

IN THE SUPREME COURT OF FLORIDA

IN RE REPORT OF THE FAMILY
COURT STEERING COMMITTEE

CASE NO. SC00-1410

The Florida Public Defender Association (“FPDA”) offers the following comments on the Report of the Family Court Steering Committee. The FPDA apologizes for not filing these comments by the time listed in this Court’s invitation for comments. Nevertheless, the FPDA respectfully asks this Court to accept these comments and consider them before making a final decision regarding this report.

The FPDA agrees with the overarching theme of the Model Family Court for Florida: a unified family court division capable of fully and fairly adjudicating the issues surrounding a family or child. Such a division would avoid many problems of specialized courts: the Balkanization of the legal system, the fragmentation of resources and inefficiency caused by multiple judges adjudicating issues involving the same litigants, and the improper blending of the judicial and executive functions inherent in specialized courts created to “solve” particular problems. The advantages of a unified court capable of determining the broadest range of issues involving a particular family or child are obvious, and would not normally require any additional comment from the FPDA.

Only after the comments were due, however, did the FPDA realize that the report arbitrarily excluded criminal domestic violence cases from the model family court. The report's Recommendation #2(a) lists nineteen different types of cases that should be in the family court division, including juvenile delinquency cases and civil domestic and repeat violence injunctions, but not criminal domestic violence cases. This exclusion was not accidental, as the comments make clear.

Excluding domestic violence cases is contrary to this Court's order in *Report of the Commission on Family Courts*, 633 So. 2d 14, 17 (Fla. 1994) (*Family Courts II*). In that opinion this Court reaffirmed "[t]he goal of creating a fully integrated, comprehensive approach to handling all cases involving children and families." *Id.*

To better accomplish this goal, a family's interaction with the courts in all circuits shall be administratively coordinated and monitored in *one unified family division*, whether that interaction involves dissolutions of marriage (and attendant determinations of custody, visitation, child support, alimony, and modifications thereof), cases under the Uniform Child Custody Jurisdiction Act and the Uniform Reciprocal Enforcement of Support Act, adoption and paternity, *domestic and repeat violence*, juvenile delinquency and dependency, termination of parental rights, or cases of children and families in need of supervision.

Id. Recommendation #2(a) follows this order in every aspect, except in its exclusion of domestic violence cases.

As this Court has stated, "unquestionably, domestic violence is a family law issue." *In re Report of the Commission on Family Courts*, 646 So. 2d 178, 180 (Fla.

1994) (*Family Courts III*). The failure to include domestic violence in the model family court is a case study in the problems with specialized courts and the need for unified courts with broad jurisdiction.

Specialized courts usually result from a public outcry for “someone to do something” about a particular topic in the news. As a result, Florida has many specialized courts hearing cases that otherwise could be dealt with quite effectively by the more generalized civil, criminal and family law divisions. Currently, these specialized courts include career criminal courts, collections courts, domestic violence courts, and juvenile courts.¹ Recent proposals suggest adding elder courts and criminal appellate courts.² One county even has an underage smoking court.³

These courts are designed to “stop” career criminals, elder abuse, teen-age smoking, or whatever cause lead to the creation of the court. While these are often

¹See Staff of Senate Criminal Justice Comm., *An Overview of Florida’s Criminal Justice Specialized Courts* 9, 50, 55 (1997); *see also* Senate Bill 428 (Fla. 1998) (never enacted proposal to authorize each judicial circuit to establish a court to hear cases against violent career criminals, habitual felony offenders, habitual violent felony offenders and prison releasee reoffenders).

²See Chap. 98-216, Laws of Fla. (requesting a committee of this Court review elders’ access to courts and make recommendations regarding court organization, procedures and support services); H.J. Res. 3617, Reg. Sess. (Fla. 1998) (proposing a constitutional amendment to create a court of criminal appeals).

³The courts in Broward County have established an underage smoking court, staffed by a judge “who is searching for ways to stop teenage smoking.” Aren Rafinski, *Judge Fights to Reduce Teen Smoking*, Miami Herald, Apr. 17, 1998, at 1A.

worthy causes to which the executive and legislative branches should respond, the judiciary's function is to fairly and impartially decide cases. This judicial function, however, directly conflicts with the executive purpose of accomplishing a particular result. In this situation, when the judicial and the executive functions merge in one court, the judicial suffers.

