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MAY 29 1997
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLOFUDA

MAURICE ANTONIO MANN,
and
The Office of the Public Defender
for the Thirteenth Judicial Circuit,

Petitioner,

Case No. 90,498

vs.

District Court of **Appeal,**
Second District Nos. 97-00566 and
97-00962

Chief Judge of the Thirteenth Judicial
Circuit and the Circuit Judge for the
Drug Division of the Thirteenth Judicial
Circuit in and for Hillsborough County,
Florida,

Respondents.

PETITIONER'S INITIAL BRIEF

Submitted by:
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Public Defender
Thirteenth Judicial Circuit

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STATEMENT OF THE CASE AND FACTS

On January 15, 1997, the Honorable F. Dennis Alvarez, Chief Judge of the Thirteenth Judicial Circuit, issued Administrative Order No. S-04-29-97-003, hereinafter referred to as "AO 97-003" or the "Order".[1] This Order created a specialized section of the Criminal Justice Division to process all persons charged with drug offenses. The section was designated the "Drug Division" and includes Criminal Divisions "X" and "Y."

Pursuant to the Order, effective January 21, 1997, all cases charging violations of the narcotics laws are to be filed in the Drug Division and assigned to Division "X." If a Defendant enters a not guilty plea, the case will be set for pretrial conference and trial. Thereafter, the case will be handled in accordance with the procedures governing the other Felony Divisions of the Circuit Court, except that all motions and pleading filed in all drug cases, and the trial of the charges in those cases, will be heard in Division "X".

Pursuant to the Order, all cases alleging a violation of the narcotics laws, including violations of community control and probation which relate to narcotics offenses, and non-forcible felony offenses coupled with narcotics offenses, will be sent to and processed through the Drug Division, Division "X." Narcotics offenses coupled with forcible felony offenses may only be transferred to Division "X" upon agreement of all parties, i.e., the State Attorney, Public Defender, and the presiding judge.

All initial filings of narcotics' offenses will be in Division "X" and the presiding judge will hear all jury and non-jury trials for the drug cases. All drug offender community control and probation cases will be docketed in Division "X." Cases in which the accused is willing to plead

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[1] A copy of Administrative Order No. S-04-29-97-003 is included as the Appendix to the instant brief.

guilty or no contest and enter a drug treatment program will be transferred to Division "Y" of the Drug Division for sentencing after the accused enters a plea in Division "X."

Following plea or conviction, a case will be transferred to Division "Y" for Court-supervised drug treatment.* Transfers to Division "Y" are limited to cases in which the sentence **is** "community sanctions" and the defendant has acknowledged a need and desire for drug treatment. Thereafter, if the defendant is charged with violating the terms of his community sanctions, but is not charged with a new felony offense, the hearing regarding the alleged violation will be conducted in Division "Y."

Pursuant to AO 97-003, Petitioner's case was assigned to Drug Division "X" on January **28,** 1997. The case was called for arraignment, before the Honorable Jack Espinosa, Jr., on February **3,** 1997. The Public Defender was appointed and Mr. Mann entered a plea of not guilty to charges of Possession of Cocaine and Delivery of Cocaine. At the time of arraignment, the Public Defender filed a Motion in Opposition to Jurisdiction, which was denied by written order entered February **3,** 1997

On February 17, 1997, Mr. Mann petitioned the Second District Court of Appeal for a writ of certiorari seeking review of AO 97-003 pursuant to Article V, Section 4(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(b)(3). On May 9, 1997, the Second District Court of Appeals certified the case to this Court as one passing upon a question of great public importance. Article V, Section 3(b)(5), Florida Constitution; Fla.R.App.P. 9.030(2)(B)(i).

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[2] The authority for the creation of Division "Y" is found in Sec. 948.08(6), Fla. Stat. Pursuant to this section, a qualified individual who has been charged with a second or third degree felony involving the possession or purchase of illegal narcotics may be admitted to a substance abuse treatment program in lieu of immediate prosecution. Subsequently, if the Court finds the accused has successfully completed the required course of education and treatment, the pending charges are dismissed.

SUMMARY OF THE ARGUMENT

AO 97-003 has resulted in the creation of an exclusive judicial forum for the processing of all felony drug cases in Hillsborough County, Florida. **As** such, it constitutes a subject matter division which can only be created through the promulgation of a local rule approved by the Supreme Court. The use of an administrative order to create a subject matter division is beyond the lawful jurisdiction of the Chief Judge for the Thirteenth Judicial Circuit.

ARGUMENT

THE ESTABLISHMENT OF A SPECIALIZED COURT WHICH HAS EXCLUSIVE JURISDICTION OVER ALL FELONY DRUG CASES CREATED A "SUBJECT MATTER DIVISION" WHICH MAY ONLY BE ESTABLISHED BY LOCAL RULE APPROVED BY THE FLORIDA SUPREME COURT.

Administrative Order 97-003 creates "Drug Division X," a special court established to solely to handle all felony drug cases in Hillsborough County, Florida. The question before this Court is whether the formation of a specialized court which provides an exclusive judicial forum for persons charged with (felony) drug offenses must be established by local rule approved by the Supreme Court. The Administrative Order under review purports to accomplish administratively something that can only be achieved through local rule.

Both the Florida Constitution and Florida Statutes mandate subject matter divisions must be created by local rule. Article **V,** Section **7** of the Florida Constitution provides in pertinent **part,** "[a]ll courts except the Supreme Court may sit in divisions as may be established by general law." Section **43.30,** Florida Statutes further 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." Although this court has never defined the term "subject matter division," some insight into the meaning of this term was provided by the Fourth District Court of Appeal in Hartley v. State, 650 So.2d 1044 (Fla. 4th **DCA** 1995):

> Here, the Fifteenth Judicial Circuit created a specialized subject matter related division which provided the exclusive judicial forum for the processing of habitual felony offenders which met the criteria of the administrative order. We hold that the habitual felony offender division should have been established **by** local rule rather than by administrative order.

