Supreme Court of Florida

WEDNESDAY, SEPTEMBER 6, 1995

RENEE RODRIGUEZ,	*	
	*	
Petitioner,	*	
	*	
v.	*	CASE NO. 85,961
	*	
GEOFFREY D. COHEN, JUDGE, ETC., ET AL.,	*	
	*	
Respondents.	*	
	*	

* * * * * * * * * * * * * * *

Petitioner's Motion To Adopt Brief of Billie Bollinger vs. Geoffrey D. Cohen, case no. 85,899, Daniel Holsman vs. Geoffrey D. Cohen, case no. 85,900 and Mark Stluke Daniel vs. Geoffrey D. Cohen, case no. 85,901 filed in the above cause is hereby granted.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

BDM
cc: Mr. Fred Haddad
Hon. Dale Ross
Hon. Geoffrey Cohen
Hon. Robert Butterworth
Hon. Michael Satz

IN THE SUPREME COURT OF FLORIDA

BILLIE BOLLINGER,
Petitioner,

v.

THE HONORABLE GEOFFREY D. COHEN
Circuit Court Judge,
17th Judicial Circuit, In and
For Broward County, Florida,
and **THE STATE OF FLORIDA,**
Respondents.

CASE NO. 85,899
4TH DISTRICT COURT
CASE NO. 95-0552

DANIEL HOLSMAN,
Petitioner,

v.

THE HONORABLE GEOFFREY D. COHEN
Circuit Court Judge,
17th Judicial Circuit, In and
For Broward County, Florida,
and **THE STATE OF FLORIDA,**
Respondents.

CASE NO. 85,900
4TH DISTRICT COURT
CASE NO. 95-0553

MARK STLUKE DANIEL,
Petitioner,

v.

THE HONORABLE GEOFFREY D. COHEN
Circuit Court Judge,
17th Judicial Circuit, In and
For Broward County, Florida,
and **THE STATE OF FLORIDA,**
Respondents.

CASE NO. 85,901
4TH DISTRICT COURT
CASE NO. 95-0554

PETITIONERS' BRIEF ON THE MERITS

ALAN H. SCHREIBER
PUBLIC DEFENDER, 17TH JUDICIAL CIRCUIT
Donald J. Cannarozzi, Assistant Public Defender
Florida Bar No. 776830
201 S.E. 6th Street
Suite 3872, 3d Floor, North Wing
Fort Lauderdale, FL 33301
(305)831-8844
Attorney for Petitioners

CERTIFICATE OF INTERESTED PERSONS

Counsel for Petitioners Bollinger, Holsman, and Daniel certify that the following persons and entities have or may have an interest in the outcome of this case:

Lisa Arnold
(Counsel for the State of Florida)

Billie Bollinger
(Petitioner)

The Honorable Robert A. Butterworth
(Attorney General, State of Florida)

Donald J. Cannarozzi
(Counsel for Petitioner)

The Honorable Geoffrey D. Cohen, Circuit Court Judge for the 17th Judicial Circuit in and for Broward County, Florida
(Trial judge; named respondent)

Renee Dadowski
(Counsel for Petitioner)

Mark StLuke Daniel
(Petitioner)

David Drill
(Counsel for the State of Florida)

Daniel Holsman
(Petitioner)

Bo Mobley
(Counsel for the State of Florida)

The Honorable Dale Ross, Chief Judge for the 17th Judicial Circuit in and for Broward County, Florida

Don M. Rogers
(Counsel for Respondents)

The Honorable Ronald Rothschild, County Court Judge for the 17th

Judicial Circuit in and for Broward County, Florida
(County Court Judge assigned to Domestic Violence Court)

The Honorable Michael J. Satz
(State Attorney for the 17th Judicial Circuit in and for Broward County, Florida)

The Honorable Alan H. Schreiber
(Public Defender for the 17th Judicial Circuit)

Mr. John W. Tiedemann
(Counsel for Respondents)

DONALD J. CANNAROZZI

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FLORIDA STATUTES:

FLORIDA LAWS:

FLORIDA CONSTITUTION:

FLORIDA RULES OF JUDICIAL ADMINISTRATION:

QUESTION PRESENTED

WHETHER A CIRCUIT JUDGE MAY BE PERMANENTLY ASSIGNED AS A COUNTY JUDGE TO PRESIDE OVER TWENTY PERCENT OF ALL MISDEMEANOR PROSECUTIONS INCIDENT TO THE OPERATION OF A DULY INSTITUTED DOMESTIC VIOLENCE COURT.