For instance, domestic violence courts were designed to stop domestic violence through providing "treatment" using the "power and control" model.⁴ Typically, the domestic violence courts need a guilty plea or a conviction so that they could order this "treatment" as a condition of probation. Therefore, in order to "help" the defendant, the domestic violence court needed to secure convictions either through pleas or at trial. The judicial process was no longer an end in itself, with indifference to the specific outcome as long as it was reached after a fair and impartial process. Instead, the judicial process became a means of securing convictions to serve the end of providing "treatment." A judicial process designed to secure convictions is directly contrary to our tradition of presuming defendants not guilty and requiring the state to prove guilt beyond a reasonable doubt.

Such a bias would not be solely the fault of particular judges in the domestic violence courts. Such judges would be influenced by the quasi-executive mission of

⁴Blaise Trettis' comments detail the problems with the judiciary jumping on that particular bandwagon and the FPDA endorses his comments.

the specialized court itself. When the judicial system abandons its neutrality and adopts such specialized courts, it is hardly surprising that individual judges in those courts consciously or unconsciously lose their neutrality as well. Judicial impartiality is a function not only of an individual, but also the structure of the judicial system itself. On a slanted playing field, one team will necessarily have an uphill battle no matter how carefully the official referees the game. Accordingly, the Code of Judicial Conduct has separate provisions for maintaining individual integrity and maintaining the integrity and independence of the judiciary as a whole. While Canons 2-7 involve individual integrity, Canon 1 states that “[a] judge should uphold the integrity and independence of the *judiciary*” because “[a]n independent and honorable judiciary is indispensable to justice in our society.” Fla. Code Jud. Conduct, Canon 1.

To ensure the integrity of the judiciary, this Court should not encourage the creation of specialized courts. Larger, more general divisions better avoid institutional capture and protect the integrity of the judiciary because they are more difficult, if not impossible, for any particular special interest group to compromise. This neutral atmosphere is crucial to the proper functioning of our system of justice:

The attitude of the judge *and the atmosphere of the courtroom* should be such that *no matter what charge is lodged against a litigant or what cause is before the court*, the [litigant] can approach the bar with every assurance that he is in a forum which is everything a court represents: impartiality and justice. The due process guarantee of a fair trial can mean nothing less than this.

State v. Steele, 348 So. 2d 398, 401 (Fla. 3d DCA 1977) (emphasis supplied). This neutral atmosphere cannot occur in any court assigned the executive mission of stopping domestic violence or any other malady.

Unfortunately, this problem is rarely self-correcting. Besides violating basic principles of judicial neutrality, specialized courts also create self-perpetuating bureaucracies and administrative structures even when the original reasons for their existence have long vanished. For instance, the original rationale for removing domestic violence cases from the criminal divisions was because judges and other court personnel needed special training and resources to recognize, understand, and counteract domestic violence:

There are ample reasons why domestic violence cases should be assigned differently from other cases. The lawyers for the State Attorney's Office, the lawyers for the Public Defender's Office and the judges assigned to the Domestic Violence Department *have received special domestic violence training*. In the courtroom, there is staff who serve as liaisons between the victim, the defendant and the defendant's family members and resources and programs relating to domestic violence in the community. Counseling programs for batterers and victims have been expanded. These expanded resources available to the domestic violence court cannot, for logistical and other reasons, be made available to all sections within the Criminal Division of the County Court and the Family Division of the Circuit Court.

See Memorandum in Support of Emergency Submission of Proposed Local Rule

(emphasis supplied) (A. 7-8).⁵

Recommendations #6(c) and #6(d) would require this same training of every judge in the family law division. Recommendations #4(b) and #4(c) provide for a comprehensive system of social service referrals, including referrals to agencies involved with domestic violence. Given that the reasons for its separate existence have now disappeared, one would logically expect the domestic violence cases to be included in the unified family court, as this Court ordered in *Family Courts II*.

The deliberate exclusion of domestic violence cases is strong testimony to the intransigence of specialized courts.⁶ The Report fails to adequately explain why it omits domestic violence courts from the unified family law court, saying merely that there are “good arguments” on both sides. This remark bears the hallmark of a

⁵See also Emergency Petition for Local Rule Establishing and Defining Jurisdiction of the Domestic Violence Division of the Eleventh Judicial Circuit of Florida (“WHEREAS, the Florida Legislature has directed the judges and prosecutors who handle domestic violence cases receive specialized training;”) (A. 4); Emergency Petition for Local Rule Establishing and Defining Jurisdiction of the Domestic Violence Division of the Seventeenth Judicial Circuit of Florida (identical language) (A. 11).

