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IN THE SUPREME COURT OF THE STATE OF FLORIDA

JOE A. WILD, JUDGE, ETC.,

Petitioner,

vs.

ROBERT LEE DOZIER,

Respondents.

CASE NO.: 85,050
4DCA CASE NO.: 94-1104

AMICUS CURIAE BRIEF OF L. B. VOCELLE, Chief Judge of the Nineteenth Judicial Circuit, in Support of Joe A. Wild, Judge, etc., Petitioner

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STATEMENT OF THE FACTS

L. B. Vocelle is the duly qualified and appointed Chief Judge of the Nineteenth Judicial Circuit for a term beginning July 1, 1993 through June 30, 1995 (A.1).

On January 18, 1995, the Fourth District Court of Appeal filed its opinion on Rehearing En Banc in Case No. 94-1104 styled Robert Lee Dozier v. The Honorable Joe A. Wild, etc. and granted Dozier's requested writ of prohibition against The Honorable Joe A. Wild, Acting Circuit Judge and, in addition, quashed the administrative orders appointing two county judges to act as circuit judges in Indian River County, Florida. L. B. Vocelle, as Chief Judge of the Nineteenth Judicial Circuit, had filed a Motion to Intervene or, in the alternative, a motion to be added as a party respondent in the Fourth District proceeding. Said motion was denied in the Fourth District's opinion on rehearing "for lack of standing" (Slip Op. at 1).

The Attorney General's office, on behalf of the Petitioner, Joe A. Wild, filed its Notice to Invoke Discretionary Jurisdiction with this Court under certificate of service dated January 19, 1995. This brief is submitted as amicus curiae pursuant to this Court's Order Postponing Decision on Jurisdiction and Briefing Schedule dated January 24, 1995.

SUMMARY OF ARGUMENT

The decision of the Fourth District Court of Appeal herein conflicts with the decision of the Second District Court of Appeal in J.G., et al. v. The Honorable Howard Holtzendorf, 20 FLW D239 (Fla. 2d DCA, December 21, 1994). Further, the Fourth District decision appears to run afoul of this Court's decision in Cruso v. Rowls, 472 So.2d 1163 (Fla. 1985). Specifically, the chief judge of a judicial circuit in the State of Florida should be allowed to appoint county judges to circuit court duties for successive and repeated six month assignments so long as county judges continue to do county court work in addition to circuit court work.

Further, it is contended that the district courts of appeal do not have jurisdiction to interfer with the authority of chief judges to appoint county judges, which authority is expressly granted to chief circuit judges through the Florida Supreme Court.

Last, as a matter of public policy, this Court should clarify exactly when and for how long a chief judge may appoint county judges to do circuit court work and under what circumstances. Such a decision is necessary for the effective and efficient administration of justice and is of great public importance. Therefore, this Court should answer the question certified by the Fourth District Court of Appeal in the affirmative and should issue an opinion giving clarification to the chief judges of this state.

ARGUMENT

POINT I

JURISDICTION

This Court has jurisdiction of this cause pursuant to Article V, Section 3(4) of the Constitution of the State of Florida and Fla. R. App. P. 9.030(a)(2)(A)(v) in that the Fourth District Court of Appeal certified a question of great public importance in its rehearing en banc. See, e.g., Susco Car Rental Systems of Florida v. Leonard, 112 So.2d 832 (Fla. 1959).

Additionally, this Court has jurisdiction pursuant to Article V, Section 3(3) of the Constitution of the State of Florida and Fla. R. App. P. 9.030(a)(2)(A)(iv). Respectfully, amicus curiae would suggest that the decision of the Fourth District Court of Appeal herein expressly and directly conflicts with the decision of the Second District Court of Appeal in J. G., et al. v. The Honorable Howard Holtzendorf, 20 FLW D239 (Fla. 2d DCA, December 21, 1994) (A.2).

Amicus curiae would also respectfully suggest that jurisdiction lies with this Court pursuant to Article V, Section 3(3) in that the decision of the Fourth District Court of Appeal "expressly affects a class of constitutional or state officers", to-wit: the ability of the chief judges of Florida's judicial circuits to appoint county judges to do circuit work.

Last, amicus curiae would point out that this Court continues to have jurisdiction over this matter for the reasons set forth above, irrespective of the fact that amicus curiae previously

flied a petition for writ of prohibition and to transfer appellate proceedings in this Court. See, L.B. Vocelle, etc. v. John W. Dell, etc., et al., Case Number 84,500 (Florida), which petition was denied by order of this Court dated December 15, 1994.

The denial of a writ without opinion cannot be the law of the case. See, Carter v. State, 604 So.2 536 (Fla. 3d DCA 1992) (prohibition is a discretionary writ); see, e.g., State of Florida exril, Florida Real Estate Commission v. Anderson, 164 So.2d 265 (Fla. 2d DCA 1964); and Bing v. A.G. Edwards and Sons, Inc., 498 So.2d 1279 (Fla. 4th DCA 1987).