STATEMENT OF THE CASE AND FACTS

Petitioners are Defendants in the in the newly created Domestic Violence Court of the Seventeenth Judicial Circuit. Each Petitioner is charged with one count of misdemeanor battery. (A 1-6)(State of Florida v. Billie Bollinger, Broward County case number 94-22171MM10A; State of Florida v. Mark StLuke Daniel, Broward County case number 94-25843MM10A; and State of Florida v. Daniel Holsman, Broward County case number 94-24366MM10A.) Respondent, the State of Florida, is the prosecution in the case below, and Respondent, the Honorable Geoffrey D. Cohen (hereinafter referred to as "Circuit Judge") is the circuit judge who is presiding over Petitioners' cases.

On October 11, 1994, this Honorable Court approved Administrative Order II-94-H-1 (hereinafter referred to as "Administrative Order") as a local rule which established a Domestic Violence Court for the Seventeenth Judicial Circuit. (A 14) A copy of this Administrative Order is attached hereto in Petitioners' appendix. (A 15-22) To implement this new court, The Honorable Dale Ross, Chief Judge of the Seventeenth Judicial Circuit (hereinafter referred to as "Chief Judge"), began signing a series of monthly administrative orders which state that "the Honorable Geoffrey D. Cohen, is assigned 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. . ."(A 26-36) The Chief Judge signed the first order on October 14, 1994, and has subsequently signed

eleven identical orders, the last of which was signed on July 11, 1995.

In a memorandum dated December 21, 1994, the Chief Judge designated areas of responsibility for domestic violence cases between the Circuit Judge and the County Judge, the Honorable Ronald J. Rothschild. (A 23-24) This memorandum indicates that twenty percent of all misdemeanor trials shall be assigned to the Circuit Judge. Then in a memorandum dated January 20, 1995, the Chief Judge ordered the Clerk of Court, Robert E. Lockwood, to assign twenty percent of all not guilty pleas from arraignments to the Circuit Judge for trial. (A 25)

Petitioner Bollinger was arrested on November 1, 1994, Petitioner Holsman was arrested on December 1, 1994, and Petitioner Daniel was arrested on December 20, 1994. As stated earlier, the State subsequently charged all three Petitioners with one count of misdemeanor battery. However, because of the Chief Judge's scheme in implementing Domestic Violence Court, Petitioners' cases - as well as at least twenty percent of all persons charged with a misdemeanor domestic violence offense - have never been before a county judge.

On February 17, 1995, Petitioners petitioned the Fourth District Court of Appeal for writs of prohibition, alleging that the Circuit Judge had no jurisdiction to preside over their prosecutions. On May 24, 1995, the Fourth District Court of Appeal issued an opinion denying Petitioners'

petitions and certified the following question to this Honorable Court as one of great public importance:

> 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.

Bollinger v. The Honorable Geoffrey D. Cohen, 20 Fla. L. Weekly D1247 (Fla. 4th DCA May 24, 1995).

On June 8, 1995, Petitioners filed a Notice to Invoke Discretionary Jurisdiction of this Honorable Court. On June 20, 1995, this Honorable Court entered an order postponing a decision on jurisdiction and ordered Petitioners to file their briefs on the merits of their cases. On July 17, 1995, this Court granted Petitioners' Motions to Consolidate for all appellate purposes.

SUMMARY OF ARGUMENT

A chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit. Such an assignment may not be permanent and cannot deprive any particular court of its jurisdiction of a particular type of case on a permanent basis.