⁶This Court’s suggestion that domestic violence courts were an “administrative Frankenstein” turns out to have been quite apt. Originally the phrase referred to their mixture of circuit and county court jurisdiction. See *Family Courts III*, 646 So. 2d at 180. If this Court accepts the exclusion of domestic violence cases, then the specialized domestic violence courts will share another attribute of that monster: they will live beyond their time.

political, rather than principled, decision.⁷

Balkanizing the judiciary into specialized divisions creates a host of largely autonomous administrative judges, associate administrative judges, and bureaucrats. None of these people want to give up their autonomy or status. Accordingly, this Court will receive comments, like those from the Eleventh Judicial Circuit, which ask this Court to give the chief judge of each circuit “discretion” to exclude even juvenile delinquency from the unified family law division and promising “coordination.” This suggestion is tantamount to maintaining the status quo.

The main theme of the report is that a unified family division is necessary to provide a quality decision for families and children. Mere “coordination” between autonomous divisions with goals and personalities that may not always be in harmony is no substitute for a unified structure that can systemically solve problems and deliver a better quality product: justice. The report provides no justification for arbitrarily

⁷At another point the report notes that misdemeanor domestic violence cases are in the jurisdiction of the county court, not the circuit court. The report does not (and could not) claim this was the reason from excluding these cases. After this Court’s decision in *Wild v. Dozier*, 672 So. 2d 16 (Fla. 1996), the routine practice in many circuits is to issue repeated orders appointing county judges to be circuit judges and vice versa.

The county court judges in domestic violence court are often the least experience judges with the lowest seniority. Currently, these judges are routinely and continuously appointed as acting circuit judges to issue civil injunctions. Thus, jurisdictional or experience issues should not prevent this Court from including domestic violence cases in a unified family court.

abandoning its central thesis when it comes to domestic violence cases.

Additionally, specialized divisions are often inefficient because they result in the fragmentation of resources. In Miami-Dade County, for instance, judges on the domestic violence court have a lower case load than county court judges in other divisions. With a larger, more unified family law division, case loads can be spread more evenly among judges.

Therefore, this Court should adhere to the idea of a unified family court and include domestic violence cases within the purview of that court. A general division like family law enables the justice system to produce better decisions for families and children and without the fragmentation of resources inherent in Balkanized, specialized courts. The citizens of Florida understood the importance of unified courts when they passed the 1972 amendments to the Florida Constitution consolidating all of the then-existing courts into a simpler, more unified structure. This Court should adhere to this principle and include domestic violence cases in the unified family court as this Court did in *Family Courts II*.

Respectfully submitted,

Florida Public Defender Association

By: _____

BENNETT H. BRUMMER

Public Defender

Eleventh Judicial Circuit of Florida

1320 N.W. 14th Street

Miami, Florida 33125

Florida Bar No.: 091347

CERTIFICATES

I hereby certify that a copy of the foregoing comments and accompanying appendix were delivered by mail any by fax to The Honorable Raymond T. McNeal, Fifth Judicial Circuit Court, 110 Northwest 1st Avenue, Third Floor, Ocala, Florida 34475; Blaise Trettis, 2725 Judge Fran Jamieson Way, Building E, Second Floor, Viera, Florida 32940; and Nushin G. Sayfie, Leon County Courthouse, Suite 401, 301 S. Monroe Street, Tallahassee, Florida 32301 this 2nd day of February 2001

I hereby certify that this document is printed in 14 point Times New Roman.

John E. Morrison

Fla. Bar No. 072222

IN THE SUPREME COURT OF FLORIDA

IN RE REPORT OF THE FAMILY
COURT STEERING COMMITTEE

CASE NO. SC00-1410

INDEX TO APPENDIX

Emergency Petition for Local Rule to Establish a Domestic Violence Court 1

Emergency Petition for Local Rule Establishing and Defining Jurisdiction
of the Domestic Violence Division of the Seventeenth Judicial
Circuit of Florida 9