

IN THE SUPREME COURT OF IOWA

STATE PUBLIC DEFENDER

Petitioner,

v.

IOWA DISTRICT COURT FOR
SCOTT COUNTY,

Defendant.

SUPREME COURT

25-0011

SCOTT CO.

SRCR443595, SRCR443481,
SRCR443474, SRCR443437,
SRCR443327, SRCR442688

CERTIORARI FROM THE IOWA DISTRICT COURT FOR SCOTT
COUNTY, DISTRICT ASSOCIATE JUDGE DALTON

PETITIONER'S BRIEF AND ARGUMENT AND
REQUEST FOR NON-ORAL SUBMISSION

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. Iowa Code sections 13B.9 and 815.10 mandate the district court “shall” appoint substitute counsel when the local public defender returns the case. The district court acted unlawfully when it failed to follow the plain language of Iowa Code 13B.9 and 815.10, the word “shall,” denying the withdrawal of the local office of the state public defender, and designating the local office supervisor as attorney of record.**

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals because the issue raised requires the application of existing legal principals and is appropriate for summary disposition. Iowa Rs. App. P. 6.903(2)(a)(4), 6.1101(3)(a), and 6.1101(3)(b).

NATURE OF THE CASE

Nature of the Case: The Supreme Court granted the State Public Defender's petition for writ of certiorari to review the district court's order denying the withdrawal of the Davenport Office of the State Public Defender from several criminal cases and subsequent designation of an attorney from the Davenport Office of the State Public Defender as the responsible attorney.

Course of Proceeding and Disposition Below:

The district court appointed the "Public Defender's Office" on October 29, 2024. D0003, In. App. Order (10/29/2024).¹

On the same day the Davenport Public Defender's Office ("local office") filed a motion to withdraw stating the office was overloaded, could not take the case, and the case was being returned to the court and directed the court to appoint counsel pursuant to Iowa Code section 815.10. D0006, M.T.W. (11/01/2024).

On October 30, 2024, the court entered the first of several illegal orders denying the Motion to Withdraw and made findings unrelated to the

¹ For purposes of this brief and ease in reading, docket numbers for pleadings and orders in Scott County SRCR443595 have been noted throughout, but the same motions and orders have been filed in each case listed in the caption, and all cases are the same procedurally.

law, extra-judicially, and ordered the local office “duly appointed” and to “comply with all ethical obligations of the appointment.” D0007, Order Denying M.T.W. (10/30/2024).

The local office filed the second Motion to Withdraw on November 1, 2024. D0008, M.T.W. (11/01/2024). In the second motion the local office stated they were ethically unable to handle the case and returned the case to the court in accordance with Iowa Code section 13B.9(4).

On December 6, 2024 the court entered its second illegal order finding there were “no contract, special contract, or private attorneys available to take these cases.” D0015, Order Re: Arr. (12/06/2024). The order suggested, “[a]s court appointed counsel they are responsible for representing their clients at all stages of the case.” The court continued to say it was “dumfounded by the failure of the local office to provide basic representation of their clients when the State Public Defender has a state-wide staff to assist the local office with the overload and the State Public Defender himself has the statutory duty to *provide* indigent defendants with appropriate representation.” D0015 (emphasis added). The court then ordered an appearance to be entered within 10 days and suggested the attorney was not able to withdraw unless the withdrawal had been granted. D0015.

On December 19, 2024, the court correctly found no attorney had filed an appearance. However, the court illegally found the local SPD “remains appointed.” Doo16 (SRCR443595), Order Designating Atty (12/19/2024); Doo21 (SRCR443481), Order Designating Atty (12/19/2024); Doo18 (SRCR443474) Order Designating Atty (12/19/2024); Doo17 (SRCR443437) Order Designating Atty (12/19/2024); Doo19 (SRCR443327) Order Designating Atty (12/19/2024); Doo26 (SRCR442688) Order Designating Atty (12/19/2024). Without evidence or authority the court again found there were “no contract or non contract attorneys available.” The court incorrectly stated “the State Public Defender is responsible for *providing* indigent defense” and that “he refuses... to mitigate the overload of this local office.” (Emphasis added). The court then declared the local office supervisor, individually, the attorney responsible for the case, further suggesting that the local SPD supervisor “may designate a staff attorney to file an appearance in his stead.” *Id.*

The local office filed a Notice of Return pursuant to Iowa Code section 13B.9(4)(a) directing the court to act in accordance with the law of 13B.9. Doo17, Notice to Return Case (12/20/2024).