> "Prohibition is a discretionary writ, and it is thus unlikely that it can have the effect of the law of the case."

Lamb v. Leiter, 603 So.2d 632 n.4 (Fla. 4th DCA 1992).

POINT II

THE FOURTH DISTRICT COURT OF APPEAL LACKED JURISDICTION TO CONSIDER THE PROPRIETY OF TEMPORARY JUDICIAL ASSIGNMENTS MADE BY THE CHIEF JUDGE OF A JUDICIAL CIRCUIT.

Amicus curiae does not believe that the Fourth District Court of Appeal had jurisdiction to consider this matter and to issue its en banc opinion which is the subject of this appeal. Because this matter is of great public importance to all judicial circuits within the State of Florida, amicus curiae respectfully suggests that this Court decide whether district courts of appeal have jurisdiction to consider the propriety of the temporary judicial assignments that amicus curiae, as chief judge, made within Indian River County.

Article V, Section 2(a) of the Florida Constitution provides: "the supreme court shall adopt rules for...the administrative supervision of all courts...".

In subsection (b), the Chief Justice of the supreme court is constitutionally authorized "to assign justices or judges...to temporary duty in any court...and to delegate to a chief judge of a judicial circuit the power to assign judges for the duty in his respective circuit".

Such delegation is to be found in Rule 2.050 of the Rules of Judicial Administration. Said rule and its subsections addressed the duties of the chief judges of the several judicial circuits, including the authority to order temporary judicial assignments. Fla. R. Jud. Adm. 2.050(4). In making such assignments, however, a chief judges is explicitly held "responsible to the Chief Justice of the supreme court". Fla. R. Jud. Adm. 2.050(2).

In the case of a circuit where there is no resident circuit judge, the legislature has authorized the Chief Justice of the supreme court in counties not having a resident circuit judge to temporarily appoint one from among the county judges. Section 26.57, Florida Statutes (1993).

Thus, the Chief Justice is solely vested with the administrative power to assign judges and to delegate such power to chief judges of the judicial circuits. Although district courts of appeal are empowered to hear appeals of orders of trial courts entered "on review of administrative action", and have "the power

of direct review of administrative action, as prescribed by general law [,]" Article V, Section 4(b)(1) and (2), such powers are not in issue here.[1]

In short, not the Florida Constitution, not any statute, and not any rule vests the district courts of appeal with power over judicial assignments. Such power is expressly and exclusively vested in the Chief Justice which, in part, the Chief Justice has delegated to L. B. Vocelle, as Chief Judge of the Nineteenth Judicial Circuit, as authorized under the Florida Constitution.

Of paramount concern for the purposes of this brief is that the Fourth District's decision went well beyond the issue presented by the Robert Lee Dozier, when the Fourth District not only quashed the order denying disqualification which was at issue, but further, quashed "the administrative order appointing Judge Wild through 1994" (Slip Op. p. 6) (A.2).

Amicus curiae emphasizes that, as Chief Judge of the Nineteenth Circuit, he was not made a party to any of the proceedings below.

It is respectfully submitted that the Fourth District exceeded its jurisdiction and usurping of the authority of this Court and its Chief Justice. Although the appellate proceedings in Payret v. Adams, 500 So.2d 136 (Fla. 1986) and Crusoe, supra, originated in district courts of appeal, no question of district court of appeal jurisdiction was raised in either of those cases.

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[1] A general law is a statute that "operates universally throughout the state...". Dept. of Bus. Reg. v. Classic Mile, Inc., 541 So.2d 1155, 1157 (Fla. 1989).

On the other hand, from the opinion in Tradwell v. Hall, 274 So.2d 537 (Fla. 1973), it appears that the review process in said case originated and concluded in the supreme court.

It is suggested that the supervisory authority over judicial assignments was vested in the supreme court to permit it to exercise plenary control over the judicial system of this state. The supreme court is best able to discern and comprehend the need for and appropriate length of temporary assignments of judges in the several judicial circuits. There is no intimation that supervision of such assignments was intended to be a two step process--first, the district courts of appeal and then, the supreme court. Since such control is specifically vested in the supreme court, under the rule that the mention of one thing implies the exclusion of other things, Gershuny v. Martin McFall Mess. An. P.A., 539 So.2d 1131, 1132 (Fla. 1989), the district courts of appeal are without jurisdiction over circuit court judicial assignments.