Hartley, *650* So.2d at 1048 (footnote omitted). Thus, the court in Hartley held that the

establishment of a court which provides the exclusive judicial remedy for the processing of habitual felony offenders is a "subject matter division" which must be established by local rule rather than by administrative order.[3] The specialized drug court created by AO 97-003 provides the exclusive judicial forum for the processing of all felony drug cases arising in Hillsborough County. Applying the test adopted in Hartley, the Drug Division can only be created by a local court rule which is subject to review by the Florida Supreme Court.

At issue in Hartley was the Fifteenth Judicial Circuit's Administrative Order creating a separate felony division to hear cases concerning serious habitual felony offenders. Following **his** conviction for sale of cocaine within 1,000 feet of a school, Hartley was declared a habitual offender and sentenced to **30** years imprisonment. On appeal, Hartley challenged the assignment of **his** case to the Habitual Felony Offender Division and demanded a new trial. Agreeing, at least in **part,** with the defendant, the Fourth District found, "the designation of a special court to exclusively handle habitual felony cases constitutes a subject matter related division which must be accomplished by local rule." Hartley, at **1047.**

Despite its finding that the Habitual Felony Offender Division had been improperly created, the Court did not reverse Hartley's conviction because there was no dispute that the Circuit Judge who heard his case possessed the authority to preside over the issue of guilt. In view of the fact that the determination as to whether one should be treated as a habitual offender is essentially a sentencing issue, the case was remanded for re-sentencing "in a properly formed division." Hartley, at 1050. At the time of the Court's Opinion, the Fifth Judicial Circuit had already voluntarily dismantled the habitual felony division. Hartley at 1051, n.2.

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[3] The First District Court of Appeal reached a contrary result in Jenkins v. State, 685 So.2d **918** (Fla. 1st **DCA** 1997).

In lower court proceedings, the state has argued the new drug court is merely a "subdivision" or "extension" of the Criminal Justice Division. This argument, however, was considered and rejected by the court in Hartley, 650 So.2d at 1048. Indeed, the court found that the creation of a specialized court to handle all Habitual Felony Offender cases created an exclusive judicial forum for such cases. Carving out this particular portion of subject matter jurisdiction and assigning it to one court exceeded the administrative authority contemplated under Rule 2.050(b)(3), Rules of Judicial Administration. As in Hartley, the Chief Judge of the Thirteenth Judicial Circuit has acted in excess of his lawful authority by implementing the division before receiving approval from the Supreme Court.

This Court held in Administrative Order, Fourth Judicial Circuit (Division of Courts), **378** So.2d *286* (Fla. **1979)** that subject matter divisions may only be created by local rule and not administrative order. In explaining the purpose of an administrative order, this Court said:

> Judicial Administrative Rule 2050 [sic] (b)(3) and **(4)** gives the Chief Judge the authority to assign judges to subject matter or geographic divisions and the responsibility to develop a fair plan in the administrative operation of the Courts that is both in the best interest of the public and provides of the full utilization of available facilities and judicial personnel. This rule does not, however, grant the sole authority to the Chef Judge to establish subject matter divisions.
>
> All Circuits which operate with subject matter divisions should establish appropriate subject matter divisions by local rules approved by this Court in accordance with Article V, Section 20(c)(10), Florida Constitution.

Administrative Order, Fourth Judicial Circuit (Division of Courts), **378** So.2d 286 (Fla. 1979). Thus, the general rule as established by this Court's decision in Administrative Order, is that subject matter divisions must be established by local rules approved by the Supreme Court. Therefore, the creation by administrative order of a subject matter division which will be the

exclusive judicial forum for all narcotics cases is contrary to the express dictates of the Florida Constitution and the **rulings** of this Court.

Within the annals of precedent, there have been exceptions to the general rule. The series of Supreme Court decisions known as the *Family Court* cases (discussed herein) created a narrow exception to the general rule announced in Administrative Order. This trilogy addressed issues and circumstances unique to family law and, based in part upon a specific legislative mandate, allowed circuit courts to implement family law divisions through either local court rule or administrative order. Whether promulgated as a local rule or an administrative order, the circuit courts were required to obtain Supreme Court approval for their plans, however.

In the case of In Re Report of the Commission on Family Courts, 588 So.2d 586 (Fla. 1991) *(Family **Court I**)* the Supreme Court directed that family law divisions of circuit and county courts should be established by local court rule. The purpose behind the creation of family law divisions was so that all family law issues affecting a single family would be heard and decided by the same judge. The Court decided less populous circuits would be permitted to develop the means to coordinate family law matters through use of an administrative order if the circuit was too small to warrant a separate family law division. As a result, some circuits submitted their proposals to the Court through local rules, while some submitted them in the form of administrative orders.

In its second opinion, In Re Report of the Commission on the Family Courts, 633 So.2d 14 (Fla. 1994) *(Family **Courts II**)*, the Supreme Court expressly approved the local rules and administrative orders submitted either to implement family law divisions or to re-organize judicial assignments. The Court specifically noted that administrative orders do not generally have to be approved by the Supreme Court, but created an exception based upon the subject matter of the

orders and because some of the smaller circuits had not created an actual family law division.

Subsequently, in In Re Report of the Commission on the Family Courts, 646 So.2d 178 (Fla. 1994) (*Family **Courts III***), the Supreme Court sought to remedy any confusion created by the earlier decisions. In that case the Court expressly held that the creation of family law divisions, including domestic violence divisions, must be done through either local rule or an administrative order, but both must be approved by the Supreme Court. The Court said:

> . . . we now hold that the implementation of family law divisions and the assignment of all family law matters, including domestic violence, **are to be controlled through either local rules or administrative orders expressly approved by this Court** . . . at this time, we expressly approve the local rules and administrative orders establishing family law divisions in each of the circuits as identified in the attached Appendix "A" with the understanding that **those rules and orders are subject to further review by this Court.** 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.** (Emphasis Supplied).

