty days to file the amended motions. Consequently, Wyatt withdrew his motion to dismiss counsel.

Answer Brief at 4-5 (citations omitted). However, Appellee failed to inform this Court of several relevant facts. The reason why the circuit court granted Mr. Wyatt an extension of time was because **the Repository did not copy or send thirty-five (35) boxes**

of public records to Mr. Wyatt that he had requested and the court failed to send Mr. Wyatt materials that, after an *in camera* inspection, the court determined were not exempt for public records production:

THE COURT: The repository has been a disaster since the onset. . . . It's been a disaster since the start and I'm sure this is not the only case that is effected by the repository. So just from what's happened in this case I'm not going to be placing blame for the records not getting back to CCRC at this point in time, . . .

As I stated earlier because I was remiss in not getting the in-camera inspection documents to Mr. Tomasino and the other parties I am going to extend the time frame for the amended 3.850 . . .

(Supp. R. 833). Thus, the extension of time Mr. Wyatt received and his fear that he was not being adequately represented were completely legitimate and were caused through no fault of his own or his counsel's. Surely Appellee would agree that being unable to obtain and review thirty-five (35) boxes of public records provided good cause to extend the time frames for filing an amended Rule 3.850?

Additionally, Appellee failed to represent that on November 29, 1999, counsel for Mr. Wyatt filed an Emergency Motion to Toll the November 30, 1999, Deadline. (Supp. R. 221- 224). However, attached to the motion was Mr. Wyatt's Preliminary Amended Motion to Vacate Judgments of Conviction and Sentence. (Supp. R. 225-460). CCC-NR attached the Rule 3.850 pleading in good faith to demonstrate that CCC-NR was not seeking a delay and had produced a preliminary, comprehensive Rule 3.850 motion for Mr. Wyatt. (Supp. R. 221-459). These facts belie Appellee's allegations that CCC-NR's conflict with Mr. Wyatt is nothing more than a delay tactic.

Furthermore, in response to Appellee's "you can't trust CCC-NR" argument, undersigned has surveyed the cases in which CCC-NR certified conflicts with clients since it's creation in 1997.

According to undersigned's review, in the four (4) years since its creation, CCC-NR has requested withdrawal because of a conflict in nine (9) cases, including Mr. Wyatt's. Seven (7) of the nine (9) clients were appointed with conflict free counsel and several of those clients were not forced to reveal attorney/client confidences.

In December, 1997, a conflict arose between CCC-NR and Grover Reed, Duval County Case No. CRC-86-6123-CF. CCC-NR informed the circuit court that a conflict had developed and without providing any other information requested the court to designate another regional counsel to represent Mr. Reed. Appendix - Tab 6. The circuit court appointed Mr. Reed conflict-free counsel.²

In 1998, CCC-NR notified the circuit court that a conflict developed between CCC-NR and Charles Michael Kight, Duval County Case No. 83-2598-CF. Appendix - Tab 7. CCC-NR provided the court with no information regarding the basis of the conflict. *Id.* The court appointed Mr. Kight with conflict free counsel. Appendix - Tab 8.

In 1999, shortly after assuming the representation of Pressley Alston, Duval County Case No. 95-005326-CF-A, CCC-NR certified a conflict of interest because CCC-NR determined "representation of Mr. Alston to be so adverse or hostile to the representation of an existing client or clients that he cannot counsel Mr. Alston without conflict of interest." Appendix - Tab 9. Without any further information, the circuit judge appointed Mr. Alston conflict free counsel. Appendix - Tab 10.

Also, on June 1, 1999, CCC-NR informed the circuit court that a conflict had arisen between the office and Marshall Gore, Columbia County Case No. 88-607-CF. Appendix - Tab 11. CCC-

² Undersigned was unable to obtain a copy of the circuit court's order.

