

IN THE SUPREME COURT OF FLORIDA

Case No. SC02-593

**REPORT AND RECOMMENDATIONS OF THE COMMITTEE
ON THE APPOINTMENT AND ASSIGNMENT
OF SENIOR JUDGES**

**INITIAL BRIEF OF INTERESTED PARTY
WILLIAM L. BLACKWELL
CHIEF JUDGE, 20TH JUDICIAL CIRCUIT
IN OPPOSITION TO THE REPORT AND RECOMMENDATIONS**

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STATEMENT OF THE CASE AND FACTS

The Court has for review the Report and Recommendations of the Committee on the Appointment and Assignment of Senior Judges. The committee was formed by the Florida Supreme Court and asked to address a number of issues regarding policies and procedures in the appointment and assignment of senior judges. The committee prepared and submitted to the Court a final report and recommendations for consideration. Recommendation Eleven of the report and recommendations provides, “While there should not be a per se prohibition against the use of senior judges in complex cases, guidelines regarding the assignment of senior judges should provide that, absent an agreement by the litigants, chief judges are encouraged not to assign senior judges to preside over complex cases.” The report then sets forth a list of types of cases which are considered to be complex cases.

William L. Blackwell is the Chief Judge of the Twentieth Judicial Circuit of Florida. Judge Blackwell believes that the assignment and utilization of senior judges is an important part of the responsibilities of the Chief Judge of any circuit of Florida. Judge Blackwell believes that the assignment of senior judges to

complex cases is beneficial to the litigants in complex cases, is beneficial to litigants in other cases which share the docket with complex cases, and is beneficial to the court system and should be encouraged rather than discouraged.

SUMMARY OF AGRUMENT

The assignment of senior judges to preside over complex cases provides several benefits to the court system. Senior judges may devote large blocks of time to complex cases, allowing those cases to come to trial more quickly and allows for a speedier trial process. Improving the trial process for complex cases benefits the litigants, counsel, jurors and witnesses in these complex cases. Having a single senior judge preside over a complex case provides for uniformity and consistency of rulings in the complex case. Removing a complex case from the docket of an active judge and assigning it to a senior judge also benefits the remaining cases on the active judge's docket by avoiding long delays in hearing these cases while the active judge focuses on the complex case.

ARGUMENT

I. IT IS IN THE INTERESTS OF JUSTICE AND JUDICIAL ECONOMY FOR A SINGLE JUDGE TO PRESIDE COMPLEX CASES

The Chief Judge of any circuit has the authority to assign judges to the courts and divisions of that circuit for the purpose of insuring the speedy, efficient and proper administration of justice. Florida Rule of Judicial Administration 2.050(b)(4). The Florida Supreme Court has previously recognized that in certain complex cases, particularly death penalty cases, having a single judge preside over the guilt, penalty, and postsentencing proceedings is necessary to avoid unnecessary judicial labor and eliminate unnecessary administrative delays. *In re: Amendments to Florida Rules of Judicial Administration Regarding Death Cases*, 672 So.2d 523 (Fla. 1996).

The substitution of a judge at any point in the litigation process is inefficient and causes duplication of effort. In a death penalty case, if, after a penalty phase, a sentence of death is pronounced and the sentence is later remanded for reconsideration, a substitute judge may not hold a bench trial on the limited issues upon which a remand was based but must hold an entirely new capital sentencing hearing. *Craig v. State*, 620 So.2d 174 (Fla. 1993); *Corbett v. State*, 602 So.2d 1240 (Fla. 1992).

In civil cases, a successor judge may complete any acts left uncompleted by the predecessor, so long as the successor judge is not required to weigh evidence and compare testimony heard before the predecessor judge. *Alvord v. Alvord*, 572 So.2d 925 (Fla. 3rd DCA, 1991); *Paragon Group v. Hoeksema*, 475 So.2d 244 (Fla. 2d DCA, 1985). A successor judge cannot enter an order based on evidence heard by the predecessor judge. *Beattie v. Beattie*, 536 So.2d 1078 (Fla. 4th DCA, 1988); *Hatcher v. St. Joe Paper Company*, 603 So.2d 65 (Fla. 1st DCA, 1992).

