IN THE SUPREME COURT

STATE OF FLORIDA

THE HONORABLE JOHN E. CRUSOE,
as Acting Circuit Judge, of
the Second Judicial Circuit,

Petitioner,

vs. CASE NO. 66,179

TROY ROWLS,

Respondent.
_____/

INITIAL BRIEF OF AMICUS CURIAE

JOSEPH R. BOYD, ESQUIRE
SUSAN S. THOMPSON, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE

BOYD, THOMPSON & WILLIAMS, P. A.
2441 Monticello Drive
Tallahassee, Florida 32303
(904) 386-2171

CHRISS WALKER, ESQUIRE
DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

QUESTION PRESENTED ON APPEAL

Whether Administrative Order 84-20 constitutes a valid assignment of the named county judges to temporary service in the circuit court pursuant to Rule 2.050(b)(4), Florida Rules of Judicial Administration.

PRELIMINARY STATEMENT

Troy Rowls will be referred to as Rowls throughout this brief.

The State of Florida, Department of Health and Rehabilitative Services will be referred to as HRS.

STATEMENT OF THE CASE AND FACTS

Trudie and Troy Rowls' marriage was dissolved by Final Judgment on October 1, 1976. In the Final Judgment of Dissolution Troy Rowls was ordered to pay child support for the parties' minor child through weekly child support payments of $20.00.

On February 5, 1979, an Amended Final Judgment was entered. The purpose of this subsequent order was to more clearly define the method of child support payments under the original Final Judgment, and to utilize the court depository as a conduit for those payments. Rowls remained under a valid court order to pay weekly child support.

Numerous contempt motions were filed against Rowls for nonpayment of his support obligations. Several orders of contempt were entered against Rowls for willful disregard of his court ordered payments.

Rowls continued to disregard his financial responsibility toward his child. Such disregard amounted to a large arrearage in unpaid child support payments. A Stipulated Settlement for Arrearage, dated April 19, 1983, and executed by Rowls established an accrued arrearage of $4,389.64.

Rowls was served with another motion for contempt on October 6, 1983. He was duly noticed of the contempt hearing. The hearing on the motion was continued to allow

Rowls additional time to prepare a response to the contempt motion.

In his response Rowls claimed that the April 19, 1983, Stipulated Settlement for Arrearage, which contained a requirement to pay ongoing child support, was void. This argument was based upon Rowls' claim that Judge John Crusoe, who signed the Stipulation, was presiding as a circuit judge under an invalid administrative order. Since Judge Crusoe was invalidly assigned to the circuit bench, Rowls argued, he was without authority to enter an order adopting the Stipulation. Therefore, Rowls continued, the order signed by Judge Crusoe was void. Rowls also argued that Judge Hal B. McClamma had no authority to hear the contempt motion, since he was presiding under the same allegedly invalid administrative order. Judge McClamma transferred the above matter to Chief Circuit Judge Ben C. Willis, who had issued the administrative order questioned.

Trudie Rowls and the State of Florida filed a Motion to Strike Troy Rowls' affirmative defenses, asserting that the administrative order was valid. Therefore, those county judges assigned to hear certain child support enforcement matters, clearly presided over these matters under legal authority.

Troy Rowls filed a Response to the Motion to Strike.

Counsel for all parties appeared before Judge Willis on December 15, 1983. After hearing the argument of counsel, Judge Willis entered an order on January 18, 1984, granting Trudie Rowls' and HRS' Motion to Strike.

A motion for contempt was subsequently served on Rowls for his continued failure to make his child support payments. The contempt hearing was scheduled to be held before Judge John E. Crusoe.

Rowls filed a Petition for the Writ of Prohibition with the First District Court of Appeal. Rowls sought a writ of prohibition to forbid Judge Crusoe from presiding over the contempt proceedings. Rowls' argument in support of his petition was again directed toward the validity of Administrative Order 82-12 which assigned Judge Crusoe to the circuit bench to preside over child support enforcement matters. Rowls claimed that the order was not for an assignment of temporary service as required by Rule 2.050(b)(4), Florida Rules of Judicial Administration. Rowls also argued that Administrative Order 82-12 contravened the jurisdictional authority of the circuit court.