NR did not provide any further information. Id. On June 4, 1999, the State responded to the certification of conflict and argued that the certification of conflict be denied because, similar to Appellee's argument in Mr. Wyatt's case, CCC-NR had not revealed the basis of the conflict and "CCRC-N and its antecedent agency have represented Gore for the last five years. . . . the evidentiary hearing has been reset for July 15-16, 1999." Appendix - Tab 12. The State also submitted a proposed order denying CCC-NR's certification of conflict because it was legally insufficient. Appendix - Tab 13. In response, CCC-NR filed an amended certification of conflict, informing the court that an informal opinion from the Florida Bar had been sought and confirmed CCC-NR's representation that a conflict existed. Appendix - Tab 14. The State again responded that CCC-NR must reveal the conflict. Appendix - Tab 15. After a hearing, the circuit court appointed Mr. Gore conflict free counsel without requiring CCC-NR to reveal the basis of the conflict. Appendix - Tab 16.

In 2000, CCC-NR attempted to certify conflicts in State v. Koon, District Court of Appeal for the Southern District Case No. 93-218-CIVFtM-23, and in the case at hand, State v. Wyatt, Indian River County Case No. 88-748A & Ct. IV. The District Court judge denied CCC-NR's motion to withdraw from Mr. Koon's federal court proceedings. The certification in Mr. Wyatt's case resulted in this appeal.

So far, in 2001, CCC-NR certified conflicts in three cases. In State v. Bates, Bay County Case No. 82-661B, CCC-NR informed the circuit court that a conflict existed. Appendix - Tab 17. Without providing any other information, the court appointed Mr. Bates conflict free counsel. Appendix - Tab 18. In State v. Way, Hillsborough County Case No. 83-8179B, CCC-NR filed a Notice of Conflict and outlined the facts surrounding the conflict because they were not confidential. Appendix -

Tab 19. The circuit court appointed Mr. Way conflict free counsel. Appendix - Tab 20. In State v. Peede, Orange County Case No. 83-1682, CCC-NR filed a Motion to Withdraw and cited an imputed disqualification of the current CCC-NR, Michael P. Reiter, who was previously the Chief Assistant in the Capital Collateral Counsel for the Middle Region where a conflict developed between Mr. Peede and his counsel. Appendix - Tab 21; see also Fla. R. Prof. Conduct 4-1.10. The circuit court granted the motion.³

The conflicts claimed by CCC-NR over the last four (4) years reveal relevant information: 1) When the conflict is not based on information protected by the attorney/client privilege, CCC-NR reveals the conflict; 2) CCC-NR does not abuse it's discretion provided by Florida Statute § 27.703 in determining conflicts; 3) circuit courts, unlike Appellee, accept CCC-NR's representations that a conflict has developed that requires withdrawal and appointment of conflict free counsel.

Appellee's argument that CCC-NR certified a conflict in order to delay Mr. Wyatt's case is not supported by the procedural history in Mr. Wyatt's case or the history of CCC-NR.

CONCLUSION

The circuit court's order requiring CCC-NR to reveal the basis of the conflict with Mr. Wyatt, despite the fact that the information is protected by the attorney client privilege, must be reversed and this case must be remanded to the circuit court for the appointment of conflict free counsel for Mr. Wyatt.

Respectfully submitted,

MICHAEL P. REITER
Capital Collateral Counsel

³ Undersigned was unable to obtain a copy of the circuit court's order.

Florida Bar No. 0320234

LINDA McDERMOTT
Assistant CCC-NR
Florida Bar No. 0102857

OFFICE OF THE CAPITAL
COLLATERAL COUNSEL
Northern Region of Florida
1533 S. Monroe Street
Tallahassee, Florida 32301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief has been furnished by United States Mail, first class postage prepaid, to all counsel of record on August 13, 2001.

CERTIFICATION OF TYPE SIZE AND STYLE

This is to certify that the Reply Brief of Appellant has been reproduced in a 14 point Times New Roman type, a font that is not proportionately spaced.

LINDA McDERMOTT
Assistant CCC-NR
Florida Bar No. 0102857

Copies furnished to:

Celia A. Terenzio
Assistant Attorney General

1655 Palm Beach Lakes Blvd., #300
West Palm Beach, Florida 33401-2299