In Re Report of the Commission on Family Courts, 646 So.2d 178, 182 (Fla. 1994) ***(Family courts III)***.

The message of the court in Family III is unmistakably clear. Whether created by local court rule or administrative order, the implementation of a subject matter division in circuit or county court requires Supreme Court approval. The administrative order in this case was implemented before it received Supreme Court approval.

The family law cases are unique because they involved legislation which required the establishment of family law divisions. However, actions of the legislature did not preempt this area from judicial review. On the contrary, the legislative mandate directing the creation of family law divisions in all courts did not relieve the courts of their responsibility to follow the local rule procedure set out in Rule 2.050(e), Rules of Judicial Administration.

In Garcia v. Rivkind, **639** So.2d 177 (Fla. 1994), this Court reviewed a decision of the Third District Court of Appeal which held that creation of a domestic violence department within the Eleventh Judicial Circuit was a subject matter division which could only be established by local rule and Supreme Court approval. In Garcia, this Court did not address the issue of whether the domestic violence section was a subject matter division because the case was rendered moot by collateral proceedings initiated by the Chief Judge of the Eleventh Circuit. Specifically, while Garcia was pending, the Eleventh Circuit promulgated a local rule regarding domestic violence and submitted it to the Supreme Court for approval. The local rule was approved by the Supreme Court in an unpublished order, and the Third District's ruling in Garcia became irrelevant. See In Re Report of the Commission on Family Courts, 646 So.2d 178, 181 (Fla. 1994). Unlike Garcia, the administrative order at issue in this case has never undergone the local rule process and was implemented without prior Supreme Court approval.

An administrative order is defined as, "a directive necessary to administer properly the Court's affairs but not inconsistent with the Constitution or with Court Rules and administrative orders entered by the supreme court." Fla.R.Jud.Admin. 2.020(c). Administrative Orders are simply entered by Chief Judges of the Circuit Courts and approval of the Supreme Court is not required. Fla.R.Jud.Admin. 2.050(b)(2) and (e)(3); Hartley v. State, 650 So.2d 1044, 1047 (Fla. 4th DCA 1995).

In contrast, a local court rule is "a rule of practice or procedure for circuit or county application only that, because of local conditions, supplies an omission in or facilitates application of a rule of statewide application and does not conflict therewith." Fla.R.Jud.Admin. 2.020(b). A local rule must be approved by a majority of all County and Circuit Judges in the Circuit. The Chief Judge must then give notice to the local Bar and afford attorneys (or any interested persons)

an opportunity to be heard on the proposed rule. The proposal is then submitted to the Supreme Court for approval.

Thus, unlike administrative orders, local court rules are subject to in-depth analysis and public scrutiny prior to implementation. Hartley v. State, 650 So.2d 1044, 1047 (Fla. 4th DCA 1995). As noted by the Court in Hartley:

> . . . local rules must be approved by a majority of all County and Circuit Judges in the Circuit. The judges must hen notify the local Bar . of the proposal and must permit a representative of the local Bar, and any other interested persons, to be heard on the proposal. The proposal is then submitted to the Supreme Court. . . for approval. After submission to the Supreme Court, the proposal is reviewed by the Supreme Court Local Rules Advisory Committee and by appropriate Committees of the Florida Bar. All other interested persons are given the opportunity to provide their comments or responses to the local Rules Advisory Committee. The Supreme Court may then act on the proposal . . . of may set the matter for a public hearing.

Hartley, 650 So.2d at 1047, citing Fla.R.Jud.Admin. 2.050(e)(1).

The reason underlying the requirement that subject matter divisions be created by local Court Rule is based upon the "checks and balances" inherent in the local rule process. These important due process safeguards are absent in the procedure used for implementing an administrative order

The administrative order under review falls prey to several defects or omissions which could have been cured had the proposal been subject to public scrutiny before its implementation. First, the Administrative Order fails to include a Pretrial Diversion Program as statutorily mandated by Section 948.08 (6)(a), Florida Statues (1995). Under Section 948.08(6), Florida Statutes, a person charged with Second or Third Degree felony for the Possession or Purchase of a controlled Substance, if he has not previously been convicted of a Felony or admitted to a

Pretrial Diversion Program, is eligible for admission into a Substance Abuse Education and Treatment Program in lieu of prosecution. Admission may be by motion of either party or the Court. Upon successful completion of the Pretrial Program, the charges are dismissed. Pretrial Intervention for first time drug offender is not available under AO 97-003 .[4] This defect could have been identified and possibly cured had the proposal been subjected to the in-depth analysis which accompanies public scrutiny.

In addition, the subject order violated another Administrative Order which requires assignment of cases by "blind rotation" unless other specified criteria come into play. First Amendment to Administrative Order No. 92-7 1.

Further, the practical effect of the Order is that one judge, the same judge, will preside over the trials of all narcotic offenses which do not include a forcible or First Degree (or higher) Felony. In excluding from the Drug Division narcotic cases which are accompanied by forcible felonies, the plan allows the prosecution to "forum shop." Specifically, by adding or not adding a forcible felony charge, the State can use its charging discretion to determine whether or not a particular case will be heard in the Drug Division or in a lettered Felony Division.

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[4]The Order does not presently provide for admission into a Substance Abuse Treatment Program unless the offender has been convicted or entered a plea of guilty or not contest.

