

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FIRST DISTRICT**

STATE OF FLORIDA, DEPARTMENT OF
MANAGEMENT SERVICES

Appellant,

Case No. 1D12-4594

v.

DEPARTMENT OF FINANCIAL
SERVICES and CHIEF FINANCIAL OFFICER,
STATE OF FLORIDA

Appellees.

_____ /

DEPARTMENT OF FINANCIAL SERVICES' AND CHIEF FINANCIAL
OFFICER'S JOINT RESPONSE TO ORDER TO SHOW CAUSE
REGARDING CONSOLIDATION OF CERTAIN PENDING APPEALS

COME NOW the Department of Financial Services ("DFS") and the State of Florida, Chief Financial Officer ("CFO"), by and through undersigned counsel, and provide this joint response to the Court's Order dated November 20, 2012, asking the parties to advise whether consolidation of certain pending appeals is appropriate:

1. Various factors are considered by courts when deciding if consolidation of appeals is proper. These factors include whether the appeals stem from the same transaction, whether the outcomes depend on the same legal and

factual principles, and whether consolidation is not prejudicial to the parties and results in judicial economy. 3 Fla.Jur.2d, Appellate Review Sec. 264; 425 Florida, Inc. v. George V. Behan Const., Inc., 497 So. 2d 1340 (Fla. Dist. Ct. App. 5th Dist. 1986).

2. Taking into account the relevant factors, DFS and the CFO respectfully propose that the cases listed in the Court's Order should be consolidated as follows:

a. Peter Brown Construction Inc. v. Chief Financial Officer, State of Florida and the Department of Financial Services, Case No.: 1D12-4495 may be consolidated with Florida Department of Management Services v. Department of Financial Services and State of Florida, Chief Financial Officer, Case No.: 1D12-4596. Both of these cases are appeals of the CFO's Final Order dated August 24, 2012. Both cases therefore involve similar factual and legal issues, and consolidation will result in judicial economy.

b. Peter Brown Construction Inc. v. Chief Financial Officer, State of Florida, Case No.: 1D12-5264 may be consolidated with Florida Department of Management Services v. Department of Financial Services and State of Florida, Chief Financial Officer, Case No.: 1D12-4594. Both of these cases are appeals of orders dismissing with prejudice petitions seeking review of the CFO's proceeding to determine the legality of payment requests in the Division of Administrative

Hearings (“DOAH”). The disputes are essentially about whether DOAH has jurisdiction to review orders issued in such proceedings. Both cases therefore involve similar factual and legal issues, and consolidation will result in judicial economy.

c. State of Florida, Department of Financial Services v. Peter Brown Construction, Inc., Case No: 1D12-3426 is an appeal from a Final Order finding a rule of DFS to be invalid. The legal issues involved in this case are distinct from the other cases. This matter should therefore be considered separately.

Respectfully submitted,



Michael H. Davidson
Fla. Bar No. 191637
Jacek P. Stramski
Fla. Bar No. 87965
200 E. Gaines Street, 612 Larson Bldg.
Tallahassee, Fl. 32399
(850) 413-4178
Michael.davidson@myfloridacfo.com
Jacek.stramski@myfloridacfo.com

Counsel for DFS/CFO

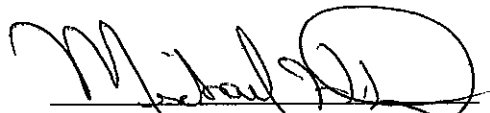
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing JOINT RESPONSE was forwarded by electronic transmission to Thomas J. Maida, Esq. at tmaida@foley.com; Melissa B. Coffey, Esq. at mcoffey@foley.com; James McKee, Esq. at jmckee@foley.com; to Clifford Taylor, Esq. at Clifford.taylor@dms.myflorida.com; Matthew Minno, Esq. at Matthew.minno@dms.myflorida.com; Robert H. Buesing, Esq. at rbuesing@trenam.com; and to Gregg Hutt, Esq. at ghutt@trenam.com this 29th day of November, 2012.


Michael H. Davidson

CERTIFICATE OF FONT

I hereby certify that this Response is submitted in Times New Roman, 14-point font, and complies with the font requirements of Rule 9.210(a), Fla. R. App. P.


Michael H. Davidson