A successor judge may not enter rulings in any case until that successor judge first becomes familiar with the record and circumstances of the case. Florida Rule of Criminal Procedure 3.700(c)(1); Federal Rule of Civil Procedure 63; *National Healthcare Partnership v. Cascio*, 725 So.2d 1190 (Fla. 2d DCA, 1999). A successor judge must therefore devote considerable time and effort into familiarizing himself or herself with the record in an existing case before making any rulings. Assigning a senior judge to a complex case will allow the senior judge to devote more time and judicial resources to the trial of a complex case. Senior judges are used sparingly and have much lower caseloads than sitting judges, and they can devote more time and attention to the complex case. Additionally, senior judges often have the greatest expertise and experience of any members of the judiciary and can devote this experience and expertise to complex cases. Many

senior judges, including at least one senior judge in this circuit, are retired from the Courts of Appeals and are returning this experience to the trial courts after distinguished careers as district court judges.

II. SENIOR JUDGES MUST BE WELL-QUALIFIED TO BE APPOINTED TO PRESIDE OVER ANY CASE, AND THEIR QUALIFICATIONS AND SUPERVISION BY THE CHIEF JUDGE BENEFITS COMPLEX CASES

It is already the case as set forth in these recommendations and in practice by the Chief Judges of the Circuit Courts that senior judges are evaluated by the Chief Judge prior to their appointment to preside over any case. The Chief Judge has an obligation and responsibility to insure that the senior judge is well-qualified to preside over a complex case before the senior judge is assigned to preside over the case. In this circuit, the Chief Judge continues to periodically review the progress of all cases assigned to senior judges to insure that the cases are being properly and expeditiously handled. This qualification of the senior judge and review by the Chief Judge benefits the litigants in a complex case by insuring that the judge presiding over the case is well-qualified for the case.

This process of certification of competence and review by the Chief Judge is not afforded to litigants in ordinary, non-complex cases which are randomly assigned to any judge of the civil division. Litigants in these cases receive a judicial

assignment through “luck of the draw” and may not receive the benefit of a highly-qualified senior judge.

III. ASSIGNMENT OF COMPLEX CASES TO SENIOR JUDGES FACILITATES EFFICIENT CONCLUSION OF THE COMPLEX CASE

Assigning a complex case to a senior judge will facilitate the efficient conclusion of the complex case. A senior judge can devote more time exclusively to the complex case. Longer hearings can be set more easily before the senior judge and short hearings can be set more quickly where the attorneys in complex cases do not have to compete for hearing time on the docket with hundreds of other cases. A senior judge handling few cases will be able to schedule hearings in days or weeks instead of weeks or months in the future and can more easily accommodate lengthy hearings.

Trial of a complex case is also more efficient before a senior judge. Active judges in civil and criminal divisions have hundreds of cases on their dockets. In the Twentieth and other circuits, active judges usually set aside at least one day a week, even in trial weeks, for hearings. Accommodating a multi-week trial in a complex case would require either the elimination of the hearing day, thereby causing delay in dozens of cases for the sake of one case, or require that a trial

week span 4 days, the fifth having been reserved for hearings. A complex trial requiring 10 courtroom days before an active judge would be required to take place over three calendar weeks. This longer trial time will cause more inconvenience for litigants, counsel, and consume more court resources. It is also much more inconvenient for jurors whose lives are interrupted for three weeks and two weekends. Before a senior judge who does not have hearing days, the ten day trial could be completed in two calendar weeks, affording more convenience to all participants.

