

FILED

SID J. WHITE

DEC 17 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

**IN THE SUPREME COURT
OF FLORIDA**

Case No. 82,895

JOHN PAUL JONES, JR., :
Judge of Compensation Claims, :

Petitioner, :

v. :

LAWTON M. CHILES, :
Governor, State of Florida, :

Respondent. :

_____ :

PETITION FOR A WRIT OF MANDAMUS

COMES NOW the Petitioner, John Paul Jones, Jr., Judge of Compensation Claims, and files this Petition for a Writ of Mandamus against the Respondent, Lawton Chiles, Governor of the State of Florida, and for grounds would state:

(1) This Petition is filed pursuant to Art. V, §3(b)(8), Fla. Const., and Fla. R. App. P. 9.100, and Fla. R. Civ. P. 1.630.

JURISDICTION

(2) Art. V, §3(b)(8) of the Florida Constitution provides:

The supreme court may issue writs of mandamus and quo warranto to state officers and state agencies.

(3) The Circuit Courts and the District Courts of Appeal may also issue writs of mandamus. Art. V, §4(b)(3), Fla. Const. and Art. V, §5(b), Fla. Const. Therefore, the jurisdiction of the Supreme Court to issue writs of mandamus may be said to be concurrent with the Circuit Courts and the District Courts of Appeal. The question then becomes: when is it appropriate for the Supreme Court to exercise its jurisdiction? While there

may be other circumstances for the exercise of Supreme Court jurisdiction in this regard, there certainly is one circumstance in which the Supreme Court should exercise its jurisdiction. This circumstance is: the act sought to be commanded by a writ of mandamus would have to be performed by the Governor of the State of Florida, the chief constitutional officer of the Executive Branch. In other words, when the respondent is the Governor and a court is being asked to command him to perform a ministerial duty of his office, this Court should exercise its jurisdiction. It is appropriate that this Court, rather than the lower state courts, should consider such a claim against the Governor. An example of such a case is *Wright v. Chiles*, 18 Fla. L. Weekly S509 (Fla. Sept. 30, 1993) in which this Court held that it had jurisdiction under Art. V, §3(b)(8), Fla. Const. to consider a petition for a writ of mandamus by Dr. Wright directing the Governor to appoint him to a new term as medical examiner for the Seventeenth District when the Florida Medical Examiners Commission nominated only Dr. Wright for the position and the Governor requested the commission to submit additional nominations.

(4) Based on Art. V, §3(b)(8), Fla. Const. as interpreted by this Court in *Wright v. Chiles*, supra, this Court has jurisdiction in the present case.

STATEMENT OF THE FACTS

(5) John Paul Jones, Jr. was appointed a state officer by Governor Reubin Askew in 1972 as a Judge of Industrial Claims, which was the title at the time for a judge who heard workers' compensation cases. The office was provided for in §440.45, Fla. Stat. and the term of office was for four years "and until his successor is appointed and qualified". §440.45, Fla. Stat. (1972). That same year the people of Florida amended Art. V of the

Constitution creating judicial nominating commissions beginning January 1, 1973. Consistent with the constitutional amendment creating judicial nominating commissions, the Florida Legislature amended the Florida Statutes to provide for merit selection and retention of workers' compensation judges. In 1974 and in 1975 and in 1978, the Workers' Compensation Law was amended to provide that the appellate district judicial nominating commission in which the Judge of Industrial Claims principally conducted hearings would submit a list of the names of three lawyers for any initial appointment by the Governor. The Workers' Compensation Law further provided that prior to the expiration of each four-year term, if the judicial nominating commission voted not to retain the Judge of Industrial Claims, then the Governor could not re-appoint him. It further provided:

If the Judicial Nominating Commission votes to retain the Judge of Industrial Claims in office, then the Governor shall re-appoint the Judge of Industrial Claims for a term of four years.

(6) Judge Jones was voted by the judicial nominating commission to be retained in office, each four years beginning with 1972, such that each four years the Governor signed his commission for re-appointment.