The First District Court of Appeal issued an order requiring the Honorable John E. Crusoe, as Respondent, to show cause why the Petition for Writ of Prohibition should not be granted. The response by Judge Crusoe argued that Rowls' challenge was moot due to the issuance of

Administrative Order 84-7, which superseded Administrative Order 82-12. Judge Crusoe argued that since prohibition is exclusively prospective in nature, Rowls could not challenge a prior judicial act by prohibition; that act being the now superseded Administrative Order 82-12.

On February 27, 1984, the State of Florida, Department of Health and Rehabilitative Services served a Motion to File a Response as an Amicus Curiae and filed a stipulation by both parties which agreed to allow HRS to file such a response.

On March 13, 1984 in his Reply, Rowls requested that the First District Court of Appeal permit him to submit argument challenging the validity of Administrative Order 84-7.

On April 24, 1984, the First District Court of Appeal ordered Rowls to file a Supplemental Petition for Writ of Prohibition addressing Administrative Order 84-7. The Court also allowed the Respondent and HRS, as amicus curiae, to file responses.

On August 22, 1984, the First District Court of Appeal in a split decision, held that 84-7 validly assigned the named county court judges to the circuit bench for the purposes contained in the Order and denied Rowls' Petition for Writ of Prohibition. However, the First District Court of Appeal certified the following question to the Supreme Court of the State of Florida:

> Does Administrative Order 84-7 constitute a valid assignment of the named county judges to temporary service in the circuit court pursuant to Rule 2.050(b)(4), Fla. R. Jud. Admin.?

On August 13, 1984, Administrative Order 84-20 was entered. Administrative Order 84-20 was substantially similar to Administrative Order 84-7, but it assigned an additional judge and extended the assignment for another six month period. On August 30th Rowls served a Motion for Rehearing or Other Relief. Rowls brought Administrative Order 84-20 to the attention of the First District Court of Appeal. Rowls asked the Court to reconsider its earlier ruling, to allow supplemental argument and to amend the certified question by substituting 84-20 for 84-7.

On November 16, 1984, in response to Rowls' Motion for Rehearing, the First District Court of Appeal reversed its earlier holding. In a split decision the majority adopted the dissent from the August 22, 1984 opinion. The dissent stated its adherence to the Court's original opinion. Specifically, the dissent declared that it viewed Administrative Order 84-20 as temporary as required by Rule 2.050(b)(4), and since there is nothing in the rule prohibiting successive assignment orders, the promulgation of 84-20 should have no impact on the Court's original holding.

The First District Court of Appeal certified the following question as being one of great public importance:

> Does Administrative Order 84-20 constitute a valid assignment of the named county judges to temporary service in the circuit court pursuant to Rule 2.050(b)(4), Fla. R. Jud. Admin.?

On the basis of the above opinion, Respondent, the Honorable John E. Crusoe, and HRS, as amicus curiae, filed a Notice to Invoke the Discretionary Jurisdiction of the Supreme Court to review the November 16, 1984, decision of the First District Court of Appeal. Based upon a Motion for Stay and Motion to Expedite, filed by Judge Crusoe and amicus curia, the First District Court of Appeal ordered the effect of its opinion stayed until the Supreme Court of Florida has ruled upon the certified question.

The Petitioner on appeal, the Honorable John E. Crusoe, and Respondent Rowls agreed to allow HRS to file a brief as amicus curiae.

ARGUMENT

I

ADMINISTRATIVE ORDER 84-20 CONSTITUTES A VALID ASSIGNMENT OF THE NAMED COUNTY JUDGES TO TEMPORARY SERVICE IN THE CIRCUIT COURT PURSUANT TO RULE 2.050(b)(4), FLORIDA RULES OF JUDICIAL ADMINISTRATION.