POINT III

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN J.G., ET AL. V. THE HONORABLE HOWARD HOLTZENDORF, 20 FLW D239 (FLA. 2D DCA, DECEMBER 21, 1994)

In its recent opinion in J.G., et al. v. The Honorable Howard Holtzendorf, 20 FLW D239 (Fla. 2d DCA, December 21, 1994), the Second District Court of Appeal approved the procedure in Desoto County, Florida, whereby a county judge was successively assigned from July 1, 1991 through December 1994 by the chief judge

of the Twelfth Judicial Circuit. In so deciding, the Second District found that the repeated six month assignments did not violate this Court's decision in Payret v. Adams, 500 So.2d 1136 (Fla. 1986) and further, declined to follow the Fourth District's original opinion (prior to its opinion on rehearing) in Dozier v. Wild, 19 FLW D2068 (Fla. 4th DCA, September 28, 1994). Instead, the Second District quoted at length this Court's decision in Crusoe v. Rowls, 472 So.2d 1163 (Fla. 1985) in approving the successive assignments of the county judge in Desoto County. In so holding, the Second District made the following distinctions:

1) "The respondent [county judge] was not assigned indefinitely solely to circuit court duties."

2) "The respondent [county judge] is repeatedly given six month assignments in circuit court."

3) That those repeated six month assignments "in addition to permitting him to fulfill his county judge duties, [also permitted] him to aid in handling the circuit court case load."

Those three criteria are also present in the instant case. In its opinion on rehearing en banc, the Fourth District noted that the two county judges at issue were also "repeatedly assigned by the chief judge of the Nineteenth Judicial Circuit for six month periods to serve as an acting circuit court judge..." (Slip Op. at 1).

Further, there is virtually no difference in the successive "temporary" assignments in Holtzendorf and Dozier. The

only difference is the way in which the Second District and the Fourth District construed the term "temporary". In Holtzendorf, supra, the term was held to include repeated six month assignments of a circuit judge in county court, which county judge continued with his county judge duties and which successive assignments lasted over three years.

Likewise herein, one of the county judges also was successively assigned to six month terms for four years and one county judge began his successive assignments in January of 1994. Like Holtzendorf, both county judges herein continued with their county court duties. (Although the record has not been transmitted to this Court, the appendix to your amicus curiae's motion to intervene in the Fourth District proceedings contains certified copies of all administrative orders appointing county judges to circuit court duties in Indian River County since 1990. A reading of those orders contained at A.2 in the Appendix to the Motion of L.B. Vocelle, as Chief Judge of the Nineteenth Judicial Circuit to intervene in the Fourth District proceedings indicate that the appointments to circuit court were temporary only and that the county judges continued to do their normal county court work load.) Thus, an express and direct conflict exists with regard to the decision of the Fourth District herein which concluded that the successive assignments violated Payret and Crusoe and the Second District's opinion in Holtzendorf, which concluded that the same type of successive six month assignments did not violate this Court's holdings in Payret and Crusoe. Respectfully, your amicus

curiae would suggest that the reasoning in Holtzendorf is the better reasoning and should be adopted by this Court.

POINT IV

A COUNTY COURT JUDGE SHOULD BE PERMITTED TO BE ASSIGNED SUCCESSIVELY AND REPEATEDLY IN SIX MONTH ASSIGNMENTS EVEN EXTENDING OVER SEVERAL YEARS IN ORDER TO PRESIDE IN A CIRCUIT COURT OVER ONE-HALF OF ALL FELONY CASES.

The Fourth District, in its opinion on its rehearing en banc, certified the following question as being one of great public importance:

> MAY A COUNTY COURT JUDGE BE ASSIGNED SUCCESSIVELY AND REPEATEDLY IN SIX MONTH ASSIGNMENTS OVER SEVERAL YEARS TO PRESIDE IN THE CIRCUIT COURT OVER HALF OF ALL FELONY CASES IN A COUNTY?

Respectfully, this is no different from the question which was answered in Holtzendorf, supra by the Second District. Specifically, this case is similar to this Court's decision in Crusoe v. Rolls, 472 So.2d 1163 (Fla. 1986). There, the supreme court upheld successive administrative orders appointing a county court judge to hear child support enforcement proceedings for a successive period of two and one-half years. The Court noted that his was a proper use of the chief judge's jurisdiction to maximize efficient administration of justice in the Second Judicial Circuit. Id. at 1165. The supreme court specifically noted that:

> "County judges were not assigned to hear all support orders, but only those falling in a specified class. Obviously, the chief judge felt he needed additional judicial manpower to promptly hear support cases."

Id. at 1165.

This is the situation in the case at bar. Judge Wild and Judge Balsiger were not assigned all felony cases since 1990. This has only been the situation since 1994. Your amicus curiae has determined that this was necessary in order to supply judicial manpower to promptly hear these types of cases.