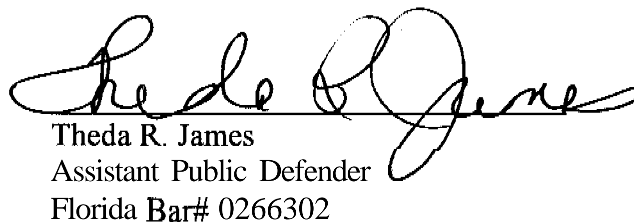
CONCLUSION

The creation of a special Drug Division to handle all drug related cases is a subject matter division which can only be established by local court rule which has been subjected to public scrutiny and approved by the Florida Supreme Court. The Chief Judge in this case acted in excess of his lawful authority by implementing the division before receiving approval from the Florida Supreme court. Had the proposal been properly subjected to public scrutiny, the defects or omissions noted in the proposal could have possibly been cured. In addition to having failed these basic due process safeguards, the Administrative Order was also implemented without Supreme Court approval. Therefore, for the reasons set forth above, Petitioner respectfully requests that this Court vacate or quash Administrative Order No. S-04-29-97-003 and order a stay of proceedings in the Circuit Court of the Thirteenth Judicial Circuit.

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the State Attorney, Courthouse Annex, South Tower, Tampa, Florida, and to the Honorable F. Dennis Alvarez, Chief Judge of the Thirteenth Judicial Circuit, County Courthouse Room 214F, Tampa, Florida, 33602, by hand/mail delivery, and to the Attorney General's Office, 2002 N. Lois, Seventh Floor, Tampa, Florida 33607, and to Richard Escobar, Esquire, 2708 West Kennedy Boulevard, Tampa, FL 33609, by mail, this 27 day of May, 1997.

Respectfully submitted,

JULIAN-NE M. HOLT
PUBLIC DEFENDER
THIRTEENTH JUDICIAL CIRCUIT



Theda R. James
Assistant Public Defender
Florida Bar# 0266302

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

MAURICE ANTONIO MANN,
and
The Office of the Public Defender
for the Thirteenth Judicial Circuit,

Petitioners,

Case No. 90,498

vs.

Chief Judge of the Thirteenth Judicial
Circuit and the Circuit Judge for the
Drug Division of the Thirteenth Judicial
Circuit in and for Hillsborough County,
Florida.

Respondents.
______________________________/

APPENDIX

TAB "A" Administrative Order No. S-04-29-97-003

TAB "B" First Amendment to Administrative Order No. 92-71

/wlg

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. S-04-29-97-003
(Supersedes Administrative Order S-04-29-92-89-I)

FILED
1997 JAN 15 PM 2: 52
CLERK CIRCUIT COURT
HILLSBOROUGH CNTY. FLA

IN RE: DRUG DIVISION

WHEREAS crime is a major concern in our community because of the expense it extracts in terms of limited resources and in terms of human suffering; and

WHEREAS it is well established and generally recognized that illegal drug use fuels most crime; and

WHEREAS it is recognized that the providing of drug treatment to criminal defendants will greatly reduce their appetite for drugs thus reducing their likelihood of engaging is further criminal behavior; and

WHEREAS there has been operating within the Thirteenth Judicial Circuit for two and one-half years Drug Division "Y", where the focus of the court has been on drug treatment as a condition of community sanctions for non-violent offenders, which has had documented success in reducing recidivism by the use of court supervised drug treatment, resulting in a high level of knowledge of this methodology; and

WHEREAS the expense of providing a drug treatment is substantially less than the expense of incarceration; and

WHEREAS it is necessary for the proper and efficient operation of the Thirteenth Judicial Circuit to establish a specialized section of the Criminal Justice Division to handle drug cases; it

is therefore

ORDERED:

1. There is hereby created the Drug Division of the Thirteenth Judicial Circuit, consisting of criminal divisions "X" and "Y". The purpose of the Drug Division shall be to process all persons charged with drug offenses in a uniform manner without compromising the people's right to a full prosecution of criminal defendants and without compromising all defendants' legal rights. Another purpose will be to insure that all defendants who qualify for community supervision and who acknowledge a drug problem and desire for treatment, shall be given the opportunity to receive such to the extent that community resources will provide, with judicial supervision.

2. For purposes of this administrative order, the following terms shall have the following meanings:

a. "Community sanctions" - means probation, drug offender probation, community control, and community control II.

b. "Drug Offense" - means a felony violation of Chapter 893, Florida Statutes.

c. "Forcible Felony" - means a violation of any felony listed in Section 776.08, Florida Statutes.

d. "Lettered Division" - means one of the divisions "A" through "G" of the Criminal Division of the Thirteenth Judicial Circuit.

e. "Drug Treatment" - means outpatient, intensive day-night, residential, and in-jail treatment programs.

f. "VOP" - means violation of probation or community control.

3. All persons presently on community sanctions for drug offenses, provided they are not also on community sanctions for a forcible felony, shall have their cases transferred to the Drug Division and assigned to Division "X". This shall be accomplished via a separate administrative order.

4. All filings, after January 21, 1997, of drug offenses shall be filed in the Drug Division and assigned to Division "X".

5. Upon a plea of not guilty in the Drug Division, the defendant shall be set for trial or pretrial conference, and the case shall be handled in accordance with the procedures governing the lettered divisions.

6. Upon a conviction or plea of guilty or no contest in the Drug Division, where the defendant is sentenced under the sentencing guidelines to community sanctions and the defendant acknowledges a need and desire for drug treatment, the defendant shall receive as a part of the sentence the transfer of the case to Division "Y" for court supervised treatment. Thereafter, should the defendant violate the community sanctions, other than being charged with a felony offense, the violation proceeding shall be conducted in Division "Y".

7. Upon a conviction at trial or a plea of guilty or no contest in Division "X", where the defendant does not acknowledge a need or desire for drug treatment, if placed on community sanctions, the defendant shall be placed on drug offender probation or community control with drug sanctions.

8. A defendant who has been sentenced pursuant to section 7 and who violates community sanctions but is still eligible for community sanctions and acknowledges at sentencing

a need and desire for drug treatment shall be entitled to receive said sanctions as a part of the sentence and have the case transferred to Division "Y" for court supervision.