On October 11, 1994, this Honorable Court approved Administrative Order II-94-H-1 as a local rule which established a Domestic Violence Court in the Seventeenth Judicial Circuit. To implement the newly created court, the Chief Judge executed a series of orders which, in effect, permanently assign twenty percent of all misdemeanor domestic violence cases to the circuit court.

Although a chief judge must be given the flexibility to assign judges to respective duties within a judicial circuit, the permanent assignment of a substantial portion of all misdemeanor domestic violence cases to the Circuit Judge is unconstitutional. A partial cross-assignment of duties between the county and circuit courts must not be permanent and should not last for more than six months. The Chief Judge cannot expand this time frame by simply signing a series of monthly administrative orders which extend longer than six months. Notwithstanding the monthly duration of the administrative orders, it is the total effect of the entire series of orders which defines whether a partial assignment is temporary or permanent.

The Chief Judge has signed eleven such orders since October 1994, along with a memorandum directing the Clerk of Court to assign twenty percent of all misdemeanor domestic violence cases to the Circuit Judge. There is no indication that the Chief Judge will stop issuing these orders. Although the Domestic Violence Court is less than one year old, the Chief Judge's assignment of twenty percent of county cases to the Circuit Judge should continue as long as Domestic Violence Court remains in existence.

Furthermore, the Chief Judge's jurisdictional structure was never addressed in the Administrative Order creating Domestic Violence Court. When this Court approved the Administrative Order as a local rule, this Court required that any modifications to the Administrative Order must first be submitted and approved by this Court. The Chief Judge chose to implement the permanent cross-assignment without this Court's approval. Although this Court exempted routine matters from the requirement that modifications to administrative orders and local rules be approved by this Court, the Chief Judge's jurisdictional scheme is surely outside the realm of routine matters and fits squarely within the arena of issues of great public importance.

ARGUMENT

I

ASSIGNING TWENTY PERCENT OF ALL MISDEMEANOR DOMESTIC VIOLENCE CASES TO THE CIRCUIT JUDGE UNCONSTITUTIONALLY DEPRIVES THE COUNTY COURT OF JURISDICTION OVER THIS PARTICULAR TYPE OF CASE ON A PERMANENT BASIS.

The resolution of the issue presented in this case involves the application of and relationship between three principles of law. First, a circuit court has no subject matter jurisdiction over a prosecution involving a misdemeanor not arising out of the same circumstances as a felony. Christopher v. State, 397 So.2d 406 (Fla. 5th DCA 1981). Second, Rule 2.050(b)(4), Florida Rules of Judicial Administration, allows a chief judge to assign any judge to temporary service for which the judge is qualified in any court in the same circuit. Third, cross-assignments between court levels are permissible; however, the assignments may not be permanent and cannot deprive any particular court of its jurisdiction of a particular type of case on a permanent basis. Crusoe v. Rowls, 472 So.2d 1163 (Fla. 1985).

In the case at bar, the Chief Judge has permanently assigned a substantial portion of misdemeanor domestic violence cases to the Circuit Judge. This improper assignment violates the rule that a circuit court has no jurisdiction to preside over a misdemeanor, is beyond the permissible scope of cross-assignments between court levels, and exceeds the Chief Judge's limited authority granted by the Rules of Judicial Administration.

A. A CIRCUIT COURT HAS NO JURISDICTION TO PRESIDE OVER A MISDEMEANOR PROSECUTION NOT ARISING OUT OF THE SAME CIRCUMSTANCES AS A FELONY.

Sections 26.012 and 34.01, Florida Statutes (1993), set forth the legislative grant of jurisdiction for the circuit courts and county courts respectively. The legislative grant of power is derived from article V, section 5; article V, section 6; and article V, sections 20(c)(3) and (4), of the Florida Constitution.

