

IN THE SUPREME COURT  
OF FLORIDA  
CASE NUMBERS: SC 01-2079 and SC01-2062

KHURSHID KAHN, M.D., et al.,  
Petitioners,

vs.

RAYMOND PFEIFLER and  
CYNTHIA PFEIFLER, his wife,  
Respondents.

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PHYSICIANS HEALTHCARE  
PLANS, INC., et al.,  
Petitioners

vs.

RAYMOND PFEIFLER and  
CYNTHIA PFEIFLER, his wife,  
Respondents.

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**PFEIFLER RESPONDENTS' RESPONSE TO ORDER TO SHOW  
CAUSE**

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## **PRELIMINARY STATEMENT**

Respondents are responding to two separate cases which have already been consolidated by this Court. Initially, a Petition for Prohibition was filed by PHYSICIAN’S HEALTHCARE PLANS, INC. (“PHP”), and assigned Case No. SC01-2062. Subsequently, a second petition was filed by KHURSID KAHN, M.D., et al. (“Kahn”), and assigned Case No. SC01-2079. Both Petitioners are defendants in a medical malpractice case filed by Respondents, RAYMOND PFEIFLER and his wife, CYNTHIA PFEIFLER, and both cases challenge the assignment of the PFEIFLERS’ medical malpractice action to the Seventeenth Judicial Circuit’s senior judges’ docket. Nearly every Defendant in the underlying litigation has joined in one

or both of the petitions. Separate Orders to Show Cause were entered in both cases, ordering Respondents to show cause why the relief requested in the Petitions should not be granted, and inviting the Chief Judge of the Seventeenth Judicial Circuit to file a response as well. Because the cases have been consolidated, and because this Court has granted PFEIFLERS' Motion for Uniform Response Date, PFEIFLER submits this single Response to Order to Show Cause.

Petitioners shall be referred to by name or as Petitioners; likewise, Respondents will be referred to by name or as Respondents. References to the Appendix to the Petition filed by PHYSICIAN'S HEALTH CARE will be made as "PHP App. Ex. \_\_\_\_". References to the Appendix to the Petition filed by the KAHN Petitioners will be made as "KAHN App. Ex. \_\_\_\_".

All emphasis supplied is that of undersigned counsel, unless otherwise indicated.

## **STATEMENT OF THE CASE AND OF THE FACTS**

The Chief Judge of the Seventeenth Judicial Circuit of Florida (hereinafter “Chief Judge”) has filed his Response to this Court’s Orders to Show Cause, and the PFEIFLERS hereby adopt and incorporate said response as if the same were fully set forth herein. In particular, the PFEIFLERS adopt and incorporate the Statement of Facts of the Case provided by the Chief Judge as if the same were fully set forth herein. The Statement of Case and of the Facts provided by both KAHN and PHP omit certain critical information, and misstate other information, such that the PFEIFLERS provide this additional Statement of the Case and of the Facts to clarify matters for the Court.

Contrary to the picture painted by the Petitioners, there is no complex litigation division or special litigation division which exists in the Seventeenth Judicial Circuit. Moreover, the assignment of cases to the senior judges’ docket in the Seventeenth Judicial Circuit is not limited to medical malpractice cases. Indeed, exhibits to the Petitioners’ Appendices show that a wide range or variety of cases were assigned to the particular senior judges’ docket on which this case was placed prior to the filing

of the instant petitions (PHP App. at pp. 27-33; KAHN App. Ex. at 13).<sup>1</sup> In fact, 17 of the 34 cases on the April, 2001 senior judges' docket, or half, constitute lawsuits which do not involve claims of medical negligence or medical malpractice. Thus, Petitioners' contention that the retired judges' docket has become a haven for only complex, medical malpractice cases is not only not supported by the record before this Court, such an inference is flatly negated by the very docket about which Petitioners complain. Petitioners are simply incorrect when they say that there exists in the Seventeenth Circuit a "standing practice of routinely transferring complex cases to the senior judges docket" (PHP Petition, p. 22).

