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AUG 22 1994

CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO.

84,231

HONORABLE LEONARD RIVKIND,  
Chief Judge of the Eleventh Judicial  
Circuit of Florida, et al.,

Petitioners,

vs.

MIGUEL GARCIA, et al.,

Respondents.

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONERS ON JURISDICTION

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### INTRODUCTION

Petitioners, Honorable Leonard Rivkind, Chief Judge of the Eleventh Judicial Circuit, in and for Dade County, Florida, et al., were the respondents in the Third District Court of Appeal. Respondents, Miguel Garcia, et al., were the petitioners in the Third District Court of Appeal.

In this brief, the parties will be referred to as they appear before this Honorable Court. The symbol "Ex." will be used to designate the exhibits contained in the appendix to this brief. All emphasis is supplied, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondents, Miguel Garcia, et al., defendants in county court prosecutions for simple battery involving domestic violence, sought the issuance of writ of mandamus requiring Petitioner to set aside Administrative Orders 92-48 and 92-49, which created the domestic violence departments of the Criminal Division of the Dade County Court and the Family Division of the Eleventh Judicial Circuit. On July 5, 1994, the Third District Court found that the administrative orders, "however denominated, ... create a specialized subject matter-related division of the trial courts which, under article V, section 7, Florida Constitution, and section 43.30, Florida Statutes, may be accomplished only by local rule, duly approved by the supreme court in accordance with Florida Rules of Judicial Administration 2.050(e)(1)." (Ex. 1).

Following the foregoing opinion, Petitioners requested that the Third District Court certify the following questions as questions of great public importance:

I.

MAY A DEFENDANT CHALLENGE THE VALIDITY OF AN ADMINISTRATIVE ORDER ISSUED BY THE CHIEF JUDGE OF A JUDICIAL CIRCUIT PURSUANT TO RULE 2.050 OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION BY FILING A PETITION FOR WRIT OF MANDAMUS OR CERTIORARI IN THE DISTRICT COURT OF APPEAL, OR MUST THE CHALLENGE BE BROUGHT BEFORE THE SUPREME COURT PURSUANT TO RULES 9.030(a)(3) AND 9.100 OF THE FLORIDA RULES OF APPELLATE PROCEDURE OR BE DIRECTED TO THE CHIEF JUSTICE OF THE SUPREME COURT THROUGH THE STATE COURTS ADMINISTRATOR PURSUANT TO RULE 2.050(b)(3) OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION?

II.

DOES A DEFENDANT HAVE THE STANDING TO CHALLENGE THE ASSIGNMENT OF HIS CASE TO A PARTICULAR DIVISION OF THE COURT WITH JURISDICTION TO HEAR THE CASE, OR ANY DEPARTMENT THEREOF, BY CHALLENGING THE CREATION OR VALIDITY OF THE DIVISION, OR DEPARTMENT, IN THE DISTRICT COURT OF APPEAL?

(Ex. 2). This motion for certification was denied on August 2, 1994. (Ex. 3). Notice invoking the jurisdiction of this Court was filed August 15, 1994.

While Petitioners' motion for certification was pending in the district court, an emergency petition for local rule to establish a domestic violence court was filed with this court. (Ex. 4). A stay of the proceedings was granted on July 27, 1994, in Case No. 84,051. (Ex. 5).

POINT ON APPEAL

WHETHER THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL IN THE INSTANT CASE EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS?

SUMMARY OF THE ARGUMENT

The position of the chief judge of a judicial circuit is defined by the Constitution of the State of Florida and Florida Statutes. The instant opinion, interpreting the authority of the chief judge of a judicial circuit and quashing administrative orders issued by the Chief Judge of the Eleventh Judicial Circuit of Florida, expressly affects a class of constitutional or state officers. This Court should exercise its discretionary jurisdiction to review the opinion issued by the Third District Court of Appeal and address the matters raised in the petition for writ of mandamus and the motion for certification filed in the district court.



ARGUMENT

THE OPINION OF THE THIRD DISTRICT COURT  
OF APPEAL IN THE INSTANT CASE EXPRESSLY  
AFFECTS A CLASS OF CONSTITUTIONAL OR  
STATE OFFICERS.

Article V of the Florida Constitution establishes the jurisdiction of the circuit courts and provides that a chief judge of each judicial circuit shall be chosen from among the judges of a circuit. Chapter 26 of the Florida Statutes establishes the duties and jurisdiction of the circuit courts and the judges of the circuit courts. Chapter 43 describes the duties of the chief judge of each judicial circuit. The chief judge of each judicial circuit is, therefore, a constitutional or state officer within the meaning of rule 9.030 (a)(2)(A)(iii) of the Florida Rules of Appellate Procedure.

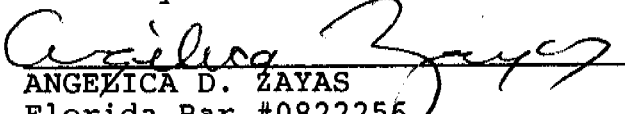
The opinion of the Third District Court of Appeal filed on July 5, 1994, expressly addresses the ability of the chief judge of a judicial circuit to establish departments within existing divisions of the county and circuit courts within the chief judge's jurisdiction. Thus, the opinion expressly affects a class of constitutional or state officers within the meaning of rule 9.030 (a)(2)(A)(iii) of the Florida Rules of Appellate Procedure. This Court, therefore, has discretionary jurisdiction to review the opinion issued by the Third District Court of Appeal and address the matters raised in the petition for writ of mandamus and the motion for certification filed in the district court.

CONCLUSION

WHEREFORE, based upon the foregoing, Petitioners respectfully request that this Court grant discretionary review in the instant cause.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONERS ON JURISDICTION was furnished by mail to Christina A. Spaulding, Counsel for Respondents, 1320 N.W. 14th Street, Miami, Florida on this 19th day of August, 1994.

  
ANGELICA D. ZAYAS