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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 85,050

THE HONORABLE JOE A. WILD,
County Court Judge,

Petitioner,

vs.

ROBERT LEE DOZIER,

Respondent.

****

ON PETITION FOR CERTIORARI REVIEW

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PETITIONER'S REPLY BRIEF ON THE MERITS

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SUMMARY OF THE ARGUMENT

POINT I - Under Fla. R. Jud. Admin. 2.050 a challenge to the propriety of an administrative order must be addressed directly to the Chief Justice of the Florida Supreme Court by the Court Administrator. As such, Respondent had no standing, and the Fourth District Court had no authority to quash the administrative order. Therefore, the decision of the District Court quashing the order must be reversed.

POINT II - The question certified by the District Court to be one of great public importance must be answered in the affirmative. Because Judge Wild was assigned to act as circuit judge for only half of felony cases in Indian River as needed to assist the circuit judges, not to replace them, and he continued to perform all his county court judge duties, the appointment was **temporary**, and as such the administrative order was properly entered. The decision of the District Court quashing the order must be reversed.

POINT I

WHETHER THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, ERRED IN QUASHING ADMINISTRATIVE ORDER OF SEPTEMBER 28, 1993, WHICH WAS ISSUED BY THE CHIEF JUDGE PURSUANT TO SECTION 2(b)(d), ARTICLE V OF THE FLORIDA CONSTITUTION AND RULE 2.050 (b)(3)(4), RULES OF JUDICIAL ADMINISTRATION?

In reply to Respondent's arguments, Petitioner hereby reasserts the arguments made in the initial brief.

Petitioner submits that Respondent has misconstrued Petitioner's position in the initial brief. Petitioner maintains that the District Court had jurisdiction to consider Respondent's Petition for Writ of Prohibition to prevent Petitioner from presiding over his criminal trial in circuit court case No. 93-1305 CF, after the motion to recuse the judge had been denied. Petitioner's position, however, is that the District Court was without authority to quash the administrative order.

While Dozier could challenge Judge Wild's authority to preside over his particular case, cf. Hartley v. State, 20 Fla. L. Weekly D186, 189 (Fla. 4th DCA Jan. 11, 1995), and the District Court had the authority to review the denial of the motion to recuse Judge Wild, the District Court had no authority to proceed and quash the administrative order assigning Judge Wild for temporary circuit court duty.

This is so because, while Respondent had standing to appeal the denial of his motion to recuse, Dozier had no standing to challenge internal court policy, which is a matter of judicial administration and the proper concern of the judges of the court

and of the administrative supervision of the judicial system. See Kruckenberg v. Power, 422 So. 2d 994, 996 (Fla. 5th DCA 1982). Respondent's challenge to Petitioner presiding over his criminal trial was that Judge Wild by virtue of the continuous administrative orders had become "a *de facto* judge." A *de facto* trial judge is a "judge who functions under color of authority but whose authority is defective in some procedural form." Card v. State, 497 So. 2d 1169, 1173 (Fla. 1987). Consistently, this Court has stated that a *de facto* judge's acts are valid, see Stein v. Foster, 557 So. 2d 861, 862 (Fla. 1990); Card, 497 So. 2d at 1169. And, many courts have determined that a *de facto* trial court has jurisdiction over the matters which it handled. See Card, 497 So. 2d at 1173-1174; State v. King, 426 So. 2d 12, 14 (Fla. 1982); Willie v. State, 600 So. 2d 479, 481 (Fla. 1st DCA 1992); Kruckenberg v. Powell, 422 So. 2d at 996; Grossman v. Selewacs, 417 So. 2d 728, 730 (Fla. 1982); In re Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978); In re Bentley, 342 So. 2d 1045, 1046 (Fla. 4th DCA 1977). See also Banker's Life and Casualty Co. v. Gaines Const. Co., 191 So. 2d 478, 479 (Fla. 3d DCA 1966). Thus, because Judge Wild was qualified and properly assigned to preside over Respondent's trial, the motion to disqualify was properly denied, and the District Court could have affirmed the denial of the motion to disqualify by which Respondent challenged being tried by Judge Wild alleging lack of jurisdiction.

Florida Rule of Judicial Administration 2.050 provides for the review of an administrative order. Rule 2.050(b)(3) states that

questions concerning the administration or management of a circuit court "shall" be directed to the chief justice of the Supreme Court through the state courts administrator. As an example of proper procedure under the rules, Petitioner points to Administrative Order, Fourth Judicial Circuit (Division of Courts), 378 So. 2d 286 (Fla. 1979), wherein this Court considered a petition of the county judges of the Fourth Circuit to review the administrative order entered by the chief judge.