9. If a defendant under supervision in Division "Y" is charged with a new felony offense that does not necessitate the transfer of the new charge from the Drug Division, the new charge and the VOP shall be handled in Division "X". If the defendant is not convicted of the new charge, the case shall be transferred back to Division "Y". If the defendant pleads to or is convicted of the new charge, tbe case shall be handled pursuant to sections 6 and 7 of this administrative order.

10. If a defendant on community sanctions in the Drug Division is charged with a forcible felony, that case shall be transferred to a lettered division together with the existing case. If the defendant is found not guilty of the new charge, the case shall be transferred back to the appropriate division of the Drug Division.

11. If a defendant is charged with multiple felony offenses, one of which is a drug offense and the other(s) is not a forcible felony or a first degree or higher non-drug felony, the charge shall be filed in Division "X" and handled as set forth above.

12. If a defendant is charged together with other defendants in an information, and otherwise qualifies to be filed in the Drug Division, the defendant shall be entitled to have the case transferred to the Drug Division, and assigned to Division "X" after plea, conviction, or conclusion where the case shall be handled pursuant to the provisions of this administrative order.

13. All defendants who are presently on community sanctions in a lettered division for a non-forcible felony who are hereafter charged with a drug offense shall have the new case transferred to the Drug Division, together with the existing case. If the defendant is found not

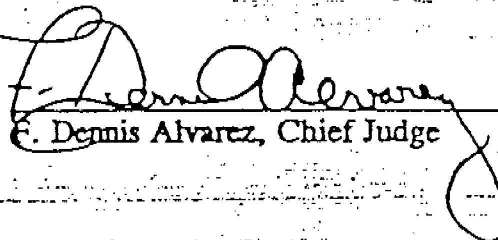
guilty of the new charge, the case for which the defendant is presently on community sanctions shall be transferred back to the lettered division, unless it is determined in Division "X" that the defendant has a need and desire for drug treatment, in which event the case shall be transferred to Division "Y" for court supervision.

14. If at any time it is determined by the court in a lettered division that a defendant has a need and desire for treatment and the charge is a non-forcible felony and the defendant is on or eligible for community sanctions, the court may transfer the case to the Drug Division and assign the case to Division "Y" for sentencing and/or court supervised treatment. Thereafter, if the defendant commits a new forcible felony, such case, together with the violation of community sanctions, shall be transferred back to the originating division.

15. By agreement of all parties, drug charges with a companion charge that is a forcible felony, may be accepted into Division "Y". The judge in a lettered division may transfer such cases to Division "Y" upon such stipulation.

16. Administrative Order S-04-29-92-89-i is hereby superseded.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida, this 15th day of January, 1997.



F. Dennis Alvarez, Chief Judge

original to: Richard Ake, Clerk of the Circuit Court
copies to: All Criminal Circuit Judges
Michael Bridenback, Court Administrator
Harry Lee Coe, III, State Attorney
Julianne M. Holt, Public Defender
Don Waldron, Department of Corrections Probation and Parole
Erio Alvarez, Criminal Justice Specialist, Hillsborough County

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT,
FOR HILLSBOROUGH COUNTY, FLORIDA

FIRST AMENDMENT TO ADMINISTRATIVE ORDER NO. 92-71

RE: UNIFORM ADMINISTRATIVE PROCEDURES FOR CIRCUIT COURT CRIMINAL JUSTICE AND TRIAL DIVISIONS

SECTION I: SCOPE AND EFFECTIVE DATE

In order to improve the administration of justice in the Circuit Court Criminal Justice and Trial Divisions, the following Uniform Administrative Procedures shall govern the practices of the Divisions. These procedures shall take effect on the first day of July, 1992, and supersede any prior conflicting Administrative Orders regarding Uniform Administrative Procedures for Circuit Court Criminal Justice and Trial Divisions.

SECTION II: NUMBER OF DIVISIONS

There shall be as many Criminal Justice Divisions as deemed necessary by the Chief Judge. The Criminal Justice Divisions shall be designated in alphabetical order commencing with the letter "A".

There shall be as many Trial Divisions as deemed necessary by the Chief Judge. The Trial Divisions shall be designated in numerical order commencing with the number one (1).

There shall be a division designated Division "O" which shall handle all matters designated by the Chief Judge in Administrative Orders.

SECTION III: ALLOCATION OF CASELOAD

1. Prior to the filing of any indictment or information, the State Attorney shall notify the Clerk of the Circuit Court in writing if any named defendant is at the time on probation,

community control, or has any other cases pending and if so, the court to which those cases are assigned.

2. The clerk shall implement and utilize a caseload allocation system which incorporates the following components:

a. Upon the filing of a criminal report affidavit and the booking of a Defendant, the Clerk shall designate a sequential case number and assign the case to Division "O". The Clerk shall randomly assign a criminal justice division when an information is filed in the case. If it is determined that a Defendant has another pending case or is on probation or community control, the newly filed information shall be assigned to the criminal justice division having the lowest numbered probation or community control case; and if not on probation or community control, to the division having the lowest numbered pending case.

b. Upon the direct filing of an indictment or information charging First Degree Murder or RICO, the Clerk shall designate a sequential case number and assign to Division "O". The Clerk shall assign a criminal justice division after the defendant has been booked on that case. All probation, community control or other pending cases involving any defendant charged in the indictment or information shall be reassigned to the said division based on information supplied to the Clerk by the State Attorney.

c. Upon the direct filing of an indictment or information charging offenses other than First Degree Murder or RICO, the Clerk shall designate a sequential case number and assign the case to Division "O". The Clerk shall randomly assign a

criminal justice division after the defendant has been booked in that case. If it is determined that a Defendant has another pending case or is on probation or community control, the newly filed case shall be assigned to the criminal justice division having the lowest numbered probation or community control case; and if not on probation or community control, to the division having the lowest numbered pending case.

