

FILED

SID J. WHITE

AUG 10 1995

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NOS. 85,899; 85,900; 85,901

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

**BILLIE BOLLINGER,
DANIEL HOLSMAN,
MARK STLUKE DANIEL,**

Petitioners,

vs.

**THE HONORABLE GEOFFREY D. COHEN,
Circuit Court Judge, 17 Judicial Circuit,
and, THE STATE OF FLORIDA**

Respondents.

RESPONDENTS' BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the Honorable Geoffrey Cohen, is the judge assigned to preside over the trials on misdemeanor charges filed by the State against each of the three petitioners in the Domestic Violence Court that was recently established in the Seventeenth Judicial Circuit. Each petitioner filed a petition for writ of prohibition in the Fourth District Court of Appeal. Judge Cohen, was the Respondent in the Petition for Writ of Prohibition filed with District Court of Appeal. The Fourth District denied issuance of the writ and certified a question of great public importance to this court.

In this brief, the parties shall be referred to as they appear before this Honorable Court.

In this brief, the symbol "A" will be used to denote the appendix attached to the initial brief.

All emphasis in this brief is supplied by Respondents unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondents accepts the statement of case and facts as found in the initial brief for the purpose of this appeal with the following clarification.

1. The administrative orders entered by the Chief Judge of the Seventeenth Judicial Circuit assign Respondent, Judge Geoffrey Cohen "to temporary duty in the County Court of Broward county, Florida, for the purpose of hearing and disposing of all matters which may come before him...having all the power and jurisdiction of a County Court Judge in said cases." (see copies of administrative orders in appendix to initial brief)

SUMMARY OF THE ARGUMENT

A circuit court judge may be assigned, via administrative order, as a temporary county court judge to assist another county court judge in handling 20 percent of the misdemeanor trials in a duly established domestic violence court. This court has recognized that domestic violence issues must be addressed in an expeditious, efficient, and deliberative manner. To accomplish this the Chief Judge of the Seventeenth Judicial Circuit promulgated the administrative orders at issue. The Chief Judge was utilizing effectively the judicial manpower available to the Domestic Violence Court.

POINT I

WHETHER A CIRCUIT JUDGE MAY BE ASSIGNED ON A REGULAR BASIS TO PART-TIME DUTIES AS A COUNTY JUDGE, PRESIDING OVER MISDEMEANOR PROSECUTIONS, NOT ARISING OUT OF THE SAME CIRCUMSTANCES AS A PENDING FELONY, INCIDENT TO THE OPERATION OF A DULY INSTITUTED DOMESTIC VIOLENCE COURT?

Respondents maintains that under the facts and circumstances of this particular case, the certified question as above set out must be answered in the **affirmative**.

Initially, respondents would like to focus this court's attention on one very important fact. Petitioner's argument is based on the erroneous factual premise that Judge Cohen would be acting as a circuit court judge when he presides over petitioners' misdemeanor trials. This is not true. Petitioners ignore the fact that the Chief Judge of the Seventeenth Judicial Circuit has entered a series of administrative orders assigning Judge Cohen "to temporary duty in the County Court of Broward County, Florida, for the purpose of hearing and disposing of all matters which may come before him...having all the power and jurisdiction of a County Judge in said cases." Copies of the orders are attached to the initial brief.

Such cross assignments of circuit court judges assigned to domestic violence courts was anticipated by this court in In re Report of the Commission on Family Courts, 646 So. 2d 178, 180 (Fla. 1994). (hereinafter Family Courts III) In Family Courts III this court noted: "This legislative action effectively placed domestic violence injunction violations within the jurisdiction of

county court criminal judges and removed those violations from the jurisdiction of circuit court family judges unless those circuit judges were specifically assigned to hear those matters as county court judges." *Id.* at 180. (emphasis added)

