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.
_____/

REPLY BRIEF OF AMICUS CURIAE

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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. THE ISSUANCE OF A SIMILAR SUCCESSIVE ADMINISTRATIVE ORDER CANNOT IN AND OF ITSELF BE CONSIDERED A PER SE VIOLATION OF THE TEMPORARY REQUIREMENT OF RULE 2.050, RULES OF JUDICIAL ADMINISTRATION.

It must be kept in mind that the decision of the First District Court of Appeal, which is presently being appealed, is a reversal on rehearing of its previous opinion. The previous position of the First District Court of Appeal, supported the position of HRS.

HRS contends that the decision of the First District Court of Appeal from which this appeal was taken was based upon the successive nature of Administrative Order 84-20. The language of the opinion makes this clear.

> 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 herein have been, and will be, in effect for two-and-a-half years if the most recent order is upheld. Thus, we now find that the orders are an abdication of circuit court jurisdiction over child support enforcement, not a temporary assignment

> of a county judge to a circuit court position. (Emphasis added).

(R-68).

Administrative Order 84-20 was the most recent administrative order in a line of three similar successsive orders. Since the opinion of the First District Court of Appeal is based upon the successive aspect of Administrative Order 84-20, the opinion is apparently grounded on the position that a successive order, which is substantively similar to preceding orders, is a per se violation of the temporary requirement of Rule 2.050(b)(4). This is also the thrust of Rowl's argument.

Rowls argues that Administrative Order 84-20 violates the temporary requirement of Rule 2.050(b)(4) "because the "assignments" are for too long a period of time . . ." (Appellee's answer brief, page 6). Rowls continues by stating, "Reality is that with the promulgation of 84-20, county judges will be hearing child support cases in Leon County, Florida, for two-and-a-half-years. The two-and-a-half year period, when viewed in comparison with a county judges four year term of office, is too substantial a period of time to be considered brief or short lived." (Appellee's answer brief, page 7). It is obvious that Rowls desires a rule of law which states that a similar successive

Administrative Order should be considered not temporary under Rule 2.050 (b)(4), as a matter law.

The opinion of the First District Court of Appeal, which creates such a per se rule of law, and the argument presented by Rowls cannot be allowed to become the general rule of law in this area. Such a rule of law is not supported by the clear language of Rule 2.050(b)(4). Neither the opinion of the First District Court of Appeal nor any argument put forth by Rowls point to any authority which explicitly supports the per se approach. Rule 2.050(b)(4) simply states that assignments are to be temporary. Without further qualifying or limiting language, the stated requirement of Rule 2.050(b)(4) is that assignments are to be for a limited duration. 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.

The First District Court of Appeal agreed with HRS in its original opinion of August 22, 1984.

> [B]ecause 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.

(R-6).

The effect of the holding of the First District Court of Appeal that a successive administrative order is invalid as a matter of law, conflicts with the purpose of Rule 2.050. There can be no doubt that Rule 2.050 was promulgated to ensure the efficient administration of the judicial systems of the various circuits. If there is a backlog of cases within the circuit court's jurisdiction which is delaying the administration of justice, Rule 2.050 assists the Chief Circuit Judge in alleviating that case load. Rowls would have this Court rule that <u>any successive order</u> is invalid regardless of whether circumstances exist which justify the issuance of the successive order. No other conclusion can be reached based upon Rowls' arguments. He has simply argued throughout this case that the successive administrative orders add up for too long a period, therefore, they circumvent the temporary requirement of Rule 2.050. Rowls has never attempted to present evidence that the successive administrative orders were actually being issued to circumvent the temporary requirement of Rule 2.050. In challenging the validity of a judicial order a greater burden of proof should be required than that presented by Rowls.

Preventing a backlog in cases can be considered a purpose of Rule 2.050(b)(4). Such a backlog leads to inefficient judicial administration. Rule 2.050(b)(4) can be

seen as a means of expediting the administration of justice. In the instant case it can be viewed as a means of expediting the enforcement of child support orders. This is a goal encouraged by the federal government as illustrated by Public Law 98-378, enacted August 16, 1984.