d. Upon written application by the State Attorney and with the written approval of the Administrative Judge of the Criminal Justice and Trial Divisions, indictments or informations charging offenses other than First Degree Murder or' RICO but arising out of the same alleged criminal episode shall be reassigned by the Clerk to that Division assigned the case having the lowest case number. If any defendant has another pending case or is on probation or community control, all such cases shall be reassigned to the Division having the lowest numbered probation or community control case; if there is no probation or community control case, to the Division having the lowest numbered pending case. The Division to which such cases are reassigned shall be taken out of the random assignment cycle for as many turns as there are such reassigned cases (to include all reassigned probation, community control, or pending cases.)

e. Upon the filing of a Notice of Appeal from a County Court Criminal Division, the Clerk shall designate a sequential case number and randomly assign the appeal to a Criminal Justice or Trial Division.

f. All Motions to Discharge Bond Forfeitures, Motions for Extension of Time, Motions for Remission of Bond Forfeiture and Motions to Set Aside Judgment shall be assigned by the clerk to that Criminal Justice or Trial Division assigned the related criminal case. If the Motion to Set Aside Judgment applies to a County Criminal case, the motion shall be randomly assigned to a Criminal Justice Division.

g. All Motions for Post-Conviction Relief shall be filed in the Criminal Justice or Trial Division originally assigned the criminal case. If the case was transferred by a Criminal Justice Division to a Trial Division or another Criminal Justice Division for trial, all Motions for Post-Conviction Relief should be filed in the Criminal Justice Division where the case originated.

SECTION IV: BOND REDUCTION AND RELEASE ON RECOGNIZANCE

1. In all instances where defense counsel seek either the reduction of bond or release on recognizance, the counsel shall contact the assistant state attorney assigned the case or said attorney's immediate supervisor. If counsel are able to stipulate to the conditions of defendant's release, said stipulation shall be reduced to writing and delivered to the office of the assigned judge for consideration and approval. Should the assigned judge not be available, the stipulation shall be presented to the Division "O" Judge for consideration and approval. Should the assigned judge and the Division "O" Judge not be available, the stipulation shall be presented to the Administrative Judge of the

criminal Justice and Trial Divisions for consideration and approval.

If the stipulation occurs during non-business hours and if counsel further stipulate to the emergency of the situation, the assigned judge may be telephoned regarding the reduction of bond or release on recognizance. If the assigned judge is not available by telephone, the Division "O" Judge may be telephoned regarding the reduction of bond or release on recognizance. If the assigned judge and the Division "O" Judge are not available by telephone, the Administrative Judge of the Criminal Justice and Trial Divisions may be telephoned.

2. When counsel are unable to stipulate to the conditions of a defendant's release, defense counsel may schedule a hearing with the assigned judge and file an application for modification of bail with notice of hearing and a certification that pursuant to Florida Statute 903.035(2) at least three (3) hours notice has been given to the county attorney and the assigned assistant state attorney or said attorney's immediate supervisor. The defendant's presence shall be required at such hearing unless waived by the defense attorney with the prior approval of the judge. The State may apply for modification of bail by showing good cause and with at least three (3) hours notice to counsel for the defendant.

3. In cases involving alleged violations of probation or community control, applications for modification of bail shall be submitted to the assigned judge. Applications for modification of bail shall not be heard at first appearance or in Division "O"

without the specific concurrence of the judge assigned the violation or in that judge's absence, the Administrative Judge of the Criminal Justice and Trial Divisions and in that judge's absence, the Chief Judge. Where counsel has scheduled a hearing for the reduction of bond or release on recognizance, counsel shall advise the court probation officer of the scheduled hearing. The court probation officer shall advise the defendant's supervising officer of the scheduled hearing and shall make available at the hearing the Department of Corrections file relating to the defendant's case(s).

SECTION V: ARRAIGNMENT AND FIRST TIME REVOCATION

1. The Clerk shall make certain that any notice of appearance and/or written plea of not guilty is in the court file by the date the case is on the docket for arraignment. Counsel for the defendant shall furnish the assigned judge with a courtesy copy of the notice of appearance and/or written plea of not guilty prior to the date of arraignment.

2. The Clerk shall provide written notice of arraignment to defendants of record who are not incarcerated as well as all surety and counsel of record.

3. The Clerk shall give written notice of the trial date as well as any scheduled pretrial conference date to all defendants, defense counsel and surety not present at arraignment.

4. Each Criminal Justice Division shall handle arraignments and first time revocations involving incarcerated defendants on a weekly basis. Such hearings shall be scheduled by the Clerk no

of filing.

3. Counsel shall file all motions and attached notices of hearing no later than 2:00 p.m. the day preceding the scheduled hearing. All matters not in compliance with this requirement will not appear on the calendar and shall be deemed abandoned until properly noticed. A courtesy copy of the motion and notice of hearing should be furnished to the judge prior to the scheduled hearing.

4. A copy of any motion which is subject to a traverse, demurrer or other responsive pleading by the State should be delivered to and received by the assistant state attorney assigned the case or said attorney's immediate supervisor at least five (5) working days prior to any scheduled hearing. A copy of the traverse, demurrer or other responsive pleading should be delivered to and received by the defense counsel at least two (2) working days prior to said hearing. It is suggested that hand delivery be utilized by all counsel.

5. All motions and other pleadings shall be signed by the attorney of record whose address, telephone number and Florida Bar number shall be stated.

6. All orders prepared by counsel and delivered to the court for execution must include the date the motion was heard and be accompanied by sufficient copies and properly stamped and addressed envelopes for delivery to all affected by said order. No mailings will be made without compliance.

SECTION VIII: DEPOSITIONS

No deposition or any part thereof shall be accepted by the clerk for filing unless accompanied by a written certificate stating the contents are necessary for the decision of a matter pending before the court.

