IN THE SUPREME COURT OF FLORIDA

CASE NO. 84,231

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

Petitioners,

vs.

MIGUEL GARCIA, et al.,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENTS ON JURISDICTION

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INTRODUCTION

The Honorable Leonard Rivkind, Chief Judge of the Eleventh Judicial Circuit, has petitioned this Court to exercise its discretion under article V, section 3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(A)(iii) of the Florida Rules of Appellate Procedure to review the decision of the Third District Court of Appeal in *Garcia v. Rivkind,* 19 Fla. L. Weekly D1434 (Fla. 3d DCA July 5, 1994). The Petitioner's Brief on Jurisdiction is cited as "Pet. Br.", the accompanying appendix is cited as "Pet. App.", and the exhibits it contains are designated "Ex." Respondents' appendix is cited as "Resp. App."

SUMMARY OF ARGUMENT

The petition for review should be denied because, although the chief judge of a circuit is a constitutional officer within the meaning of article V, section 3(b)(3), the decision of the Third District Court of Appeal in this case merely reiterates settled procedural law and therefore does not satisfy the jurisdictional requisites set out in this Court's decisions construing article V, section 3(b)(3).

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL DOES NOT SATISFY THE JURISDICTIONAL REQUISITES FOR DISCRETIONARY REVIEW UNDER ARTICLE V SECTION 3(b)(3) BECAUSE IT MERELY REITERATES EXISTING PROCEDURAL LAW.

Respondents do not dispute that the chief judge of a judicial circuit is a constitutional officer within the meaning of article V, section 3(b)(3) of the Florida Constitution. *See* art. V § 2(d), Fla. Const.; *see also Chief Judge of the Eighth Judicial Circuit v. Board of County Commissioners of Bradford County,* 401 So. 2d 1330, 1331 (Fla. 1981). This Court has held, however, that "[a] decision which 'affects a class of constitutional or state officers' must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state." *Spradley v. State,* 293 So. 2d 697, 701 (Fla. 1974). In the same case, this Court observed that a decision which affects only one member of a class of constitutional or state officers "in relation to the specific facts of [the] case" does not vest the Supreme Court with jurisdiction. *Id.* at 702.

In this case, the Third District Court of Appeal held that certain administrative orders issued by the Chief Judge of the Eleventh Judicial Circuit were invalid because "they create a specialized subject matter-related division of the trial courts, which, under Article V, section 7, Florida Constitutution, and section 43.30, Florida Statutes, must be accomplished only by local rule, duly approved by the supreme court in accordance with Florida Rules of Judicial Administration 2.050(e)(1)." *Garcia v. Rivkind,* 19 Fla. L. Weekly D1434 (Fla. 3d DCA July 5, 1994), Resp. App. at 1. In so holding, the court of appeal did not modify or add to existing case law or adopt an innovative construction of the relevant rules or constitutional or statutory provisions. The court merely followed

the explicit precedent of this Court and the requirements of section 43.30, Florida Statutes, and the Rules of Judicial Administration. *See Garcia,* 19 Fla. L. Weekly at D1435 (citing *Administrative Order, Fourth Judicial Circuit (Division of Courts),* 378 So. 2d 286 (Fla. 1979) *and In re Report of the Comm'n on Family Courts,* 588 So. 2d 586 (Fla. 1991)). Indeed, Chief Judge Schwartz referred in his dissent from entry of a stay to the "obvious invalidity" of the administrative orders in question. *Id.* (Schwartz, C.J., dissenting in part). Thus, although the court of appeal held that the Chief Judge of the Eleventh Judicial Circuit could establish a subject-matter division only by obtaining Supreme Court approval of a local rule, that holding is merely a recitation of well-established authority; and the Chief Judge's circumvention of those requirements is nothing more than an *ultra vires* act by a single constitutional officer.

Moreover, although petitioner attempts to broaden the significance of the court of appeal's decision by characterizing it as "address[ing] the ability of the chief judge of a judicial circuit to establish departments within existing divisions of the county and circuit courts," Pet. Br. at 7, the decision actually affects only one chief judge "in relation to the specific facts of [the] case." *Spradley,* 293 So. 2d at 701. Respondents argued below that the Dade County Domestic Violence Court consists of "departments" of existing divisions in name only. For example, it was undisputed that, while the administrative orders in question purported to create a domestic violence department *within* the Criminal Division of the County Court, the domestic violence "department" is not, in fact, under the administrative control of the county court criminal division but has its own administrative judge who reports directly to the Chief Judge.[1] The court of appeal therefore concluded

[1]The domestic violence court is also unique in having a hybrid of county and circuit court jurisdiction as well as jurisdiction over both civil and criminal matters. (continued...)

that "however denominated" the "departments" comprising the domestic violence court in fact constituted a subject-matter "division." *Garcia,* 19 Fla. L. Weekly at D1535.