A. ADMINISTRATIVE ORDER 84-20 HAS THE EFFECT OF ASSIGNING COUNTY COURT JUDGES TO THE CIRCUIT COURT.

There can be no doubt that a Chief Circuit Judge can temporarily assign county court judges to the circuit bench to hear child support enforcement matters. State Ex Rel. Treadwell v. Hall, 274 So. 2d 537 (Fla. 1973); Martinez v. v. Demers, 412 So. 2d 5 (Fla. 2d DCA 1981); Rodgers v. State, 325 So. 2d 48 (Fla. 2d DCA 1975). Article V, Section 2(b), Florida Constitution states:

> [The Chief Judge] shall have the power to . . . delegate to a chief judge of a judicial circuit the power to assign judges for duty in his respective circuit.

Rule 2.050(b)(4) provides in part:

> The chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit.

The First District Court of Appeal held that Administrative Order 84-20 and preceding Administrative Orders 84-7 and 82-12 are "an abdication of circuit court

jurisdiction over child support enforcement. . . the orders are an attempt to confer jurisdiction on the county courts over matters which they have no constitutional authority to decide." The Court appears to view Administrative Order 84-20 invalid because it assigns a class of cases over which the circuit court has jurisdiction to the county court, instead of assigning county judges to the circuit court. This is a result of what the Court apparently viewed to be the successive aspect of Administrative Order 84-20.

HRS contends that there is no removal of a particular class of cases from the jurisdiction of the circuit court through the implementation of Administrative Order 84-20. In fact, circuit court judges of this circuit have continued to hear child support enforcement matters even while Administrative Orders, 84-7 and 82-12 were in effect. Clearly, these matters which fall under circuit court jurisdiction have not been abdicated to the county court. Furthermore, the First District Court's opinion makes it clear that it is the successive nature of Administrative Order 84-20 which leads to the Court's decision. When isolated from any of the other orders, it is apparent that the practical and obvious effect of Administrative Order 84-20 is to temporarily assign county court judges to the circuit court to hear certain child support enforcement

cases. This, in fact, was the position of the First District Court when it upheld the validity of Administrative Order 84-7 in its August 22, 1984, opinion. In that opinion the Court stated:

> Although perhaps not a model to be followed, we think the administrative order, in effect, assigns the named county judges to serve as circuit judges in certain child support enforcement cases.

HRS contends that the same conclusion as that quoted above must be reached when reviewing Administrative Order 84-20. Administrative Order 84-20 is substantially similar to Administrative Order 84-7, about which the previous statement was made by the First District Court. As such, HRS argues that the Court's reversal of its opinion on rehearing is not based upon the substance of Administrative Order 84-20. Instead, the reversal was based upon the successive nature of Administrative Order 84-20. The question of the effect of being a successive order will be addressed later in this brief.

Absent a showing that the county judges named in Administrative Order 84-20 are not qualified for assignment under that order, the effect of Administrative Order 84-20 is to accomplish what is precisely the intent of Rule 2.050.

Martinez, supra, addressed the validity of an administrative order promulgated under Rule 2.050(b)(4). In Martinez, the petitioner was charged with a misdemeanor, trespass after warning. Petitioner's counsel filed a Motion for Sanity Inquisition pursuant to Rule 3.216(a), Florida Rules of Criminal Procedure. The motion was denied on the basis of an administrative order issued pursuant to Rule 2.050(b)(4), Florida Rules of Judicial Administration. The administrative order provided:

> It is ordered henceforth all petitions for sanity inquisitions in misdemeanor cases shall be brought before the Criminal Administrator for determination.

Id. at 5. The criminal administrator is a circuit court judge.

The petitioner in Martinez argued that the above order removed misdemeanor jurisdiction from the county courts. In effect, the administrative order removed a class of cases from the jurisdiction of the county court and assigned it to the circuit court.

