



Law Office of the
PUBLIC DEFENDER
Seventeenth Judicial Circuit

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George Gretsas
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

RE: Defense of Indigents Charged with Violating County or Municipal Ordinances

Dear Mr. Gretsas:

Amendments to Article V of the Florida Constitution, statutory law and rules of criminal procedure require individual counties and municipalities to pay for the legal defense of indigents prosecuted for county or municipal ordinance violations if the charge is not ancillary to a state charge and the prosecution subjects the person to possible incarceration.

Section 27.51, Florida Statutes (2006) provides that the Public Defender must represent indigent defendants within a list of categories. Representation of persons accused of county or municipal ordinance violations, however, is discretionary. With reference to county or municipal ordinance violations, the Public Defender:

“...shall represent, without additional compensation, any person determined to be indigent under 27.52 and *** under arrest for, or charged with *** a violation of a special law or county or municipal ordinance violation ancillary to a state charge, or if not ancillary to a state charge, **only if the public defender contracts with the county or municipality to provide representation** pursuant to ss. 27.54 and 125.69.” (Emphasis added)

Section 27.54, Florida Statutes (2006) authorizes a Public Defender to contract with a county or municipality. If the Public Defender chooses to defend violations of county or municipal ordinances punishable by incarceration and not ancillary to a state charge, they:

“...shall contract with counties and municipalities to recover the full cost of services rendered on an hourly basis or reimburse the state for the full cost of assigning one or more full-time equivalent attorney positions to work on behalf of the county or municipality. *** A contract for reimbursement on an hourly basis shall require a county or municipality to reimburse the public defender for services rendered at a rate of \$50 per hour.”

In addition to the cost of providing counsel for indigents, Section 27.54(2) requires the county or municipality to "...pay for due process services that are approved by the court, including deposition costs, deposition transcript costs, investigative costs, witness fees, expert witness costs, and interpreter costs."

The Law Office of the Public Defender has been representing person accused of county and municipal ordinance violations without a contract while we considered how to best address the issues involved in this representation. The Legislature has given the Public Defender only two choices. The Public Defender can either refuse to provide representation in this class of cases and shift the burden of providing representation directly to the county and municipalities or the Public Defender can provide the services pursuant to a contract.

After review, I have made the difficult decision to decline to contract with the county and all municipalities. **Accordingly, the Law Office of the Public Defender will no longer provide legal representation to individuals charged with a violation of county or municipal ordinance that is not ancillary to a state charge.** There are many reasons for my decision. First and foremost, I do not believe that individuals accused of violating a county or municipal ordinance should be arrested. They should be given a Notice to Appear (NTA) in court. Many of these individuals are poor and homeless. Because many of them cannot afford any monetary bond, and because they are not released at first appearance hearings on nonmonetary conditions, they are forced to remain in jail until their case is resolved. The recent report on jail overcrowding submitted by the Sheriff's Office's jail consultant indicated that there are many individuals in jail on minor offenses with deminimus bonds.

I also believe that many people are arrested under the guise of an ordinance violation simply for being homeless. It makes much more sense, both from a humanitarian standpoint and from an economic standpoint, for local governments to provide homeless assistance rather than using the county jail as a solution to get homeless people off the street.

Although it is painful to see these people in magistrate court and not assist them, it is my strong belief that my office's participation in their prosecution only legitimizes that prosecution. By stepping off the train, I hope that the county and municipalities will re-think these prosecutions. Too many people are being arrested on ordinance violations which are not criminal offenses under state law. If the county or municipalities continue to prosecute ordinance violations, then that jurisdiction will be responsible to retain and pay for legal counsel for any indigent defendant. For those arrested, the representation begins at first appearance pursuant to Rule 3.130(c), Florida Rules of Criminal Procedure (2007).

In addition, the law requires a municipality to contract with the county to house persons arrested for municipal ordinance violations. I have notified General Counsel for the Sheriff on this issue, citing AGO 91-25, F.S. 951.23 (1)(a) and (d), F.S. 125.01(5)(a), and an opinion from the County Attorney for Pinellas County.

In order to avoid any disruption in the legal process, my office will continue to provide representation without contract or reimbursement for all persons charged prior to April 23, 2007.

Starting on that date, we will no longer provide representation to any person charged with a county or municipal ordinance violation not ancillary to a state charge.

Dale Ross, Chief Judge of the 17th Judicial Circuit, by copy of this letter is on notice that the Law Office of the Public Defender will no longer provide the representation as outlined above. It will be up to the judiciary and the charging jurisdiction to insure that defendants' right to counsel is timely complied with.


As stated above, this obligation begins at magistrate hearing. Rule 3.111, Florida Rules of Criminal Procedure (2007), sets forth the requirements for the appointment of counsel for indigents.

“A person entitled to appointment of counsel . . . shall have counsel appointed when the person is formally charged with an offense, or as soon as feasible after custodial restraint, or at the first appearance before a committing magistrate, **whichever occurs earliest.**” (Emphasis added).

In addition, Hardy v. State, 776 So.2d 962 (Fla. 3d DCA 2001) and Rule 3.111 prohibit a judge from certifying no jail time in lieu of appointing counsel when a defendant is in custody. As a result, absent a specific waiver of counsel from a defendant, the courts and the charging agency will need to coordinate to provide legal counsel to indigents at First Appearance hearings.

Hopefully, my decision to decline representation of persons accused of violating county or municipal ordinances will cause local governments to re-think their procedures which further burdens individuals who are already overwhelmed in life by incarcerating them in an already overcrowded jail.

Sincerely,



Howard Finkelstein
Public Defender
17th Judicial Circuit of Florida

CC: Harry A. Stewart, City Attorney
The Honorable Dale Ross, Chief Judge
Edward A. Dion, General Counsel, BSO