There also appears to be some confusion as to how a senior judge is assigned to any case in the Seventeenth Circuit. First and foremost, this Court should understand that an entire case is not transferred to a senior judge for the senior judge to preside over every aspect of the case. The Court should also understand that no litigant can unilaterally effectuate an assignment of the case to a senior judge. Rather,

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<sup>1</sup> A review of the particular docket shows that the cases set for trial on that docket include an action against a contractor; a case against a car wash facility; a case against an architectural firm; a corporate dispute involving an in-line hockey center; what appears to be a wrongful death case against a property management company; a case against Saturn Corp. (apparently involving a dispute over an automobile); another case against an insurance company and a contractor; a case against a developer; at least three civil cases by and between two individuals, none of whom are shown to be involved in the practice of medicine; a civil dispute between Broward Marine and Palm Beach Polo Holdings, Inc.; a case against Continental Tire Co.; a case against a polyfoam company; and a case against Winn Dixie Stores, Inc. and another defendant.

a party must first make a request to the assigned Seventeenth Circuit judge that the case be tried by a senior judge. If the assigned judge determines that the case would be appropriate for assignment to a senior judge for trial, the case is placed on the senior judges' docket. However, the assigned Seventeenth Circuit judge continues to rule on pretrial matters and otherwise presides over the case until the time of trial (many senior judges will rule on pretrial motions, such as motions in limine). Judge Brescher, who is the administrative judge for the Seventeenth Circuit, controls the call of the calendar and the assignment of the case for trial to a senior judge. The salient point here is that there is no transfer order which is entered by any judge transferring a case from the assigned Seventeenth Judicial Circuit judge. Moreover, there is no separate "senior judges' division," only a docket of cases over which a senior judge will preside at trial. If a case is not reached on a particular senior judge's docket, the case goes back to the assigned Seventeenth Circuit judge for further action, including possible trial of the case.

As referenced above, and contrary to certain assertions by the Petitioners, there is no limitation of any type of case for which a senior judge can be utilized. The only guideline speaking to whether a case would be appropriate for consideration for a senior judges' docket is that a case would take at least two and one half weeks for trial. That guideline, however, has been historically given, at best, only permissive

application. As shown in the Chief Judge's Response to Order to Show Cause and material in the Chief Judge's Appendix, a myriad of cases of various length have been assigned to a senior judges' docket. In fact, not only civil cases can be assigned to a senior judges' docket. Indeed, the Chief Judge utilizes the senior judges' docket for criminal cases - particularly "jail cap relief" or "strike force" cases - in which a criminal trial must be conducted expeditiously since the Broward County jail is about to exceed capacity or the defendant has been incarcerated for a lengthy period of time (PHP App. pp. 245, 249-51, 253-56).<sup>2</sup> The Chief Judge's use of the retired judges is, then, entirely consistent with guidelines promulgated by this Court which allow for the use of retired judges in a myriad of different types of cases or instances (See, *infra*).

This Court is certainly familiar with the Certifications of Need for Additional Judges prepared by the Office of the State Court's Administrator of the Supreme Court of Florida. This document was provided in the Appendix to the Chief Judge's Response, and it provides a wealth of information (as do prior certification of need reports from previous years). For example, from these public documents, the Court is aware that there are 49 judges presiding in the Seventeenth Judicial Circuit. These 49 judges are trying more cases than any other circuit in Florida. In 1999, the average

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2. For example, in the Seventeenth Circuit in 1999, Senior Judges were used 56% of the time in criminal cases, compared to 29% of the time in civil cases, 5% in juvenile cases and 1% in probate cases (PHP App. p. 253).