Florida law is well settled that a misdemeanor charge not arising out of the same circumstances as a felony charge is cognizable only in the county court. "If the information charges only a misdemeanor, the circuit court does not have jurisdiction and thus any judgment or sentence rendered by it is void." Christopher v. State, 397 So.2d 406 (Fla. 5th DCA 1981). Even when a misdemeanor and felony are originally charged together and are subsequently severed, the relationship between the felony and misdemeanor charges becomes irrelevant and only the county court can preside over the misdemeanor. Booker v. State, 497 So.2d 957 (Fla. 1st DCA 1986). Furthermore, a defendant cannot waive or acquiesce to a circuit court exercising jurisdiction over a misdemeanor charge, White v. State, 568 So.2d 1318 (Fla. 2d DCA 1990), and this issue of subject matter jurisdiction is considered fundamental. Booker, 497 So.2d 957, 958.

B. A CIRCUIT JUDGE MAY BE ASSIGNED TO PRESIDE OVER A MISDEMEANOR PROSECUTION; HOWEVER, TO BE CONSIDERED "TEMPORARY," THE ASSIGNMENT MUST BE FOR A RELATIVELY SHORT PERIOD OF TIME.

A circuit judge may preside over a misdemeanor prosecution providing that the chief judge of the judicial circuit validly

assigns the circuit judge to assume the responsibilities of a county judge. The chief judge's authority to make cross-assignments is derived from Article V, section 2(b) of the Florida Constitution[1], and rule 2.050(b)(4), Florida Rules of Judicial Administration[2]. There is no bright line rule which distinguishes a valid cross-assignment from an unconstitutional delegation of county court jurisdiction to the circuit court. However, this Honorable Court has provided substantial guidance to resolve this issue by addressing the validity of a chief judge's assignment of a county judge to assume jurisdiction of matters which are in the exclusive jurisdiction of the circuit court[3].

In State ex rel. Treadwell v. Hall, 274 So.2d 537 (Fla. 1973), this Court approved the temporary assignment of a county judge to

---

[1]Article V, section 2(b) of the Florida Constitution states:

> The chief justice of the supreme court shall be chosen by a majority of the members of the court. He shall be the chief administrative officer of the judicial system. He shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in his respective circuit.

[2]Rule 2.050(b)(4) states in pertinent part:

> . . . The chief judge may assign any judge to **temporary** service for which the judge is qualified in any court in the same circuit. (Emphasis added.)

[3]Even though the cases discussed herein involve the validity of an assignment of a county judge to perform matters exclusively within the jurisdiction of the circuit court, this Court has recognized that the same rationale extends to the assignment of a circuit judge to perform county court duties. Crusoe v. Rowls, 472 So.2d 1163, 1165 n.4 (Fla. 1985).

act as a circuit judge in all matters of probate, guardianship, incompetency, trusts, proceedings under "the Florida Mental Health Act," and all juvenile proceedings, dissolutions of marriage, and all uncontested civil matters in court. The opinion in Treadwell, however, did not address the meaning of the phrase "temporary circuit judge".

In Crusoe v. Rowls, 472 So.2d 1163 (Fla. 1985), this Court thoroughly discussed the distinction between temporary and permanent assignments and emphasized that a cross-assignment must be for a short period of time.

> "Temporary" is an antonym for "permanent." It is a comparative term. It can be said that if a duty is not permanent it is temporary. If a county judge is assigned to perform solely circuit court work, the assignment must be for a relatively short time for it to be temporary. If a county judge is assigned to spend a portion of his time performing circuit work, the assignment can be longer, but the assignment cannot usurp, supplant or effectively deprive circuit court jurisdiction of a particular type of case on a permanent basis."[4]

Id. at 1165.

In approving the assignment in Crusoe, this Court cautioned that "the chief judge should be mindful that we do have a two-tier trial system and that generally we should not trespass on the other's jurisdiction. Cross-assignments are to be used to aid and assist and are not to be used to redesignate jurisdiction of the respective courts." 472 So.2d at 1165.

---

[4]When the assignment is to perform solely the duties of the circuit court, this Court suggested a period of no more than sixty days; when the assignment is to spend only part time in the performance of circuit court duties, this Court suggested a period of no longer than six months. 472 So.2d 1163, 1169, nn.2 and 3.