IV. THE COMMITTEE REPORT PROVIDES NO SOUND REASONS FOR PROHIBITING THE ASSIGNMENT OF SENIOR JUDGES TO COMPLEX CASES

Placing limitations on the ability of a Chief Judge to use our most skilled and experienced judges to preside over those cases which most demand a skilled and experienced judge is counterproductive to the administration of justice. The committee report surrounding Recommendation 11 indicates that these cases should be assigned to sitting judges “who are subject to constitutional mechanisms of accountability.” No other reason is provided by the committee for Recommendation 11, and no factual materials are provided to justify this Recommendation.

Why should “constitutional mechanisms of accountability” play any relevance in the assignment of complex cases? The decisions of any judge presiding over a case are subject to review by appellate courts and the Supreme Court of Florida. Senior judges are subject to review by the Judicial Qualifications Commission and the Florida Supreme Court just as are sitting judges. The only difference between a sitting circuit court judge and a senior judge presiding over a case in circuit court is that the senior judge is not subject to being voted out of office at the next general election term. Otherwise senior judges are subject to all the same rules, regulations, and review as sitting judges.

Moreover, the assignment and review of senior judges is squarely in the hands of the Chief Judge of the circuit. The Chief Judge has more control over the senior judge than over sitting judges, as the Chief Judge has the authority to assign or reassign the senior judge at any time. Whereas litigants whose case is before a sitting judge must follow the procedures set forth in Judicial Administration Rule 2.160 to reassign a case from that judge, in the case of a senior judge all it takes is a direction from the Chief Judge and the case can be reassigned from the senior judge. The Chief Judge as a sitting judge is accountable to the litigants, the bar and the voters through all “constitutional mechanisms of accountability.” The Chief Judge is chosen to manage the circuit, and should be allowed to do so.

V. CHIEF JUDGES SHOULD BE AFFORDED DEFERENCE AND LATITUDE IN THE MANAGEMENT OF JUDICIAL ASSIGNMENTS AND DOCKETS TO INSURE JUDICIAL ECONOMY IN THEIR CIRCUITS

Insuring that litigants receive a prompt and just resolution of their cases while managing limited judicial resources is the job of the Chief Judge of each circuit.

The ability to utilize senior judges is a precious resource to the court system and is a valuable tool available to Chief Judges to aid them in managing the courts and dockets of the circuit. Each circuit is different and the Chief Judge of the circuit, as the chosen representative of all the judiciary in the circuit, is in the best position to understand the needs and demands of the circuit and to use the tools available to resolve issues of judicial assignment and docket control in the circuit.

Deference should be given to the ability of the Chief Judge of each circuit to use the tools provided to the Chief Judge to manage the circuit. Each circuit has its own unique problems and the Chief Judge should be allowed to use the tools available to deal with those problems in the best way for the circuit. Senior judges are a precious resource and the Chief Judges of several circuits including the 20th Circuit have determined that one of the best ways to use this precious resource is by assigning senior judges, with their superior experience and skills, to preside over the trials of complex cases. Absent some strong compelling reason, this Court

should defer to the knowledge and experience of the Chief Judge of each circuit to use senior judges in complex cases and should not impose limits on the ability of Chief Judges to make such assignments.

CONCLUSION

It is in the interest of justice and the efficient use of judicial resources to assign appropriately trained and experienced senior judges to complex cases. Such assignments facilitate a consistent and speedy resolution of the complex case without adversely impacting the numerous other cases on an active judge's docket. Chief Judges should be allowed at their discretion to assign senior judges to complex cases and should not be discouraged from doing so.

Respectfully submitted this ____ day of May, 2002.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to the Honorable Gilbert S. Goshorn, Chairman of the Committee on the Appointment and Assignment of Senior Judges, C/O Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601; and upon each of the Chief Judges of the Twenty Circuits of the State of Florida, this ____ day of May, 2002.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionally spaced, and complies with the requirements set forth in Florida Rules of Appellate Procedure 9.210(a)(2).

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