circuit court judge tried 24.2 cases; in the year 2000, the number was 21.2 cases per judge. The state average for those two periods was 14 cases and 12.3 cases per judge, respectively. In calendar year 2000, the judges of the Seventeenth Judicial Circuit disposed an average of 1,527 cases per judge. The state average was much lower, or 1,482 cases per judge. The Seventeenth Judicial Circuit's disposition rate improved 2.4% in 1999, and .03% in 2000. Both the disposition rate and the number of cases disposed per judge ranked the Seventeenth Judicial Circuit in the top four in the state. Moreover, the judges of the Seventeenth Judicial Circuit have resolved more cases per judge than any other large, urban county in the state with the exception of the Fifteenth Judicial Circuit. All of these statistics show that the Chief Judge of the Seventeenth Judicial Circuit has promulgated a system which utilizes senior judges to effectively move cases towards resolution, including trial, and have utilized senior judges as a valuable resource to help insure the prompt, speedy and efficient administration of justice within the circuit.

Finally, throughout both Petitions, Petitioners bang their drum to the beat that "justice delayed is justice denied," claiming that the use of retired judges in the Seventeenth Judicial Circuit causes an inordinate delay in the time within which a case can proceed to trial. First and foremost, there is no record before this Court which supports this statement. Indeed, given the statistics cited above, a very fair inference

from these public records would be that the use of retired judges within the circuit will only speed up the final resolution or disposition of a case since more cases are being disposed or resolved, including trials, within the Seventeenth Judicial Circuit than almost any other large, urban circuit within the state. The statement by the KAHN Petitioners that prohibition is necessary to avoid an inordinate delay of this case is inconsistent with the actions of the KAHN Petitioners who have unnecessarily delayed the final resolution of this case. For example, the Petitioners moved to strike an order setting this case on the April, 2002 docket, and the Kahn Petitioners have also objected to the conducting of any discovery pending the outcome of the matter currently pending before this Court (see, Respondent's Motion for Clarification of Prior Order, filed with this Court November 19, 2001). Furthermore, both Petitioners first raised this issue with the Chief Judge in July 2000; the Chief Judge ruled on this issue in November 2000. Thereafter, Petitioners waited another ten (10) months - or until September 2001 - to file the Petitions currently under review. Thus, this Court must view with some skepticism any claim by the Petitioners that prohibition is necessary because the Petitioners have been thwarted in their attempts to obtain a speedy resolution of this case; if Petitioners truly sought to expedite the resolution of this case, they would have a) not have waited so long to seek review by this Court; b) allowed the case to remain on a trial docket and/or c) would have allowed for discovery to

continue pending the outcome of this appellate proceeding, since nothing about this case would affect the taking of discovery or the parties' preparation of the case for trial.

Having clarified certain matters for the Court and provided additional information not found in the Petitioners' submissions, the PFEIFLERS now respond to the Order to Show Cause and respectfully submit that the Petition for Writ of Prohibition should be denied.

### **LEGAL ARGUMENT**

#### **I) THE USE OF SENIOR JUDGES IN THE SEVENTEENTH CIRCUIT IS CONSTITUTIONAL**

The judicial branch of the Florida government is governed by Article V of the *Florida Constitution*. Article V, Section 8, *Fla. Const.*, allows for temporary assignment of a judge or justice after the judge or justice has attained the age of seventy (70) years. Article V, Section 2, *Fla. Const.*, provides that the Florida Supreme Court shall adopt rules for the practice and procedure in all courts of this state, including administrative supervision of all courts. Article V, Section 2, *Fla. Const.*, also provides that a chief judge for each circuit shall be chosen from amongst circuit court judges as provided by supreme court rule, and that the chief judge shall be responsible for administrative supervision of circuit and county courts in his or her