In Payret v. Adams, 500 So.2d 136 (Fla. 1986), this Honorable Court found that a series of administrative orders which created a *de facto* permanent assignment of a county judge to circuit court duties in a specially created jury district of the Fifteenth Judicial Circuit violated Article V, section 10(b) of the Florida Constitution which mandates that circuit judges shall be elected by vote of the qualified electors within the territorial jurisdiction of the court. This Honorable Court also found that the administrative orders violated Article V, section 11(b) of the Florida Constitution which provides that the governor shall appoint a judge to fill a vacancy that occurs on a circuit court.

In Payret, this Court further discussed the rationale in Crusoe by explaining that the time frames of sixty days for a complete assignment and six months for a partial assignment were suggested because of the recognized need for giving the chief judges flexibility to utilize available judicial labor. 500 So.2d at 138. However, this Court had great difficulty in Payret with the fact that the assignment of the county judge to circuit court duties had been successive and repetitive and had been renewed annually for the last five years. In responding to the argument that each administrative order was, on its face, a temporary assignment, this Court stated:

> [w]e cannot simply close our eyes to the *de facto* permanency of respondent's assignment, and no exercise in liberal construction of the administrative order before us can transform this permanent assignment into a valid temporary one; such a result could only be accomplished by legerdemain.

500 So.2d at 138.

The recent case of Dozier v. Wild, 20 Fla. L. Weekly D199 (Fla. 4th DCA Jan. 18, 1995), rev. granted, 652 So.2d 819 (Fla. 1995), dealt with a series of administrative orders which between 1990 and 1994, had assigned one county court judge to hear one-half of all criminal cases in Indian River County, and since January 1994, had assigned two county judges to hear all criminal cases in the county. In finding this practice unconstitutional, the district court focused on the permanency created by the series of "temporary" orders. Relying on this Court's holding in Payret, the district court noted that it would also have to engage in an exercise of "judicial legerdemain to characterize as temporary these virtually indistinguishable continuous reassignments of county judges to preside over all felony cases in Indian River County for what appears to be longer than the last four years." 20 Fla. L. Weekly at D200.[5]

C. THE CHIEF JUDGE'S SERIES OF "TEMPORARY" ORDERS CREATE AN UNCONSTITUTIONALLY PERMANENT ASSIGNMENT OF THE CIRCUIT COURT JUDGE TO PRESIDE OVER MATTERS EXCLUSIVELY WITHIN THE JURISDICTION OF THE COUNTY COURT.

Although there is no bright line rule which defines what constitutes a proper temporary cross-assignment, the cases discussed above clearly instruct that the focus of inquiry must be on the duration of the assignment. Furthermore, the courts of this

---

[5]Ultimately, the Fourth District Court of Appeal certified the following question to this Honorable Court as one of great importance to the administration of justice throughout the state:

> 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?

20 Fla. L. Weekly at 200.

state will not permit a chief judge to transform an illegal permanent assignment into an acceptable temporary assignment by simply issuing a series of "temporary" administrative orders.

In the case sub judice, the Chief Judge has issued a series of monthly administrative orders since the inception of the Domestic Violence Court which assign the circuit judge 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." The designation of these monthly orders as "temporary" cannot disguise the permanent nature of the assignment in the newly created Domestic Violence Court. The Chief Judge's memorandum which directs the Clerk of Courts to assign a substantial portion of all misdemeanor domestic violence cases to the Circuit Judge indicates the permanency of the assignment. The Fourth District Court of Appeal recognized this fact and stated, "[b]ased on a December memorandum from Chief Judge Dale Ross, it is apparent that the chief judge will continue to issue orders of "temporary assignment" to Judge Cohen to preside over county court misdemeanor prosecutions, at least for twenty percent (20%) of all misdemeanor trials in domestic violence court." Bollinger v. The Honorable Geoffrey D. Cohen, 20 Fla. L. Weekly D1247 (Fla. 4th DCA 1995).