On October 11, 1994 this court issued an order in case no. 84, 292 which approved the Seventeenth Judicial Circuit Local Rule 1-B. This local rule established the Domestic Violence Court in the Seventeenth Judicial Circuit. Since that date the Chief Judge of the Seventeenth Judicial has entered a series of administrative orders which allows Circuit Judge Geoffrey Cohen to preside over approximately 20 percent of domestic violence misdemeanor trials as a temporary county court judge. The entry of such administrative orders is in full compliance of this court's mandate in Family Courts III where this court noted: "we in no way intend this mandate to include the approval of routine matters generally included in administrative orders such as the assignment of judges to divisions. *Id.*, at 182, note 2. Clearly, the Chief Judge of the Seventeenth Circuit entered the orders to help alleviate crowded dockets in the Domestic Violence Court.

In Crusoe v. Rowls, 472 So. 2d 1163, 1165 (Fla. 1985) this Court noted that circuit court judges had frequent occasion to sit as county court judges. Additionally, this court stated: "When, by some good fortune, judicial time is available, it is not time to go fishing or golfing but rather to make oneself available to alleviate crowded dockets in all levels of the court system." *Id.* at 1165. The cross assignment presented at bar is extremely

important to assure the prompt administration of justice in the Domestic Violence Court in the Seventeenth Judicial Circuit. When this court reviewed the establishment of several domestic violence courts, including the one in the Seventeenth Judicial Circuit, it noted "the extreme importance of having domestic violence issues addressed in an expeditious, efficient, and deliberative manner. In particular, we do not want these important issues to become bogged down in an administrative morass." Family Courts III, 646 So. 2d at 182. The Chief Judge of the Seventeenth Judicial Circuit, acting pursuant to Florida Rule of Judicial Administration 2.050¹, initiated the cross assignment at issue to facilitate the expeditious and efficient administration of justice in the county court portion of the Domestic Violence Court of the Seventeenth Judicial Circuit. Respondents believes that the temporary assignment of Judge Cohen as a county court judge is in full compliance with this court's directions in Family Courts III.

Petitioner's reliance on Payret v. Adams, 500 So. 2d 136 (Fla. 1986) is misplaced. In Payret, a county court judge was annually reassigned over five years to be the circuit court judge for the Glades district in Palm Beach County. 500 So. 2d at 137. In essence, the county court judge in Payret was the sole circuit court judge and county court judge responsible for administering justice, involving all subject areas, in a large portion of Palm

¹Rule 2.050(b)(4) gives the chief judge the authority to "assign any judge to temporary service for which the judge is qualified in any court in the same circuit" for the speedy, efficient, and proper administration of justice.

Beach County.

In contrast, the administrative orders at bar only allow Judge Cohen to preside over 20 percent of the misdemeanor domestic violence trials in the newly established Domestic Violence Court in the Seventeenth Judicial Circuit. The subject matter jurisdiction of the Domestic Violence Court is very limited.² Judge Cohen was not assigned to hear all misdemeanor cases but only 20 percent of the narrow class of misdemeanors that would be assigned to the newly established Domestic Violence Court. This court has approved similar administrative orders in such a factual scenario. Crusoe v. Rowls, 472 So. 2d 1163 (Fla. 1985) (court approves administrative order appointing county court judge as a temporary circuit court judge to hear specified class of support cases).

The situation herein is quite similar to the recent case from the Second District, J.G., et al. v. Holtzendorf, 648 So. 2d 781 (Fla. 2d DCA 1994) review granted, case no. 85,189 (Fla. May 5, 1995), where it was held:

We conclude that respondent's service as a circuit judge under the current administrative order, which results in the chief judge assigning the respondent to share a circuit caseload in two specific areas, does not violate the holdings in *Payret* or *Crusoe*. The respondent is not assigned indefinitely to circuit court duties. Instead, the respondent is repeatedly given six-month assignments in circuit court which, in addition to permitting

²The local rule defines domestic violence as "any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

him to fulfill his county judge duties, permits him to aid in handling the circuit court caseload.