In its slip opinion, the Fourth District determined that the instant situation was not like Crusoe but was more like that in Payret v. Adams, 500 So.2d 136 (Fla. 1986). Payret is inapposite. In Payret, a county judge effectively became a circuit judge in the Glades Courthouse Annex in the Fifteenth Judicial Circuit, In and For Palm Beach County. There, the county judge performed no county court duties and only acted as a circuit judge, in fact he was the acting circuit court judge for the Glades District for all practical purposes. Here, Judges Wild and Balsiger each hear fifty percent of the felony cases since 1994 (not since 1990), in addition to their other county court duties (A.2). (Again, since the record has not been transmitted to this Court, your amicus curiae relies on his Appendix to his motion to intervene in the Fourth District proceedings at A.2, which contained certified copies of all administrative orders appointing county judges to circuit court duties in Indian River County since 1990.) As noted in both Crusoe and Payret, when a county court judge is assigned only a portion of his time doing circuit court work, it should be for an assignment of no more than 6 months as opposed to a shorter assignment if the county court judge was doing solely circuit court work. Thus, the order of L. B. Vocelle, as Chief Judge of the

Nineteenth Judicial Circuit, appointing Judges Wild and Balsiger to handle felony work for more than six months at a time should be affirmed.

POINT V

CHIEF JUDGES OF THE CIRCUIT COURTS MUST BE GIVEN FLEXIBILITY TO MEET INCREASING JUDICIAL DEMANDS IN THE FACE OF FLORIDA'S GROWING POPULATION.

The above concern was expressly recognized by the Fourth District in its en banc decision (Slip Op. at 6). Attached to your amicus curiae's Appendix to motion to intervene in the lower court proceedings, which will be part of the record transmitted to this Court, are the Indian River County assignments of county judges to circuit court work (A.2), the Okeechobee County assignments of county judges (A.3), and the Martin County assignments of county judges (A.4).

These counties are also in the Nineteenth Judicial Circuit and those assignments are also in jeopardy. In Okeechobee County, a county court judge was appointed to act as a circuit judge to hear all felonies. In Martin County, county judges were assigned to hear 10% of the felonies, less capital and life felonies. These orders were initially put into effect on January 1, 1994 and, because of the tremendous case load, were subsequently reinacted by the chief judge upon a determination that these assignments did not interfer with the county judges' other county court work.

Your amicus curiae, as Chief Judge of the Nineteenth Judicial Circuit, represents to this Court that the temorary assignment of county judges to acting circuit judges in Indian River, Martin and Okeechobee Counties, three out of the four counties of the Nineteenth Judicial Circuit, was necessitated by

the tremendous population growth in the Nineteenth Judicial Circuit, together with the limited number of judges in the circuit. Another reason was the recently mandated creation of the family court division. Faced with those constraints and the effect of the Fourth District's decision on the administration of justice in the Nineteenth Judicial Circuit, your amicus curiae would request that this Court adopt the reasoning of the Second District Court of Appeal in Holtzendorf and otherwise approve the successive appointments of county judges for repeated six month terms so long as those county judges are permitted to continue with their county court duties.

Your amicus curiae, as Chief Judge of the Nineteenth Judicial Circuit, would further ask this Court to declare that the internal assignments of county judges in the Nineteenth Judicial Circuit, as presently made, be validated.

Finally, because of the great public importance of this issue, your amicus curiae, as Chief Judge of the Nineteenth Judicial Circuit, would request that this Court either modify the certified question presented by the Fourth District or, in addition to same, answer the following:

> **MAY A CHIEF JUDGE OF A JUDICIAL CIRCUIT ENTER AN ADMINISTRATIVE ORDER FOR COUNTY COURT JUDGES TO PERFORM CIRCUIT COURT ASSIGNMENTS WITHOUT ANY TIME LIMITATION WHERE SUCH ASSIGNMENT IS NECESSARY FOR THE ADMINISTRATION OF JUSTICE AND CASE MANAGEMENT WITHIN A PARTICULAR JUDICIAL CIRCUIT WHERE THE CHIEF JUDGE IS SATISFIED THAT A COUNTY COURT JUDGE HAS AMPLE TIME TO CONTINUE TO FULFILL HIS COUNTY COURT RESPONSIBILITIES.**

CONCLUSION

Your amicus curiae, as Chief Judge of the Nineteenth Judicial Circuit, requests that this Court answer both the restated certified question herein, as well as the question certified by the Fourth District, in the affirmative, that this Court clarify its position on the jurisdiction of the district courts to interfer with the power of chief judges to assign county judges, and that this Court set forth explicit and definitive guidelines for chief judges of judicial circuits to assign county court judges to prevent this question from arising in the future.

Respectfully submitted,

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By:________________________
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail, postage prepaid, to the following:

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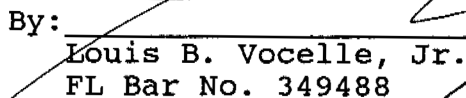

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