The assignment of specific court cases between or among the judges of a multi-judge court is a matter within the internal government of the court, and is directed by policy adopted by and through the chief judge. Gallagher v. State, 476 So. 2d 754, 756 (Fla. 5th DCA 1985); Condominium Owners v. Century Village East, 428 So. 2d 384, 386 (Fla. 4th DCA 1983); Kruckenberg, 422 So. 2d at 995-996; In re Guardianship of Bentley, 342 So. 2d 1045, 1047 (Fla. 4th DCA 1977); Bankers Life and Casualty Co. v. Gaines Construction, 191 So. 2d 478, 479 (Fla. 3d DCA 1966); Peters v. Meeks, 171 So. 2d 562, 563 (Fla. 2d DCA 1965).

There is an important distinction between the arguments made by Respondent (AB 9-16), and the issue as presented by Petitioner in the initial brief. Once again, the District Court had jurisdiction to consider the petition for writ of prohibition as it related to the motion for disqualification in Dozier's individual case. However, the District Court had no authority to quash the administrative order. The quashing of the administrative order puts in question the proper running of the criminal division of the

circuit court in Indian River County for the entire 1994 years, and affects other cases than just Respondent's.

The impropriety of the quashing of the administrative order is more apparent when the facts that led to the challenged order are considered. The Nineteenth Judicial Circuit is comprised of Indian River, Martin, St. Lucie and Okeechobee Counties. These counties have undergone tremendous population growth in recent years, but no comparable increase in the number of judicial appointments have taken place. Further, the recently mandated creation of the Family Court Division has added to the shortage of circuit judges in the Nineteenth Judicial Circuit. Faced with these constraints the Chief Judge of the Nineteenth Judicial Circuit exercised his authority under Rule 2.050, and made the temporary assignments of a county court judge to act as circuit judge called into question now.

The administrative orders, beginning with those entered in 1990, (Appendix, pages 4-42), reflect that neither Judge Wild nor Judge Balsiger ever ceased functioning as county judges. Said orders further reflect that, beginning in January of 1994, in addition to the regular county court duties in Indian River County, Judge Wild and Judge Balsiger were also called upon to each handle one-half of the felony case load for Indian River County. This was the first time that both were called upon to temporarily handle the entire felony case load for Indian River County. Until 1994, only one of the county judges had been assigned to temporarily handle a portion of the Indian River County felony case load in addition to

his county cases. From these assignments, it is clear that they were intended "to supplement and aid the circuit judges rather than to replace them." Crusoe v. Rowls, 472 So. 2d at 1165.

These facts clearly show that the exercise of the Chief Judge's duties in making the necessary assignments under Florida Rule of Judicial Administration 2.050(4) should not have been **summarily** quashed by the District Court without the appropriate hearings. Therefore, the decision of the district court that quashes the administrative order must be reversed. Any changes or review of the administrative order must be left up to this Court after the appropriate cause of action has been taken to review such administrative order.

POINT II

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?

Petitioner maintains that under the facts and circumstances of this particular case, the certified question as above set out must be answered in the **affirmative.** Petitioner once again reasserts the arguments made in its initial brief in reply to Respondent's arguments in its answer brief.

In specific response to Respondent's statements at page 20 of the answer brief that "These county judges had become, for all practical purposes, the circuit court judges for the entire class of cases to which they were appointed," Petitioner submits that Judge wild and Judge Balsiger had clearly **not** become "circuit court judges." Both judges still performed all their county court duties and performed circuit court duties only on temporary assignments to assist in manning all the circuit court divisions as need. Appendix, pages 4-42.

The administrative orders demonstrate that, beginning in January of 1994, in addition to the regular county court duties in Indian River County, Judge Wild and Judge Balsiger were also called upon to each handle one-half of the felony case load for Indian River County. This was the first time that both were called upon to temporarily handle the entire felony case load for Indian River County. Until 1994, only one of the county judges had been assigned to temporarily handle a portion of the Indian River County

felony case load in addition to his county cases. From these assignments, it is clear that they were intended "to supplement and aid the circuit judges rather than to replace them." Crusoe v. Rowls, 472 So. 2d at 1165.

These facts support the contention that the order was a temporary assignment that complied with the mandate set out in Crusoe. It is clear therefore that Judge Wild continued to fulfill his duties as a county judge. In addition, he has been assigned to share some circuit court duties involving felony cases.

CONCLUSION

WHEREFORE, based on the above and foregoing arguments and authorities cited therein, the State of Florida respectfully submits that the decision of the district court should be **QUASHED** and the cause remanded for further proceedings.

Respectfully submitted,

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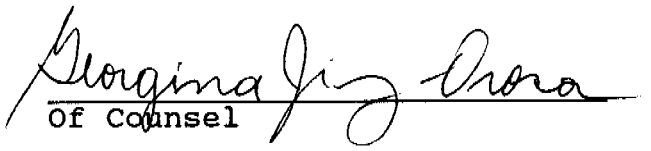
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Reply Brief on the Merits" has been furnished by U. S. Mail to: JEFFREY H. GARLAND, ESQUIRE, Counsel for Respondent, 102 North Second Street, Fort Pierce, Florida 34950, this 15th day of February, 1995.



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