circuit. Pursuant to the authority vested in it by Article V, Section 2, *Fla. Const.*, the Florida Supreme Court has promulgated rules for the practice and procedure in all courts, entitled the Florida Rules of Judicial Administration. Rule 2.030, *Fla. R. Jud. Admin.*, allows for the temporary assignment of any consenting retired judge. Rule 2.030(a)(3), *Fla. R. Jud. Admin.*, to a great extent mirrors and codifies the older version of Article V., Section 2, *Fla. Const.* Under the former Article V, Section 2, *Fla. Const.*, this Court held that the assignment of retired, consenting judges is constitutional. *In Re: Rules Governing Assignment Duty of Retired Justices and Judges*, 239 So. 2d 254 (Fla. 1970); and *In Re: Assignments of Justices and Judges*, 222 So. 2d 22 (Fla. 1969). Thus, unless this Court is prepared to make new law and recede from long-standing precedent, without any change in the Florida Constitution or the underlying policy reasons which allowed for the use of senior judges in the first place, nearly all of the Petitioners' claims regarding the constitutionality of the use of retired judges were long ago considered and rejected by this Court.

Again, pursuant to the authority vested in it under Article V, Section 2, this Court approved and adopted Rule 2.050, *Fla. R. Jud. Admin.* Under Rule 2.050, *Fla. R. Jud. Admin.*, administrative responsibility is fixed with the chief judge of the circuit court, who is empowered with broad discretion to exercise administrative supervision over all courts within the judicial circuit and the exercise of judicial powers

and over the judges and officers of the court. The chief judge shall develop an administrative plan for the efficient and proper administration of all courts within that circuit. The plan must include an administrative organization capable of effecting the prompt disposition of cases; assignment of judges, other court officers and executive assistants; control of dockets; and regulation and use of courtrooms. Rule 2.050(b)(3), *Fla. R. Jud. Admin.* Moreover, the chief judge is empowered to assign judges to the courts and divisions and to determine the length of each assignment. Rule 2.050(b)(4), *Fla. R. Jud. Admin.* The chief judge is also empowered to assign any judge to temporary service for which the judge is qualified in any court in the same circuit. *Id.* Finally, where it appears to the chief judge that “the speedy, efficient, and proper administration of justice so requires,” **judges from outside the circuit may be appointed on a temporary basis to duty in the circuit in need of assistance.** *Id.*

By virtue of the foregoing authority, there really is no question that the Chief Judge is constitutionally empowered to appoint retired judges on a temporary basis. This Court has reviewed this issue in the past and has held the assignment of senior or retired judges constitutional. *In Re: Rules Governing Assignment Duty of Retired Justices and Judges*, 239 So. 2d 254 (Fla. 1970); and *In Re: Assignments of Justices and Judges*, 222 So. 2d 22 (Fla. 1969). Moreover, this Court approved and ratified

the Rules of Judicial Administration; certainly the Court would not have approved rules which were unconstitutional. Thus, by the mere passage or approval of Rule 2.050 and provisions for temporary assignments (including a provision authorizing the appointment of judges from outside the circuit to serve in the circuit), this Court has already indicated that such an assignment is constitutional. This Court and other appellate courts have held that judges may be temporarily assigned to serve in circuits other than the one in which he or she was elected or appointed. *State ex rel Dato v. Himes*, 184 So. 648 (Fla. 1938); *Judges of Polk County Court v. Ernst*, 615 So. 2d 276 (Fla. 2d DCA 1993); *see also, Card v. State*, 497 So. 2d 1169 (Fla. 1986) (assignment of judge to a different circuit than the one in which the judge had been elected or appointed could be voidable, but only because proper assignment was not made - indicating that had proper procedure been followed there would have been no constitutional bar to appointment).

In summary, the use of retired judges has already been ruled to be constitutional. Rule 2.030 allows for the temporary assignment of senior or retired judges. Rule 2.050 vests the administration of circuit courts and authority to assign judges with the chief judge, who has broad discretion to assign judges to temporary service or even seek assignment of a judge from a sister circuit if necessary. If the use of senior judges on a temporary basis and the temporary assignment of judges from outside the circuit are

both constitutional, then *a fortiori* the temporary assignment of a senior judge who previously sat in a sister circuit must also meet constitutional muster. Thus, Defendants' primacy argument (that senior judges may serve only in the circuit in which they were elected or appointed and, therefore, Article 5, Section 2 must yield to Article 5, Section 10) is without merit.