The respondent in Martinez made several arguments in support of the order. The Second District Court of Appeal viewed the respondent's strongest argument to be the authority provided by Rule 2.050(b)(4). Even so, the Second District Court of Appeal held that Rule 2.050(b)(4) was not

authority for the Martinez adminstrative order. The Court found the order invalid because it assigned all misdemeanor cases to a circuit judge. The order simply removed a particular class of cases from the jurisdiction of the county court. The Martinez Court found the order defective because the "administrative order does not assign a particular judge for a limited period of time" Id., at 6. This is clearly not occurring in the present case. Martinez is clearly distinquishable from Administrative Orders 84-20 and 84-7.

The First District Court of Appeal agreed on this point when it reviewed Administrative Order 84-7. In its August 22, 1984, opinion the Court stated:

> We find that the administrative order in the instant case does not contain the weaknesses of the administrative order under review in Martinez.

HRS contends that Administrative Order 84-20 is substantially similar to Administrative Order 84-7. This contention was admitted by Rowls in his Motion for Rehearing or Other Relief. As such, the facts of the present case, even after the issuance of Administrative Order 84-20, remain distinquishable from Martinez. Administrative Order 84-20 names the specific county judges to be temporarily assigned to the Circuit Court, and the order is of limited duration, automatically expiring on a specific date. In this sense,

Administrative Order 84-20 is no different from Administrative Order 84-7. Yet, the First District Court of Appeal reversed its position upon the issuance of Administrative Order 84-20.

HRS would reiterate its contention that reversal by the First District Court of Appeal on rehearing was not based upon the substance of Administrative Order 84-20. Rather, it is the successive nature of Administrative Order 84-20 which led the Court to reverse its earlier position.

The intent of Administrative Order 84-20 is clear. That intent is the temporary assignment of county court judges to the circuit bench to hear child support enforcement cases. The Order was issued in accordance with Rule 2.050(b)(4), Florida Rules of Judicial Administration. Even if this Court should find that Administrative Order 84-20 is perhaps not the best model to be followed, it should find, as did the First District Court of Appeal in reviewing the substantially similar Administrative Order 84-7 in its original opinion, that the effect of Administrative Order 84-20 is to properly assign for temporary duty the named county judges to the circuit court to hear certain child support enforcement cases.

B. ADMINISTRATIVE ORDER 84-20 IS TEMPORARY, PURSUANT TO RULE 2.050(b)(4), FLORIDA RULES OF JUDICIAL ADMINISTRATION

In its opinion On Motion for Rehearing the First District Court of Appeal stated:

> The promulgation of 84-20 has made evident the correctness of Judge Barfield's dissent to the original opinion. By issuing successive orders, the provisions contained therein have been, and will be, in effect for two-and-a-half years if the most recent order is upheld. (Emphasis supplied).

The First District Court of Appeal went on to hold that Administrative Order 84-20 was not temporary, and, therefore, invalid.

HRS contends that Administrative Order 84-20 is clearly temporary on its face. It is specifically limited to a duration of six months. There is no guidance in Rule 2.050 or in existing case law helpful in determining the length of a temporary assignment pursuant to Rule 2.050.

The First District Court summarized Rowls' argument in the following statement in its original opinion of August 22, 1984, concerning the issue of whether former Administrative Order 84-7 was temporary:

> [Rowls] argues that the order is not "temporary" because the assignments are for a six-month period. [Rowls] asserts that the word "temporary" has meaning only when considered in relation to or in

> regard to a larger time. In relation to the "temporary" assignment of county judges to the circuit court, [Rowls] contends that the larger time period is the four-year term of office for county judges. He thus concludes that a six month assignment cannot be temporary because it is equal to one-eighth of a county judge's term. Further, [Rowls] suggests that this administrative order should be considered together with the prior administrative order, which assigned the same judges to act on the same type of cases, and the "temporary" assignment becomes a two year assignment, one-half of a county judge's term.

In its original August 22, 1984, opinion which found Administrative Order 84-7 to be temporary and valid, the First District Court of Appeal implicitly rejected Rowls' ultimate conclusion that temporary means brief. However, upon review of Administrative Order 84-20 on rehearing, the First District Court found that Administrative Order 84-20 was not temporary.