SECTION IX: COKPETENCY AND INVOLUNTARY HOSPITALIZATION HEARINGS

1. Upon the granting of a motion to determine competency and/or need for involuntary hospitalization, the assigned judge shall appoint two (2) mental health experts, from an approved list circulated by the Court Administrator's Office, to examine the defendant and set the matter for further hearing.

2. Unless otherwise required by the court, if the assigned judge has received the original and two (2) copies of the evaluation report at least twenty-four (24) hours in advance of the scheduled hearing, the examining mental health experts need not be present at the scheduled hearing.

3. Counsel shall obtain a copy of said evaluations from the assigned judge the day prior to said hearing date.

4. If counsel cannot stipulate to said evaluations, the matter shall be set for a further evidentiary hearing and the examining mental health experts shall be notified that their presence is required for such hearing.

SECTION X: PLEA AGREEMENTS

If the State and the defendant reach a plea agreement, the case shall be placed on the assigned judge's calendar as quickly as possible for a change of plea.

SECTION XI: TRIAL WEEKS

1. Each Criminal Justice Division shall schedule weekly trial dockets in accordance with the trial calendar published by the Chief Judge and the Administrative Judge of the Criminal Justice and Trial Divisions. The trial calendar may be modified by the assigned judge if deemed necessary. In those instances where a division's trial docket is not taken up with its own cases, the judge of that division shall be available to handle the trial of cases which cannot be reached in other divisions.

2. Each Trial Division shall be available on a weekly basis to handle its own cases and the trial of cases transferred from Criminal Justice Divisions. On those occasions when a Trial Division's docket is not taken up with the trial of cases, the Trial Division Judge shall notify the Administrative Judge and be available, as determined by the Administrative Judge, to preside over and handle a Criminal Justice Divisions's calendar, to include arraignments, pretrial conferences, change of pleas, sentencings, violation of probation dispositions and sentencings, violation of community control dispositions and sentencings, violation of probation or community control hearings, motion hearings, and all other matters that might appear on a Criminal Justice Division's calendar. It is the intent of this provision that under such circumstances the Trial Division judge actually dispose of as many matters as possible so as to assist the Criminal Justice Division in reducing its pending caseload, and to allow the Criminal Justice Division judge to devote time to such other matters as the judge

deems appropriate.

SECTION XII: CASES TRANSFERRED TO TRIAL DIVISION FOR JURY TRIAL

1. Once a case is transferred by a Criminal Justice Division to a Trial Division or other Criminal Justice Division for jury trial, absent exceptional circumstances, no pre-trial motions shall be entertained by the judge to whom the case has been transferred for trial. Once a case is transferred by a Criminal Justice Division to a Trial Division or other Criminal Justice Division for jury trial, absent exceptional circumstances, no plea agreements shall be entertained by the judge to whom the case has been transferred for trial.

2. Once a case has been transferred to a Trial Division, the Trial Division shall be responsible for retrials upon remand and retrials upon the declaration of a mistrial.

3. Upon conclusion of a trial along with all post trial motions and the sentencing of defendant(s), a case which was transferred by a Criminal Justice Division to a Trial Division or other Criminal Justice Division for trial, shall be reassigned to the Criminal Justice Division from which it was transferred. All violations of probation and/or post conviction relief motions shall be heard in the Criminal Justice Division originally assigned the case.

SECTION XIII: APPEARANCE AND WITHDRAWAL

1. No counsel, having made a general appearance, shall thereafter abandon the case or proceeding in which the appearance was made, or withdraw as counsel therein, except by written leave

of Court obtained after giving notice to the client affected thereby, and to opposing counsel.

2. If a defendant discharges counsel it shall be the responsibility of that defendant to either proceed pro se or obtain substitute counsel in sufficient time to meet established trial dates or such other scheduled proceedings.

SECTION XIV: CONTINUANCES

1. A continuance may be granted by order of the Court for good cause shown. Counsel seeking a continuance shall file an appropriate motion and notice of hearing and shall be present for hearing on said motion. No trial, hearing or other proceeding shall be continued upon stipulation of counsel alone. All motions for continuance of a trial or violation of probation hearing shall be filed and heard prior to the scheduled trial or violation of probation hearing date.

2. Failure to complete discovery shall not constitute cause for a continuance unless such failure is brought to the attention of the Court at least five (5) working days in advance of any scheduled trial or hearing date and is not the result of lack of diligence in pursuing such discovery.

3. Except for good cause shown, no continuance shall be granted because a witness has not been served with a subpoena, unless the moving party has attempted service at least five (5) working days before the return date.

SECTION XV: SCHEDULING CONFLICTS

Counsel who have scheduled hearings or trials in more than one

court at the same time shall notify the effected judges and counsel prior to the hearing date if the conflict will substantially affect counsel's ability to meet his or her obligation.

SECTION XVI: EMERGENCY **MATTERS**

1. All Criminal Justice and Trial Division Judges shall be available to handle emergency matters arising in their respective divisions during normal business hours unless arrangements have been made with another judge to substitute during any absence.

2. The Administrative Judge of the Criminal Justice and Trial Divisions shall handle emergency matters in the event the assigned or substitute judge is not available.

3. One assistant state attorney shall be designated by the State Attorney to handle emergency matters arising in any division during normal business hours when the assistant state attorney assigned the case or the attorney's immediate supervisor is not available. The name and telephone number of that assistant state attorney shall be circulated to all judges assigned to the Criminal Justice and Trial Divisions.

4. One assistant public defender shall be designated by the Public Defender to handle emergency matters arising in any division during normal business hours when the assistant public defender handling the case or the attorney's immediate supervisor is not available. The name and telephone number of that assistant public defender shall be circulated to all judges assigned to the Criminal Justice and Trial Divisions.

5. One assistant public defender and one assistant state

attorney shall be designated by their respective offices to handle emergency matters arising during non business hours. The Clerk and the Hillsborough County Sheriff's office shall maintain a schedule of such emergency assigned attorneys and their respective telephone numbers.