Martinez v. Demers, 412 So.2d 5 (Fla. 2d DCA 1981), involves a factual situation which is strikingly similar to the case at bar. In Martinez, the petitioner was charged with a misdemeanor and

filed a Motion for Sanity Inquisition pursuant to Florida Rule of Criminal Procedure 3.216(a). The county judge presiding over petitioner's case found the motion sufficient on its face. However, because of an administrative order which directed that all sanity inquisitions in misdemeanor cases shall be brought before the Criminal Administrator, a *circuit* judge, the county judge denied petitioner's motion.

In holding that Rule 2.050(b)(4) did not give the chief judge authority to make such an assignment, the district court stated:

> we do not agree that Rule 2.050(b)(4) is authority for giving a portion of all misdemeanor cases (such as motions for sanity inquisitions) to a circuit judge. The rule contemplates assignment for "temporary service." The administrative order does not assign a particular judge for a limited amount of time.

Id. at 6.

Similarly, the Chief Judge has assigned a significant portion of all domestic violence misdemeanor cases to the Circuit Judge. Rule 2.050(b)(4) mandates that a cross-assignment be only temporary. This Court's holdings in Payret and Crusoe, and the district courts' holdings in Dozier and Martinez further establish the precept that a permanent cross-assignment is prohibited even if the assignment is accomplished through a series of ostensibly temporary administrative orders. In order to characterize the Chief Judge's series of administrative orders as creating a temporary partial assignment of misdemeanor cases to the circuit court, one would have to become a participant in an exercise of prohibited legerdemain. The chief judge's orders are improper and Petitioner urges this Court to answer the certified question in the

negative and to quash the decision below denying the Petitions for Writs of Prohibition.

II

THE CHIEF JUDGE'S ORDERS REPRESENT A SUBSTANTIVE MODIFICATION OF THE ADMINISTRATIVE ORDER ESTABLISHING DOMESTIC VIOLENCE COURT AND VIOLATE THE RULE THAT SUCH A CHANGE MUST FIRST BE SUBMITTED AND APPROVED BY THIS COURT.

The genesis of the Domestic Violence Court began with chapter 90-273, section 10(3), Laws of Fla., in which the legislature announced the policy that family law divisions were to be established within each of the circuit courts of Florida. The legislature also established the Commission on Family Courts to make recommendations so that the family law divisions would operate with consistency throughout the state. In In re Report of the Commission on Family Courts, 588 So.2d 586 (Fla. 1991), this Honorable Court held that each judicial circuit should develop a local rule establishing a family division in its circuit. In In re Report of the Commission on Family Courts, 633 So.2d 14 (Fla. 1994), this Court further clarified its intent and expectations regarding the family court concept and provisionally approved the local rules and administrative orders submitted by the respective circuits. In approving the plans, this Court noted that "[a]ny deviations from or amendments to local rules or administrative orders provisionally approved must be submitted to this Court for approval." Id. at 18. This admonition insured that changes to the approved rules would first be reviewed by this Court thereby avoiding substantial variations between the circuits and to efficiently establish acceptable parameters for the operation of

the newly created divisions.

On October 11, 1994, this Court approved the local rule which established the Domestic Violence Court in the Seventeenth Judicial Circuit. In In re Report of the Commission on Family Courts, 646 So.2d 178 (Fla. 1994), this Court expressly approved the local rule which established the Domestic Violence Court and again stated, "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." Id. at 182. (Emphasis in original.)

In the case at bar, the Administrative Order states that the Domestic Violence Court is created "under the jurisdiction of the Family Division of the Circuit and County Courts." The administrative order defines the term "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." Family or household member is defined as "spouse, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time." Therefore, as defined in the Administrative Order, "domestic violence" encompasses both felonies and misdemeanors.

Although the Administrative Order states that the Domestic Violence Court is "under the jurisdiction of the Family Division of

the Circuit and County Courts." the Administrative Order consistently refers to Domestic Violence "Court" in the singular and states that "[t]he Domestic Violence Court shall have the jurisdiction to hear all cases involving domestic violence or repeat violence. . ."