It is clear that the Court's reversal on rehearing was based upon the issuance of Administrative Order 84-20, which was the most recent administrative order in a line of three similar successive orders. The Court apparently reasoned that successive orders which are substantively similar violate the temporary requirement of Rule 2.050(b)(4).

The opinion of the First District Court of Appeal is not supported by the clear language of Rule 2.050(b)(4). The

rule simply states that assignments are to be temporary. Without further qualifying language, the stated requirement of Rule 2.050(b)(4) is that assignments are to be for a limited amount of time. In Martinez, supra, the Second District Court of Appeal found the administrative order deficient because it "does not assign a particular judge for a limited time." Id. at 6. Administrative Order 84-20 clearly sets a limited duration to the assignment of the county judges listed within the Order. There is no language in Rule 2.050 or elsewhere which explicitly or implicitly prohibits the issuance of successive orders which temporarily assign county judges to the circuit bench for child support enforcement matters.

In discussing Administrative Order 84-7 in its original opinion of August 22, 1984, the First District Court of Appeal stated:

> Although we agree with [Rowls] that an order of assignment could provide for a termination date and yet not be temporary, we believe that a six-month assignment falls within the term temporary as contemplated by Rule 2.050(b)(4). Further, because there is nothing in the rule that prohibits successive orders of appointment, we do not think that the duration of prior assignments should be considered in determining whether the current assignment is temporary.

As previously stated, it was the issuance of Administrative Order 84-20, as a successive order, which led the Court to reverse itself upon rehearing.

HRS contends that the August 22, 1984 opinion of the First District Court of Appeal, and specifically the above-quoted language is the correct position on the issue of the relation between temporary and successive orders. As Judge Wentworth stated in her dissent from the Court's opinion on rehearing, "The promulgation of the new order [84-20] should have no impact on our original holding."

The effects of prior Administrative Orders 84-7 and 82-12 have been superseded by Administrative Order 84-20. As the First District Court of Appeal recognized in its original August 22, 1984 opinion, the previous orders are irrelevant to Rowls' action in prohibition based upon Administrative Order 84-20. Prohibition is only prospective in nature and cannot challenge or grant relief from prior judicial acts. English v. McCray, 348 So. 2d 293 (Fla. 1977). By granting Rowls' request for a writ of prohibition the First District Court of Appeal failed to consider the above rule of law, since relief was granted on the basis of administrative orders which were no longer in effect. This is especially clear in light of the Court's statement "that the orders are an abdication of circuit court jurisdiction." (Emphasis

supplied). As such, the relief granted is retrospective in its approach.

II

THE OPINION OF THE FIRST DISTRICT COURT OF APPEAL CONFLICTS WITH THE PURPOSES OF RULE 2.050, FLORIDA RULES OF JUDICIAL ADMINISTRATION.

The effect of the Court's opinion basing the invalidity of Administrative Order 84-20 on the fact it is a successive order will have widespread effects on the efficient administration of justice. The mechanism established in Rule 2.050 assists the Chief Circuit Judge in the efficient administration of the judicial system of his circuit.

It is reasonable to state that the power to assign a county judge temporarily to the circuit bench is used in various circumstances. For instance, there may be a backlog of cases within the circuit court's jurisdiction which is delaying the administration of justice. It cannot be disputed that the temporary assignment of county judges to the circuit bench to hear these cases is a valid implementation of Rule 2.050(b)(4) by the Chief Circuit Judge.

The problem with the opinion of the First District Court of Appeal arises when the temporary order of assignment

expires or approaches the end of its term of duration. The circumstances may dictate the issuance of another administrative order because the situation which mandated the original order still exists. Such a situation may continue to exist even after the second order expires.