(7) In 1979, the title of the office was changed to "Deputy Commissioner", which had been the title at an earlier time when a workers' compensation judge was a Deputy Commissioner of the Florida Industrial Commission. The office was located within the Department of Labor and Employment Security, although the Industrial Relations Commission, as it was then called, was abolished at the same time. The title "Deputy Commissioner" was a misnomer, as the Commission no longer existed.

(8) In 1989, the title was changed to "Judge of Compensation Claims".

(9) Having been voted by the judicial nominating commission to be retained, Judge Jones was re-appointed by Governor Bob Martinez on September 3, 1988, for a four-year term.

(10) In 1990 and then again in 1991, the Legislature amended the Workers' Compensation Law to create a statutory statewide nominating commission to replace the District Court of Appeal Judicial Nominating Commissions, but just for Judges of Compensation Claims.

(11) This statewide nominating commission, like its predecessor, the appropriate District Court of Appeal Judicial Nominating Commission, was required by §440.45, Fla. Stat. to meet more than six months prior to the expiration of the four-year term of office of a Judge of Compensation Claims. The Commission would vote whether to remove the judge or to retain him in office. A vote to retain a judge would then be submitted to the Governor for re-appointment.

(12) On February 28, 1992, the statewide nominating commission met and voted to retain Judge John Paul Jones, Jr. in office. The report of this vote was submitted by Stephen L. Rosen, chairman of the commission, to the Governor on March 2, 1992. (Appendix 1).

(13) Thereafter, the Governor has failed, refused and neglected to sign Judge Jones' re-appointment.

(14) On September 3, 1992, Judge Jones' four-year term of re-appointment by Governor Martinez was completed. Thereafter, Judge Jones has remained in office and has performed his duties and has been paid his salary by the State of Florida.

(15) On December 15, 1993, the Governor advised that he would not re-appoint Judge Jones. Instead, the Governor seeks to re-constitute a new nominating commission after January 1, 1994, to pass on Judge Jones' re-appointment.

RELIEF SOUGHT

(16) The Petitioner seeks an Alternative Writ of Mandamus directing the Respondent, Governor, to sign the Petitioner's commission as a Judge of Compensation Claims for a four-year term from the date of issuance as required by law, or to show cause why this Court should not make the Alternative Writ a final and absolute order.

ARGUMENT

(17) The applicable statute is §440.45(2), Fla. Stat. (1991), which provides:

Each full-time judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of the term of office of the judge of compensation claims, the conduct of such judge of compensation claims shall be reviewed by the statewide nominating commission, which commission shall determine whether such judge of compensation claims shall be retained in office... A report of the decision shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the judge of compensation claims. If the statewide nominating commission votes not to retain the judge of compensation claims, the judge of compensation claims shall not be reappointed but shall remain in office until a successor is appointed and qualified. **If the statewide nominating commission votes to retain the judge of compensation claims in office, then the Governor shall reappoint the judge of compensation claims for a term of 4 years.** (Emphasis added).

(18) In *Orr v. Trask*, 464 So. 2d 131 (Fla., 1985), the Florida Supreme Court held:

Further, under the provisions of section 440.45 a governor can only remove deputies for cause. A governor's only truly discretionary power on appointing and reappointing deputies is to select an initial appointee from the list of the three or more nominees provided to him by the appellate district judicial nominating commission. **The decision as to whether an incumbent will be reappointed rests entirely with the judicial nominating commission.**

(2) ... If the judicial nominating commission votes not to retain the deputy commissioner, the deputy commissioner *shall not* be reappointed.... If the judicial nominating commission votes to retain the deputy commissioner in office, then the Governor *shall* reappoint the deputy commissioner for a term of four years.

§440.45(2), Fla. Stat. (1981) (emphasis supplied). In the case at hand, as it was required to do by law, the judicial nominating commission reviewed the conduct of the deputy whose term was scheduled to expire in November and submitted a report of its decision to retain the deputy in office to the Governor in March 1983, at least six months prior to the expiration of the term of office. **The reappointment of the deputy in November was purely ministerial; the governor had no discretion under the law to do otherwise.** *Id.*, at 133-134. (Emphasis added).