Article V, section 1 of the Florida Constitution provides that "[t]he judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision, or any municipality." The four courts established by article V, section 1 are the only authorized repositories of judicial power, an exclusive list that cannot be expanded or modified other than by constitutional amendment.

Similarly, article V, section 7, as implemented by section 43.30, Florida Statutes (1993), provides that "[a]ll courts except the supreme court may sit in divisions as may be established by local rule approved by the supreme court." This provision contemplates that divisions may be created only within existing constitutionally established courts.

As stated above, the Administrative Order created the Domestic Violence Court without specifically defining the respective duties of the county and circuit court. There is nothing in the Administrative Order which states that the Circuit Judge will preside over almost one-quarter of all misdemeanor case. This was accomplished by the Chief Judge's December memorandum and the signing of the monthly administrative orders which purport to give

the Circuit Judge "temporary" jurisdiction over county court matters.

In In re Report Of The Commission On Family Courts, this Court noted that prior approval was not necessary for "routine matters generally included in administrative orders such as the assignment of judges to divisions." 646 So.2d at 182, n.2. Obviously, this Court recognized that chief judges needed some flexibility in implementing domestic violence courts throughout the state. However, the Chief Judge's cross-assignment in the case at bar is far removed from the realm of routine matters and should have been brought before this Court for approval.

Surely this Court was sensitive to the fact that the administrative order establishing domestic violence court blurred the distinction between county and circuit jurisdiction. The mandate 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 ensured a safeguard against potential abuses in the implementation of the newly created court. Such a critical safeguard is absolutely necessary when a new creature such as domestic violence court is born.

In the present case, the Chief Judge has sought to implement a jurisdictional scheme which obscures the distinction between county and circuit court jurisdiction. The Fourth District Court of Appeal considered this substantive jurisdictional issue to be of great public importance and is certainly removed from the ambit of routine matters such as the assignment of judges to divisions.

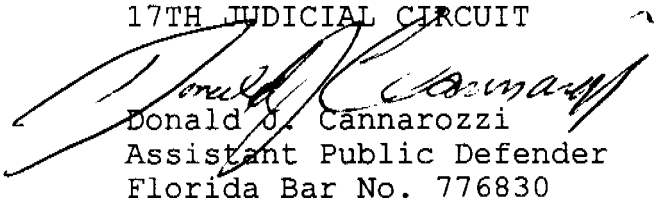
The Chief Judge chose to avoid review by this Court of this novel jurisdictional scheme before permanently assigning twenty percent of all misdemeanor cases to the Circuit Judge. As stated by this Court, "cross-assignments are to be used to aid and assist and are not to be used to redesignate jurisdiction of the respective courts." 472 So.2d at 1165. At the very least, this Court should first have the opportunity to review any showing by the Chief Judge that his assignment scheme is necessary to the effective function of Domestic Violence Court. Therefore, even if this Court finds that the Chief Judge's cross-assignment is constitutionally permissible on its face and does not run afoul of the holdings in Payret and Crusoe, Petitioner urges this Court to find that the Chief Judge's orders are void because this Court's approval was not secured before they were issued.

CONCLUSION

For the reasons set forth above Petitioner respectfully requests that this Honorable Court answer the certified question in the negative and quash the decision of the Fourth District Court of Appeal denying Petitioner's Petition for Writ of Prohibition.

Respectfully Submitted,

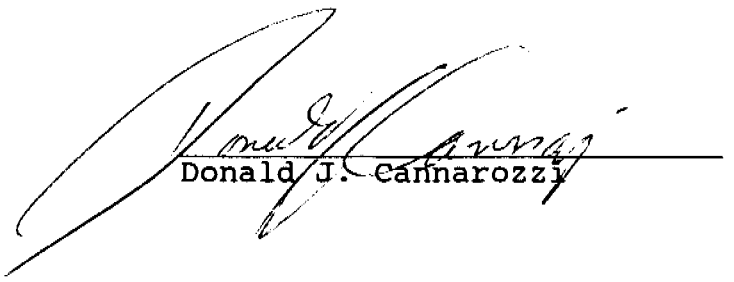
ALAN H. SCHREIBER, PUBLIC DEFENDER
17TH JUDICIAL CIRCUIT



Donald J. Cannarozzi
Assistant Public Defender
Florida Bar No. 776830
201 S.E. 6th Street
Suite 3872, 3d Floor, North Wing
Fort Lauderdale, FL 33301
(305)831-8844