Does the opinion of the First District Court of Appeal mean that if the circumstances require the issuance of an administrative order pursuant to Rule 2.050(b)(4) to assist the efficient administration of justice, such an order is invalid if it immediately succeeds similar orders? HRS contends that this certainly cannot become the accepted rule of law. If so, Rule 2.050(b)(4) becomes limited in a manner clearly in opposition to the purposes for which it was promulgated. If so, the Chief Circuit Judge is placed in the position of having to delay the issuance of another order to a later time, so that the order of temporary assignment will not be considered successive, and, therefore, invalid. Meanwhile, because Rule 2.050(b)(4) cannot be implemented, the administration of justice suffers.

The question also arises of how long must the delay be before Rule 2.050(b)(4) can again serve as the basis of a valid administrative order, without being found to be successive and defective according to the opinion of the First District Court.

In the area of child support enforcement the above scenario can have grevious ramifications. The First District Court of Appeal has basically stated that county judges cannot assist the circuit court in the area of child support enforcement over an extended period of time. This prohibition exists regardless of the factual situation which exists in the child support enforcement area.

No evidence supporting an abuse of Rule 2.050 was never presented to the First District Court of Appeal. The Court's decision was simply based upon the fact that Administrative Order 84-20 was a successive order. The Court's opinion does nothing to clarify the issues upon which it ruled. HRS contends that the waters have become unnecessarily muddied.

Those persons who will be most affected by the opinion of the First District Court of Appeal will be the mothers and children who rely upon child support as an integral and often the primary source of income. Meanwhile, the nonpaying parent benefits because the wheels of judicial machinery will turn more slowly, resulting in even greater delays before that parent is brought before a judicial officer and required to meet his support obligations.

The instant case demonstrates how a recalcitrant parent can frustrate the judicial system even when the system is working efficiently. Rowls has been repeatedly in front of

the court for failing to pay his child support, and yet, has continued not to meet his obligations. If the system is not able to operate efficiently through the promulgation of successive orders such as Administrative Order 84-20, many parents are unlikely to ever meet their support obligations due to the delays incurred as a result of an overburdened and inefficient judicial system. Many nonpaying parents will rarely come before a judge. The opinion of the First District Court of Appeal clearly will not advance the interests of justice.

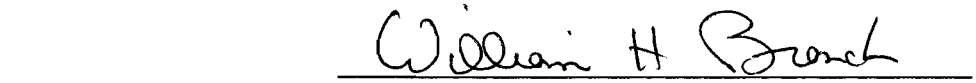
CONCLUSION

On rehearing the First District Court of Appeal reversed its previous position and ruled that Administrative Order 84-20 was invalid. The Court's opinion was based upon the fact that Administrative Order 84-20 was successive and substantially similar to previous Administrative Orders 84-7 and 82-12. It is the successive nature of 84-20 which the First District Court of Appeal finds offensive. In and of itself, Administrative Order 84-20 does appoint temporarily county court judges to the circuit bench to hear child support enforcement cases.

The successive nature of 84-20 should not have any effect on the question of whether it temporarily assigns the named county court judges. On its face, Administrative Order 84-20 is of limited duration. There is nothing in Rule 2.050, Florida Rules of Judicial Administration, which prohibits the promulgation of successive orders.

The opinion of the First District Court of Appeal weakensRule 2.050. Regardless of the necessity for an administrative order, the Court's opinion will find that order invalid if it is successive in nature.

HRS requests that this Honorable Court reverse the opinion of the First District Court of Appeal in accordance with the arguments set forth herein, and positively answer the certified question.



JOSEPH R. BOYD, ESQUIRE
SUSAN S. THOMPSON, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE

BOYD, THOMPSON & WILLIAMS, P. A.
2441 Monticello Drive
Tallahassee, Florida 32303
(904) 386-2171

and

CHRISS WALKER, ESQUIRE
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

Attorneys for Amicus Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **ARMANDO GARCIA, ESQUIRE**, 216 West College Avenue, Tallahassee, Florida 32301 and **KENT A. ZAISER, ESQUIRE**, The Capitol Suite 1501, Tallahassee, Florida 32301, this 17th day of December, 1984, by U. S. Mail.

William H Boyd

for JOSEPH R. BOYD, ESQUIRE