SECTION XVII: SEARCH WARRANTS AND WIRETAPS

Absent exceptional circumstances no application for Search Warrants or Wiretaps shall be heard by any judge assigned to the Criminal Justice or Trial Divisions.

SECTION XVIII: COURT APPOINTED PRIVATE ATTORNEYS

Court appointed private attorneys shall follow the procedures for payment of fees and costs promulgated by the office of the Court Administrator. (A copy of those procedures along with necessary forms is available in the Office of the Court Administrator).

SECTION XIX: WITNESS AID CENTER

Counsel desiring the services of the Witness Aid Center shall hand deliver copies of subpoenas showing a return of service to the Witness Aid Center, and the original, if not already filed, shall be immediately hand delivered to the clerk for filing. The Witness Aid Center shall not divulge information concerning any subpoenaed witness to anyone other than the presiding judge or counsel causing the issuance of said subpoena.

SECTION XX: SEALING OR EXPUNGING CRIMINAL RECORDS

1. All Petitions and Orders to Expunge or Seal Criminal Records shall substantially comply with forms set forth in Florida

Rule of Criminal Procedure 3.989.

2. If a Felony Criminal Report Affidavit is reduced to a misdemeanor and filed in the County Court, that affidavit shall also be sealed or expunged by the Clerk and Law Enforcement Agencies upon the entry of an Order Sealing or Expunging the misdemeanor case which states both case numbers.

SECTION XXI: TRIAL CONDUCT AND COURTROOM DECORUM

The procedures stated herein set forth basic principles of trial conduct and courtroom decorum. They are not inclusive and are intended to emphasize and supplement the obligations of counsel under The Florida Bar Rules of Professional Conduct and The Hillsborough County Bar Association Standards of Professional Courtesy. Each judge may announce and enforce additional requirements, or may excuse compliance with any provisions hereinafter set forth as that judge deems appropriate.

1. Counsel should always deal with parties, other counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility and avoid undignified or discourteous conduct which is degrading to the court.
2. Counsel should be punctual and prepared for any court appearance.
3. Counsel should stand as court is opened, recessed or adjourned; when the jury enters or retires from the courtroom; and when addressing, or being addressed by, the Court.

4. Counsel should conduct examination of jurors and witnesses from a suitable distance. Counsel should not crowd or lean over the witness or jury and during interrogation should avoid blocking opposing counsel's view of the witness.

5. Counsel should not extract promises from prospective jurors during voir dire.

6. Counsel should address all remarks to the court, not to opposing counsel.

7. Counsel should avoid disparaging personal remarks or acrimony toward opposing counsel.

8. Counsel should refer to all adult persons, including the defendant, witnesses, and other counsel, by their surnames and not by their first or given names.

9. Only one counsel for each party shall examine, or cross examine each witness. Counsel stating objections, if any, during direct examination, shall be the one recognized for cross examination.

10. Counsel should request permission before approaching the bench. Any documents counsel wish to have the Court examine should be handed to the clerk.

11. Counsel should have the clerk pre-mark potential exhibits.

12. Any paper or exhibit not previously marked for identification should first be handed to the clerk to be marked before it is tendered to a witness for

examination. Any exhibit offered into evidence should, at the time of such offer, be handed to opposing counsel.

13. In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the Court.

14. Generally, in examining a witness, counsel shall not repeat or echo the answer given by the witness.

15. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury, unless the offeror knows or has reason to believe opposing counsel will accept it.

16. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.

17. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

18. During trials and evidentiary hearings counsel should mutually agree to disclose the identities, and duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel all visual-aid equipment.

19. Counsel should not mark on or alter exhibits, charts, graphs, and diagrams without opposing counsel's permission or leave of court,

20. Counsel should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

21. counsel's word should be his or her bond. Counsel should not knowingly misstate, distort, or improperly exaggerate any fact or opinion and should not improperly permit counsel's silence or inaction to mislead anyone.

22. A charge of impropriety by one counsel against another in the course of litigation should never be made except when relevant to the issues of the case.

23. Counsel should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his or her testimony or the outcome of the case. Counsel, however, may advance, guarantee or acquiesce in the payment of:

    (a) expenses reasonably incurred by a witness in attending or testifying;

    (b) reasonable compensation to a witness for his list time in attending or testifying;

    (c) a reasonable fee for the professional services of an expert witness.

24. In appearing in his or her professional capacity before

a tribunal, counsel should not:

(a) state or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence;

(b) ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;

(c) assert one's personal knowledge of the facts in issue, except when testifying as a witness;

(d) assert one's personal opinion as to the justness of a cause, as to the credibility of a witness, or as to the guilt or innocence of an accused; but may argue, on the counsel's analysis of the evidence, for any position or conclusion with respect to the matters stated therein.

25. Counsel should not interrupt a question by opposing counsel with an objection unless the question is patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

26. Counsel should address objections, requests and observations to the court and not engage in undignified or discourteous conduct which is degrading to court

procedure.

27. Where a judge has already made a ruling in regard to the inadmissibility of certain evidence, counsel should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although he or she is at liberty to make a record for later proceedings. This does not preclude the evidence being properly admitted through other means.

28. Counsel should not attempt to get before the jury evidence which is improper.

29. Counsel should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, by fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

30. Counsel should never attempt to place before a tribunal or jury, evidence known to be clearly inadmissible, nor make any remarks or statements which are intended to improperly influence the outcome of any case.

31. Counsel should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

32. Counsel should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel and shall not mislead by inaction or

silence. Further, if this occurs unintentionally and is later discovered, it should immediately be disclosed or otherwise corrected.

33. At or prior to commencement of trial, counsel shall file written witness and exhibit lists with the courtroom clerk, with copies to the presiding judge, court reporter, and opposing counsel.

34. Prior to the commencement of jury selection, counsel shall provide to the court and opposing counsel all requested jury instructions.