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief was delivered by hand tot he Honorable Dale Ross, the Honorable Geoffrey D. Cohen, and the Office of the State Attorney, Broward County Courthouse, and by U.S. mail to Don Rogers, Department of Legal Affairs, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 33201-2299, this 25th day of July, 1995.



Donald J. Cannarozzi

IN THE SUPREME COURT OF FLORIDA

BILLIE BOLLINGER, Petitioner, v. **THE HONORABLE GEOFFREY D. COHEN** Circuit Court Judge, 17th Judicial Circuit, In and For Broward County, Florida, and **THE STATE OF FLORIDA,** Respondents.	CASE NO. 85,899 4TH DISTRICT COURT CASE NO. 95-0552
DANIEL HOLSMAN, Petitioner, v. **THE HONORABLE GEOFFREY D. COHEN** Circuit Court Judge, 17th Judicial Circuit, In and For Broward County, Florida, and **THE STATE OF FLORIDA,** Respondents.	CASE NO. 85,900 4TH DISTRICT COURT CASE NO. 95-0553
MARK STLUKE DANIEL, Petitioner, v. **THE HONORABLE GEOFFREY D. COHEN** Circuit Court Judge, 17th Judicial Circuit, In and For Broward County, Florida, and **THE STATE OF FLORIDA,** Respondents.	CASE NO. 85,901 4TH DISTRICT COURT CASE NO. 95-0554

PETITIONERS' APPENDIX

ALAN H. SCHREIBER
PUBLIC DEFENDER, 17TH JUDICIAL CIRCUIT
Donald J. Cannarozzi, Assistant Public Defender
Florida Bar No. 776830
201 S.E. 6th Street
Suite 3872, 3d Floor, North Wing
Fort Lauderdale, FL 33301
(305)831-8844
Attorney for Petitioners

INDEX TO APPENDIX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appendix was delivered by hand to the Honorable Dale Ross, the Honorable Geoffrey D. Cohen, and the Office of the State Attorney, Broward County Courthouse, and by U.S. mail to the Don Rogers, Department of Legal Affairs, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida, 33201-2299, this 25th day of July, 1995.

Donald J. Cannarozzi

IN THE SUPREME COURT OF FLORIDA

BILLIE BOLLINGER, Petitioner, v. **THE HONORABLE GEOFFREY D. COHEN** Circuit Court Judge, 17th Judicial Circuit, In and For Broward County, Florida, and **THE STATE OF FLORIDA,** Respondents.	CASE NO. 85,899 4TH DISTRICT COURT CASE NO. 95-0552
DANIEL HOLSMAN, Petitioner, v. **THE HONORABLE GEOFFREY D. COHEN** Circuit Court Judge, 17th Judicial Circuit, In and For Broward County, Florida, and **THE STATE OF FLORIDA,** Respondents.	CASE NO. 85,900 4TH DISTRICT COURT CASE NO. 95-0553
MARK STLUKE DANIEL, Petitioner, v. **THE HONORABLE GEOFFREY D. COHEN** Circuit Court Judge, 17th Judicial Circuit, In and For Broward County, Florida, and **THE STATE OF FLORIDA,** Respondents.	CASE NO. 85,901 4TH DISTRICT COURT CASE NO. 95-0554

PETITIONERS' APPENDIX

ALAN H. SCHREIBER
PUBLIC DEFENDER, 17TH JUDICIAL CIRCUIT
Donald J. Cannarozzi, Assistant Public Defender
Florida Bar No. 776830
201 S.E. 6th Street
Suite 3872, 3d Floor, North Wing
Fort Lauderdale, FL 33301
(305)831-8844
Attorney for Petitioners

INDEX TO APPENDIX