IN THE SUPREME COURT OF FLORIDA

MAURICE ANTONIO M A '' ,
et al.,

Petitioners,

vs.

CHIEF JUDGE OF THE
THIRTEENTH JUDICIAL CIRCUIT,

Respondents.
_____/

Case No.: 90,498

District Court of Appeal
Second District Case Nos.:
97-00566
97-00962

PETITIONER'S REPLY BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioner adopts and incorporates by reference the statement of the case and facts as set forth in the Petitioner's initial brief filed on May 29, 1997.

SUMMARY OF ARGUMENT

There is nothing in Administrative Order, Fourth Judicial Circuit (Division of Courts), 378 So.2d 286 (Fla. 1979), which suggests the word "division" as it concerns the court system, is a term of *art.* Indeed, Petitioner has never argued that Respondent does not have the authority to promulgate directives which are necessary to administer the court's affairs. Rather, the gist of our argument, is that AO 97-003 goes beyond the court's administrative role and establishes a subject matter jurisdiction which may only be created by local rule subject to Supreme Court approval.

ARGUMENT

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

While Respondent is correct in his argument that merely labeling and naming a particular portion of the court is not sufficient to create a subject matter division, and it is true that the other, lettered felony courts within the Thirteenth Circuit are referred to as divisions, there is a significant difference. The so-called lettered felony divisions handle all manner of criminal cases, and the differentiation between each court is simply a matter of administrative convenience, whereas the newly created drug division only handles drug cases. More importantly, it is designed to handle all drug cases within the circuit. Thus, division X, and its "subdivision" *Y*, are substantially different than felony divisions A through G.

Moreover, while Respondent claims the drug division created by AO 97-003 is the same, or analogous to the habitual offender and career criminal divisions approved by the First District Court of Appeal in Dennis v. State, *673* So.2d 881 (Fla. 1st DCA 1996), and Jenkins v. State, 685 So.2d 918 (Fla. 1st DCA 1996), there is no evidence that this is true. Specifically, the published decisions in Dennis and Jenkins, provide no information as to whether either of those divisions solely handled cases relating to career criminals and/or habitual offenders, or whether each division also dealt with general criminal cases. Thus, without further information, one cannot determine whether or not the court's decisions in Dennis and Jenkins are indeed applicable to the current situation.

In support of his argument, Respondent also cites an unpublished decision of this Court, In

re: Administrative Order of the Fourth Judicial Circuit - No. 88-21 (Career Criminal Project), No. 81,017 (Fla. Mar. 11, 1993). This decision simply states that the Court rejected the advice of its Local Rules Advisory Committee and found that the administrative order at issue did not establish a "division" of the circuit court, The unpublished order contained no factual information about the administrative order at issue or the circuit court section it created. Based upon the absence of similar facts, the order cannot be said to have any precedential value in relation to the instant controversy.

Further, analogies to the facts and legal reasoning of the series of cases known as *Family Courts I, II, and III*[1] are also inapposite because those cases were based upon an unwieldy legislative mandate which was intended to create a coherent and comprehensive means of addressing a myriad of issues involving the family unit. In order to give effect to the legislature's intent, this Court allowed the circuits latitude to formulate plans which would be effective in light of the particular demographics of each court's constituency. Some circuits promulgated a local rule to create a separate family law division within the circuit, and other circuits simply reorganized case loads through the use of an administrative order. In either case, this Court required each circuit to submit its plan for final approval. Thus, due to the unique background behind the unusual decisions of the *Family Law* cases, those decisions cannot be said to have any relevance to the current issue.

Respondent also argues, disingenuously, that he has effectively complied with the requirement that a local rule be subject to scrutiny and public input because a representative from the Public Defender Office's and a member of the local criminal defense community were invited to, and attended two meetings in late December 1996, at which the plans for Division X were discussed.

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[1] See, In re: Report of the Commission on Family Courts, 633 So.2d 14 (Fla. 1994)(Family Courts II); In re: Report of the Commission on Family Courts, 646 So.2d 178 (Fla. 1994)(Family Courts III).

However, the documentation supplied by Respondent[2] to support this claim belies its substance. As evinced by the minutes of the two meetings, in late December 1996, Respondent unveiled a plan substantially dissimilar to any which had been discussed at previous public meetings, including a November 1996 meeting of the Hillsborough County Public Safety Coordinating Council.[3] This plan was initiated with minimal discussion or investigation in the January 1997 administrative order currently at issue.

Moreover, Respondent cannot seriously contend that the extension of a limited invitation to defense counsel to attend an unannounced, closed meeting in the bowels of the courthouse constituted sufficient public notice and inquiry to satisfy the requirements of the Rule 2.050(b)(2) of the Florida Rules of Judicial Administration. Clearly, the meetings which occurred merely two weeks before the order was implemented are no substitute for legitimate public debate.

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[2] See, Appendix to Respondent's Response, at 4 and 5, pp. A9-A11 and A12-A16, respectively.

[3] See, the minutes of the November 1996, PSCC meeting contained in the Appendix to Petitioner Mann's Reply before the Second District Court of Appeal. In November 1996, the published plan for the augmentation of drug division was characterized as an expansion of operations as they existed at the time. The expansion was to include an additional judge, but there was no indication that the court would become the sole forum within the Thirteenth Circuit for felony drug offense cases.

CONCLUSION

Based upon the foregoing, it is apparent that the administrative order at issue has resulted in the creation of an exclusive judicial forum for all felony drug cases. Further, the proper procedure for the establishment of **a** subject matter division is through the issuance of a local rule, but, in order to initiate a local rule, the Chief Judge must comply with the procedures found in the Rules of Judicial Administration.

CERTIFICATE OF SERVICE

I HEREBJ CERTIFY that a copy of the foregoing was sent by mail to the Angela McCrary, Office of the Attorney General, 2002 North Lois Avenue, Tampa, Florida, 33607, and a copy has been furnished to David Rowland, Esq., Court Counsel for the Thirteenth Judicial Circuit, and Robert A. Shimberg, State Attorney's Office, this 18 day of June, 1997.

Respectfully submitted,

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