On December 31, 2024, the district court entered an order captioned Response to “Notice.” The response continues to unlawfully maintain the

appointment of the local office. Doo18 (SRCR443595), Response to “Notice” (12/31/2024); Doo23 (SRCR443481), Response to “Notice” (12/31/2024); Doo20 (SRCR443474), Response to “Notice” (12/31/2024); Doo19 (SRCR443437), Response to “Notice” (12/31/2024); Doo21 (SRCR443327), Response to “Notice” (12/31/2024); Doo28 (SRCR442688), Response to “Notice” (12/31/2024).

The State Public Defender sought review of the orders and was granted a writ of certiorari.

STATEMENT OF THE FACTS

Other relevant facts will be mentioned in the argument as necessary.

ARGUMENT

- I. **Iowa Code sections 13B.9 and 815.10 mandate the district court “shall” appoint substitute counsel when the local public defender returns the case. The district court acted unlawfully when it failed to follow the plain language of Iowa Code 13B.9 and 815.10, the word “shall,” denying the withdrawal of the local office of the state public defender and designating the local office supervisor as attorney of record.**

Preservation of Error

The local office of the State Public Defender filed a motion to withdraw on October 29, 2024. The district court unlawfully denied the motion on October 30, 2024. The local office filed a second motion to withdraw on November 1, 2024 and the district court again unlawfully denied the motion on November 5, 2024. The district court then entered an order continuing the unlawful appointment of the local office and unlawfully designating the office supervisor personally on December 19, 2024. The local office filed a notice to the court that the case was returned to the court on December 20, 2024. The court entered an order continuing the appointment of the local office on December 31, 2024. A petition for writ of certiorari was filed on December 31, 2024, within 30 days of the orders entered on December 19 and December 31, 2024. “Certiorari arises from the supervisory function which the supreme court exercises over all

lower courts within the state.” *Hadjis v. Iowa Dist. Ct.*, 275 N.W.2d 763, 765 (Iowa 1979). (*citations omitted*).

“The granting of writs of certiorari by this court are original proceedings only in a very limited sense inasmuch as the function of the writ is to bring before this court for review in a particular manner a limited class of errors alleged to have been committed by inferior judicial tribunals, namely those which the serves to annul proceedings of such inferior judicial tribunals.”

Eden Township Sch. Dist. V. Carroll County Bd. of Educ., 181 N.W.2d 158, 165-66 (Iowa 1970) (citing *Indep. Sch. Dist. v. Samuelson*, 220 Iowa 170, 171, 262 NW. 169, 170 (1935)). Error was preserved. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (stating “[i]t is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before [the court] will decide them on appeal.”).

Standard of Review

Certiorari actions are reviewed for correction of errors at law. *State v. Iowa Dist. Ct.*, 902 N.W.2d 811, 814 (Iowa 2017). A writ of certiorari is applicable where a party claims a district court judge exceeded the judge’s jurisdiction or otherwise acted illegally. Iowa R. App. 1.107(1). In the review

of a certiorari action, the Court “can only examine ‘the jurisdiction of the district court and the legality of its actions.’” *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007) (quoting *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998)). “When the court’s findings of fact are not supported by substantial evidence, or when the court has not applied the law properly, an illegality exists.” *Id.* (citing *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 138 (Iowa 1988)).

Discussion

The legislature has defined common words to guide the interpretation and intent of the legislature in statutes. Relevant to this case, the legislature has defined the word “shall.”

“Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be: a. The word “shall” imposes a duty, b. The word “must” states a requirement, c. The word “may” confers a power.”

Iowa Code § 4.1(30) (2024).

Longstanding precedent and law provides that “shall” in a statute creates a mandatory duty, and does not leave room for discretion. See *In re Detention of Fowler*, 784 N.W.2d 184 (2010), *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000); see also *State v. Luckett*, 387 N.W.2d 298,

301 (Iowa 1986) (use of “shall” creates mandatory action unless context clearly indicates otherwise). Additionally, in *Hansen v. Henderson*, this Court said:

“Sometimes courts are justified in interpreting the word ‘shall’ as ‘may,’ but, when used in a statute directing that a public body do certain acts, it is manifest that the word is to be construed as mandatory and not permissive. The uniform rule seems to be that the word ‘shall,’ when addressed to public officials, is mandatory and excludes the idea of discretion.”