(19) In *Orr v. Trask*, supra, the Secretary of Labor and Employment Security, Mr. Orr, had notified Mr. Trask that his position was abolished as of December 31, 1983, because there was a proviso in the Department's budget for that year for a judge's position to be deleted in District K, which is Dade and Monroe Counties. The Secretary selected Mr. Trask for this deletion. Mr. Trask brought suit against the Secretary claiming that this action was illegal and invalid. The trial court agreed and the Secretary appealed. The Supreme Court concluded that the proviso in the budget contravened general law, which is not permitted. Mr. Trask

was a state officer who could only be removed in the manner provided by general law. A budget proviso is not general law, and therefore the deletion was invalid. Under §440.45, Fla. Stat., the only removal, which is not for cause, is by a vote of the nominating commission not to retain the judge at the time it considers reappointment. The Court did hold that once the nominating commission has voted to retain the judge in office, the Governor's re-appointment is a non-discretionary act. This is another way of saying that when the nominating commission has approved a judge for re-appointment, he must be re-appointed by the Governor. The Governor's failure to do so is subject to mandamus. See *Orr v. Trask*, supra.

(20) In the present case, the nominating commission voted to retain Judge Jones on February 28, 1992. The Governor has failed, refused, and neglected since that time to re-appoint Judge Jones to another four-year term as required by law. §440.45, Fla. Stat. specifically provides that the Governor **shall** make such re-appointment upon a vote to retain by the nominating commission. On December 15, 1993, the Governor advised that he would not comply with this law. Rather, he would seek to re-constitute the nominating commission as of January 1, 1994, under the new statute, thereby obtaining a new vote of a different commission. Under existing law, Judge Jones is already entitled to his commission at the present time.

WHEREFORE, the Petitioner requests the Court to issue an Alternative Writ of Mandamus directing the Respondent, Governor, to sign the Petitioner's commission as a Judge of Compensation Claims for a four-year term from the date of issuance as required by law, or to show cause why this Court should not make the Alternative Writ a final and absolute order.

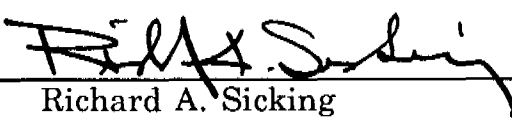
Respectfully submitted,

RICHARD A. SICKING, P.A.
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(305) 858-9181

By: 
Richard A. Sicking
Florida Bar No. 073747

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U. S. Mail to J. Hardin Peterson, Jr., Esquire, Attorney for Respondent, Office of the Governor, 209 The Capitol, Tallahassee, Florida 32399-0001, this 16th day of December, 1993.

By: 
Richard A. Sicking

APPENDIX

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Letter from Stephen L. Rosen, Chairman of the Judicial Nominating Commission, to Governor Lawton Chiles dated March 2, 1992	1
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STEPHEN ROSEN, P.A.
ATTORNEYS AT LAW

STEPHEN L. ROSEN*
RICHARD W. OSBORNE*
LEO D. GOMEZ

*PERMITTED AS A
MEMBER OF COMPENSATION LAWYERS
BY THE FLORIDA BAR

March 2, 1992

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The Honorable Lawton Chiles, Governor
The Capitol
Tallahassee, FL 32399-0001

Re: Reappointment of the Honorable J. Paul Jones as
Judge of Compensation Claims in District "L"

Dear Governor Chiles:

I am pleased to recommend that, after 13 hours of hearings concerning the reappointment of the Honorable J. Paul Jones as Judge of Compensation Claims in District "L" (Brevard County), the Statewide Judicial Nominating Commission for Judges of Compensation Claims has recommended that Judge Jones be retained for another four year term.

Currently, Judge Jones' term expires September 3, 1992.

Thirty five witnesses testified concerning Judge Jones' reappointment at the meeting which began at 10:00 a.m. in the Brevard County Court House in Titusville, Florida, and ended at 11:00 p.m. the same day.

Thank you for your kind attention in this matter.

Very truly yours,

STEPHEN ROSEN, P.A.


Stephen L. Rosen

SLR/hk

cc: The Honorable Shirley Walker, Chief Judge
The Honorable J. Paul Jones
All Members of the Judicial Nominating Committee