Then Chief Justice Shaw was acting under such constitutional authority in June 1991 when he signed the Memorandum Regarding Senior Judge Assignments for FY 1991-92 (PHP App. at 1-5; KAHN App. Ex. 9). In the Memorandum, Chief Justice Shaw recognized that the assignment of senior judges has become one of the most important resources in the judicial system to address calendaring related problems in trial and appellate courts. The Justice Shaw specifically stated that decisions relating to the routine use of senior judges will be delegated to the chief judges of the circuits, and procedures were promulgated to guide chief judges in implementing the authority delegated to them for assignment of retired judges on a temporary basis. Justice Shaw also implemented suggested guidelines governing the priorities for assignment,<sup>3</sup> but those priorities were subsequently amended. Petitioners have essentially ignored these revised guidelines.

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3. The priorities for assignment are as they are described – guidelines; they are not mandatory and, in fact, Chief Justice Shaw indicated that the priorities need be followed “whenever possible . . .”

On July 30, 1999, then Chief Justice Major B. Harding effectuated a new set of procedures for the assignment of senior judges for the fiscal year beginning July 1, 1999 when he signed Senior Judges Procedures for Assignment, F.Y. 1999-2000 (PHP App. at 233-37; not found in KAHN Appendix). Significantly, the priorities for assignment were modified to indicate that senior judges should be used in fourteen different situations. In this hierarchy of instances where senior judges should be utilized, **the second highest priority was given to “long duration civil trials that would otherwise be disruptive of civil calendars.”** As was shown below and as reflected in the docket sheet, there is no dispute that this case is a long duration, complex malpractice case which “would otherwise be disruptive of civil calendars.” Clearly, then, this case fits squarely into criteria 2 of the latest guidelines (as opposed to criteria 11 of the now 10 year old guidelines) and is therefore appropriate for assignment to a senior judge.

## **II) THE ASSIGNMENT IN THIS CASE WAS AND IS TEMPORARY**

Having established constitutional authority for the creation of a retired judges docket, the assignment of the instant case to that docket, and even the appointment of a senior judge who formerly served outside the circuit to preside over trial in the 17<sup>th</sup> Judicial Circuit, the only issue remaining is whether the assignment in this case constitutes a “temporary” assignment. On this issue, Petitioners primarily rely below

upon this Court's decision in *Crusoe v. Rowls*, 472 So. 2d 1163 (Fla. 1985). However, subsequent to its decision in *Crusoe*, the Court further clarified its position regarding "temporary" assignments in its decision in *Wild v. Dozier*, 672 So. 2d 16 (Fla. 1996). It is the *Wild* decision which is determinative as to whether the assignment in this case constitutes a temporary assignment, which therefore does not violate the Florida Constitution or the Rules of Judicial Administration.

In *Wild*, the Florida Supreme Court reviewed a decision by the Fourth District Court of Appeal quashing an administrative order of the chief judge of the Nineteenth Judicial Circuit assigning a county court judge to circuit court duty. Judge Wild had been assigned to serve successive six (6) month periods as acting circuit court judge over half of the felony cases in Indian River County. Judge Wild was a county court judge and he continued to handle a county court docket during this temporary assignment. Respondent Dozier had sought to disqualify Judge Wild from presiding over his felony case, alleging that Judge Wild had become a "*de facto* permanent" circuit judge lacking jurisdiction to hear his case. In holding the assignment invalid, the district court had relied upon this Court's decision in *Payret v. Adams*, 500 So. 2d 136 (Fla. 1986), and *Crusoe, supra*. In quashing the district court's opinion in *Wild*, the Court began by noting that the delegation of the chief justice's assignment power to the chief judges of the judicial circuits was necessary to the proper administration