56 N.W.2d 59, 67 (1952) (cleaned up).

Under Iowa Code Chapter 13B a local public defender “shall handle every case to which the local public defender is appointed if the local public defender can *reasonably handle the case*.” Iowa Code § 13B.9(3) (2024) (emphasis added). Iowa Code section 13B.9(4)(a) provides, “[i]f a conflict arises or if the local public defender is *unable to handle a case* because of temporary overload of cases, the local public defender *shall* return the case to the court.” (emphasis added). The local public defender is duty bound by the code to return a case to the district court when the office determines they are unable to handle the case.

Once the case is returned to the court the code places the burden on the court to exercise its appointment power found in Iowa Code section

815.10. Iowa Code section 815.10 directs (“shall”) the court to appoint the local office, a designee, a contract attorney, and empowers (“may”) the court to appoint a noncontract attorney. Iowa Code §§ 815.10 (1)-(3) (2024).

In Iowa Code sections 13B.9 and 815.10, the court has a duty to appoint an attorney when the local office of the public defender is unable to accept an appointment. Iowa Code § 4.1(30)(a). The court also has the power to appoint any attorney in Iowa, except those that fall under the designating authority of the state public defender. Iowa Code §§ 815.10 (1)-(3).

In the cases at issue, the district court correctly executed its duty under the law by appointing the designated local public defender office. See Dooo3, In. App. Order (10/29/2024); Iowa Code §§ 13B.9(3), 815.10(1) (2024). However, when the local public defender office returned the case to the court in a motion to withdraw because the office was unable to continue the representation, the court denied the motion declaring the court was unable to determine if the office was unable to handle the case, and stated it would only appoint a contract or noncontract attorney should one be “available or willing to take court appointed cases.” Dooo7, Order Denying

M.T.W. (10/30/2024). Any rationalization made by the court to circumvent their duty to appoint an attorney where the local office is unable to accept the case is beyond the consideration of the court. Once the office provides notice to the court that the case is being returned, the court “shall”, or has the duty to, appoint a substitute attorney. Iowa Code § 13B.9(4)(a).

After several unlawful orders denying the withdrawal of the local office the court took it upon itself to reiterate its unlawful orders, not only to maintain the appointment of the local office of the state public defender but to specifically designate the local office supervisor. Doo26, Order Designating Atty (12/19/2024). The order of the district court extra judicially attempts to direct the executive function of the state public defender.

“The position of state public defender is established within the department of inspections, appeals, and licensing. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor...” Iowa Code § 13B.2.

Iowa Code section 13B.4 defines the role of the office of the state public defender in coordinating indigent defense throughout the state. As it relates to this writ, Iowa Code section 13B.4(1) provides, “The state public

defender shall coordinate the provision of legal representation to all indigents under arrest or charged with a crime who face the possibility of imprisonment under the applicable criminal statute or ordinance.”

The code establishes how this is to be accomplished by assigning the state public defender the authority to establish and abolish offices; *manage the location of an office, personnel, and the locations and types of cases an employee or designee* is allowed to accept for appointment; appoint and remove local public defenders; contract, establish fee limitations, and establish a claims submission system. Iowa code §§ 13B.4(3), (4); 13B.8(2) (emphasis added).

The district court misapplies the law by designating the local office supervisor as the attorney of record and further suggests the local office supervisor can further designate an attorney within the office. This is a function clearly within the statutorily defined role of the state public defender and the local office of the public defender. The court lacks any authority to designate the local office supervisor.

Iowa Code chapter 13B is clear in what it says: when the local public defender office withdraws, the court shall appoint. Iowa Code § 13B.9(4)(a). “But we need not speculate about legislative motivations to decide the

question of statutory interpretation before us. In questions of statutory interpretation, [w]e do not inquire what the legislature meant; we ask only what the statute means. We derive a statute's meaning and purpose from the text, not from assumptions about the legal drafter's inspirations. As Justice Scalia neatly put the point, 'The law is what the law says'" *Michael Chandler, Eddie Jones, and Chad Maddison, et al. v. Iowa Dept. of Corrections*, 24-0189, 3- 4 (Iowa 2025) (cleaned up).

The plain language requires the district court to enter an order in conformity with Iowa Code sections 13B.9 and 815.10 and withdraw the local public defender office.

CONCLUSION

For the reasons stated above, the State Public Defender respectfully requests this Court direct the district court to enter orders withdrawing the Davenport Office of the State Public Defender and office supervisor Miguel Puentes as counsel for the Defendants and for appointment of counsel for the defendants pursuant to Iowa law.

REQUEST FOR ORAL ARGUMENT

Counsel does not believe oral argument would assist the court, therefore, counsel requests the case be submitted without oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g)(1) and 6.903(1)(i)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Georgia, font 14 point and contains 2,447 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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