Rule 2.050 gives no guidance as to the meaning of temporary. However, it clearly does not prohibit the issuance of successive orders. Accordingly, the rule of law established by the First District Court of Appeal that successive orders are per se invalid should not be adopted by this Court. The better rule would be to require the challenging party to demonstrate more than just the fact that a similar successive order has been issued. Instead, the challenging party must be required to show that the similar successive orders are being issued to circumvent the intent and purpose of Rule 2.050. The fact that the order is successive is not conclusive evidence of an attempt to circumvent Rule 2.050 which should, as a matter of law, lead to the finding that the successive administrative order is invalid.

Under the decision of the First District Court of Appeal, the challenging party, for all practical purposes, does not really have any type of burden. He simply has to show that the challenged order is successive.

The ramifications of the per se rule established by the First District Court of Appeal are obvious. Some of the effects were discussed in the initial brief of HRS. The practical effect of the decision of the First District Court of Appeal and Rowl's argument is to limit the ability of the Chief Circuit Judge to efficiently administer his circuit.

B. ADMINISTRATIVE ORDER 84-20 ASSIGNS COUNTY COURT JUDGES TO THE CIRCUIT COURT FOR THE PURPOSE OF HEARING CERTAIN CHILD SUPPORT ENFORCEMENT MATTERS.

HRS contends that Administrative Order 84-20 validly assigns the county judges named therein to service on the circuit bench. Rowls' argument to the contrary is without support. Rowls' misunderstands the argument put forth by HRS. Nowhere does HRS argue in its initial brief that it is sufficient to assign circuit court cases to the named county judges, instead of assigning the county judges to the circuit bench, since the same judges would be deciding the same cases. HRS argued that a plain reading of Administrative Order 84-20 illustrates that the effect of that Order "is to temporarily assign county court judges to the circuit court to hear certain child support enforcement cases." (Amicus curiae's initial brief, page 2).

Rowls further contends that Administrative Order 84-20 is similar to the order which was the subject of Martinez v. Demers, 412 So. 2d 5 (Fla. 2nd DCA 1981). In Martinez, a class of misdemeanor cases was removed from the jurisdiction of the county court and given to the circuit court. However, there is no such removal of a particular class of cases from the jurisdiction of the circuit court through the implementation of Administrative Order 84-20. The

administrative order in Martinez is clearly distinguishable from Administrative Order 84-20.

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

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

(R-60).

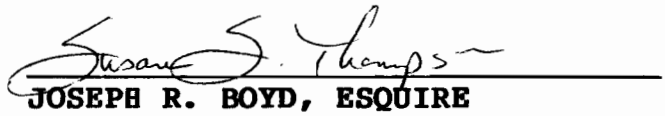
Since Administrative Order 84-20 is substantially similar to Administrative Order 84-7, a fact admitted by Rowls, Administrative Order 84-20 is also distinguishable from Martinez. There is no support for the contention that Administrative Order 84-20 does not assign the named county judges to the circuit bench. This is even more evident in light of the fact that the First District Court of Appeal reversed itself on the basis of the successive nature of Administrative Order 84-20. This Court should find that Administrative Order 84-20 properly assigns the named county court judges to the circuit court to hear child support enforcement cases.

CONCLUSION

The First District Court of Appeal erred in ruling that the successive nature of Administrative 84-20 made it invalid. The effect of the decision of the First District Court of Appeal, and the thrust of Rowls' argument, is to create a rule of law, which requires that a similar successive administrative order must be found invalid, as a matter of law, simply because it is successive in nature. Such a rule of law places no burden on the party challenging the administrative order. The decision of the First District Court of Appeal conflicts with the purpose of Rule 2.050.

Administrative Order 84-20 assigns county judges to the circuit bench. There is no removal from the jurisdiction of the circuit court of any class of cases intended or affected by Administrative Order 84-20. In fact, circuit court judges continue to hear child support enforcement cases.

This Honorable Court should answer the certified question affirmatively, reverse the opinion of the District Court of Appeal and remand for further proceedings consistent with the Court's holding.



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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, **KENT A. ZAISER, ESQUIRE**, Assistant Attorney General, Department of Legal Affairs, Civil Division, The Capitol, Suite 1501, Tallahassee, Florida 32301 and **JACK HARKNESS, JR., ESQUIRE**, Executive Director, The Florida Bar, Tallahassee, Florida 32301, this 1st day of February, 1985, by U. S. Mail.

for WILLIAM H. BRANCH