At bar, Judge Cohen continued to fulfill his responsibilities as circuit court judge in the Domestic Violence Court while assisting the county court judge assigned to the Domestic Violence Court in handling his misdemeanor caseload. Such "[f]lexibility must be given the chief judges to utilize effectively judicial manpower in the mutual assistance of each court." Crusoe v. Rowls, 472 So. 2d 1163, 1165 (Fla. 1985). At bar, "obviously the chief judge felt he needed additional judicial manpower to promptly hear [domestic violence misdemeanor] cases." Id. "The administrative orders under review were simply an expedient way of accomplishing this and required the [circuit judge] to supplement and aid the [county judge] rather than replace [him]." Id.

This court should approve the decision of the district court of appeal. The administrative orders at issue were entered to allow a circuit court judge, who is already hearing felony cases in an existing Domestic Violence Court, to act as a temporary county court judge to assist another county court judge with misdemeanor trials in the Domestic Violence Court in the Seventeenth Judicial Circuit. Such orders allows the Chief Judge to effectively utilize the judicial manpower in the Seventeenth Judicial Circuit to provide that domestic violence cases are "addressed in an expeditious, efficient and deliberative manner." Family Courts III, 646 So. 2d at 182.

POINT 2

THE ADMINISTRATIVE ORDERS DID NOT HAVE TO BE
SUBMITTED TO THIS COURT FOR APPROVAL

Petitioners suggest that the Chief Judge of the Seventeenth Judicial Circuit violated this court's pronouncement in In re Report of the Commission on Family Courts, 646 So. 2d 178 (Fla. 1994) in failing to submit the administrative orders at issue to this court for approval.³ In presenting this issue petitioners overlook footnote 2 of the opinion. 646 So. 2d at 182. The footnote reads in part: "we in no way intend this mandate to include the approval of routine matters generally included in administrative orders such as the assignment of judges to divisions. This requirement is limited to the implementation of family court divisions and related domestic violence issues." Id.

Clearly, the administrative orders at bar involve the assignment of judges. The orders have nothing to do with the implementation of the family court division or related domestic violence issues. As such the orders at issue did not have to be presented to this court for approval.

In presenting this issue at this time petitioners are attempting to have the issue of their guilt or innocence of a crime of domestic violence, "bogged down in an administrative morass." Family Courts III, 646 So. 2d at 182. This court should summarily

³The opinion states: "Further, we reiterate that any proposed changes to the rules or orders approved by this Court *must be submitted to this Court for approval before those changes are effected.*" 646 So. 2d at 182.

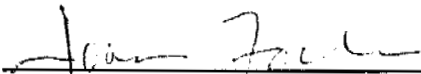
reject their position and allow domestic violence issues to be addressed in an expeditious, efficient, and deliberative manner in the Seventeenth Judicial Circuit. Id.

CONCLUSION

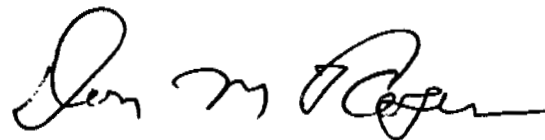
WHEREFORE, based on the above and foregoing arguments and authorities cited therein, Respondents respectfully submits that the decision of the district court should be AFFIRMED and the certified question answered in the affirmative.

Respectfully submitted,

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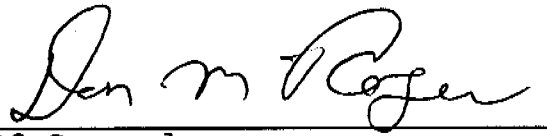


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Answer Brief" has been furnished by U.S. Mail to: Donald Connarozzi, Assistant Public Defender, 201 S.E. 6th Street, Suite 3872, 3rd Floor, North Wing, Ft. Lauderdale, Florida 33301, this 8th day of August, 1995.



Of Counsel