In *Spradley*, this Court concluded that the decision of the district court of appeal affected at most a "sub-class" of assistant state attorneys who had failed to record their oaths of office as required by statute and the corresponding "substantive and procedural law regarding the sufficiency of indictments in general." 293 So. 2d at 702. Similarly, the decision of the Third District Court of Appeal below affects only a "sub-class" of chief judges who fail to obtain Supreme Court approval for new subject-matter divisions as required by statute and the corresponding substantive and procedural law regarding the validity of administrative orders in general. The decision below does not, therefore, satisfy the jurisdictional requisities of *Spradley*. The petition for review should therefore be denied.

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[1](...continued)
See Emergency Petition for Local Rule to Establish a Domestic Violence Division, at 1, Pet. App., Ex. 4. The creation of a "division" that combines circuit and county court jurisdiction may also violate Article V, section 1 of the Florida Constitution, which prohibits the state from creating any courts in addition to those established by the constitution. A court with both circuit and county court jurisdiction is not a "division" of a single constitutionally-established court but rather is a new, hybrid court not authorized by the Florida Constitution.

CONCLUSION

For the foregoing reasons, respondents respectfully submit that this Court lacks jurisdiction under article V, section 3(b)(3) to review the decision of the Third District Court of Appeal in this case or, alternatively, that even if this Court does have jurisdiction, it should decline to grant discretionary review in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were forwarded by mail to ANGELICA D. ZAYAS at the Office of the Attorney General, 401 N.W. Second Avenue, Post Office Box 013248, Miami, Florida 33101, this 12th day of September 1994.

Christina Spaulding

CHRISTINA A. SPAULDING
Special Assistant Public Defender

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FLORIDA, THIRD DISTRICT

APPENDIX

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NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1994

MIGUEL GARCIA and FELIPE BOUZA and CHARLIE WILLIAMS,

Petitioners,

vs.

THE HONORABLE LEONARD RIVKIND, Chief Judge of the Eleventh Judicial Circuit of Florida, and THE HONORABLE HARVEY RUVIN, Clerk of the Eleventh Judicial Circuit of Florida,

Respondents.

CASE NOS. 94-705
94-806

Opinion filed July 5, 1994.

A case of Original Jurisdiction - Mandamus.

Bennett H. Brummer, Public Defender and Christina A. Spaulding, Special Assistant Public Defender, for petitioners.

Robert A. Butterworth, Attorney General and Angelica D. Zayas, Assistant Attorney General, for respondents.

Before SCHWARTZ, C.J., and JORGENSON and GODERICH, JJ.

PER CURIAM.

The petitioners, who are defendants in county court prosecutions for simple battery which involve domestic violence, seek the issuance of writ of mandamus requiring the respondent chief judge of the Eleventh Circuit to set aside Administrative Orders 92-48 and 92-49. We grant the petitions.

The orders in question purported to establish a domestic violence "department" of the Criminal Division of the Dade County Court, to which the petitioners' cases are assigned, and the Family Division of the Eleventh Judicial Circuit. It is obvious that, however denominated, they 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). Administrative Order, Fourth Judicial Circuit (Division of Courts), 378 So. 2d 286 (Fla. 1979); In re Report of the Comm'n on Family Courts, 588 So. 2d 586 (Fla. 1991); see State ex rel. Zuberi v. Brinker, 323 So. 2d 623 (Fla. 3d DCA 1975). Compare Fla.R.Jud.Admin. 2.050(b)(3) & (4). Mandamus is granted and the administrative orders under review are therefore quashed.

To avoid disruption in the judicial administration of the courts in Dade County, by permitting application for the adoption of an appropriate local rule on the subject, we withhold issuance of the peremptory writ and allow the orders to remain in effect for thirty days, and thereafter for such time as the supreme court may allow.

Mandamus granted.

JORGENSON and GODERICH, JJ., concur.

SCHWARTZ, C.J. (dissenting in part).

In view of the obvious invalidity of the rules before us, and the failure to take appropriate steps to correct this situation before now, I see no reason to delay issuance of the preemptory writ. I would invalidate the rules forthwith and order that the petitioners' cases be reassigned according to the blind filing system.