of our court system. *Wild*, 672 So. 2d at 17. This is because the **“chief judge is best equipped to assess the needs of each trial court and to allocate the judicial labor available within the circuit accordingly.”** *Id.* at 18. When a chief judge exercises the authority delegated to him or her by the chief justice to assign judges on a temporary basis, the chief judge “is acting under the chief justice’s constitutional power to make temporary judicial assignments to ensure the speedy, efficient and proper administration of justice within the various circuits.” *Id.*

In determining whether the assignment of Judge Wild to successive six (6) month terms constituted to a “temporary” assignment, the Court first discussed its decision in *Crusoe* and noted that in *Crusoe* it upheld the successive and repetitive appointment of county court judges to hear all petitions to enforce child support orders that directed support payments to be made through the child support section of the sheriff’s office. The Court cited to its opinion in *Crusoe* for the definition of the word “temporary,” and stated that an assignment is temporary under Rule 9.050 merely if it is not “permanent.” The Court further explained

“[t]emporary” is an antonym for “permanent.” It is a comparative term. It can be said that if a duty is not permanent it is temporary.

*Wild*, 672 So. 2d at 19, citing *Crusoe*, 472 So. 2d at 1165.

In *Crusoe*, as recognized in *Wild*, this Court held that the sixty (60) day

guideline applies only “where a county judge is assigned solely to perform circuit court duties.” Indeed, the court did not hold that this was an absolute mandate, but merely “suggested that a sixty (60) day assignment was acceptable.” *Wild*, 672 So. 2d at 19; *Crusoe*, 472 So. 2d at 1165, nn. 2-3. The Court also held that when a judge is ordered to spend only a portion of his time performing circuit court work, a six (6) month assignment was suggested as being acceptable. *Id.* Both of these time periods “were suggested with the recognition that **chief judges must be given flexibility to effectively utilize available judicial labor.**” *Id.* Thus, this Court has reiterated what is clear from the Rules of Judicial Administration - the chief judges of the circuits are vested with great discretion regarding the length of temporary assignments.

Even though the successive assignments at issue in *Crusoe* totaled two and one-half years, the Court upheld the assignments as a proper temporary assignments, in part because the judges were assigned only a limited class of orders and the assignment was to “supplement and aide the circuit judges, rather than replace them.” *Wild*, 672 So. 2d at 19. The Court concluded in *Wild* that successive six (6) month assignments of Judge Wild to hear half of the felony cases in Indian River County constituted a permissible, temporary assignment. *Id.* at 20. In reaching its conclusion, the court also noted that the determination of whether a judicial assignment is a proper “temporary” assignment is not merely a function of the duration of the individual

assignment. Rather, reviewing courts must look to the successive nature of the assignment, the type of case covered by the assignment, and the practical effect of the assignment on circuit court jurisdiction over a particular type of case. *Id.* at 19. Citing to *Crusoe*, the Court held that if a class of circuit court case covered by the assignment is limited, and the practical effect of the assignment is to aide and assist circuit judges, rather than to usurp circuit court jurisdiction over a particular type of case, the assignment is proper. *Id.*, citing *Crusoe*, 472 So. 2d at 1165.

This case is at issue and has been noticed for trial. The only reason there is no trial date is the dispute over assignment to the retired judges docket. It has been estimated that this case will take at least two and one-half weeks to try. Since the case is at issue, the pleadings have been essentially closed and there will remain very little to be done by the trial judge, other than setting of the trial and resolving issues relating the ultimate trial of this case. For example, the judge who tries this case may be faced with motions for summary judgment or motions in limine. While it makes all the sense in the world for the judge who will try the case to rule on these sorts of dispositive motions (especially as they may relate, for example, to a motion for directed verdict raised at trial which mirrors arguments made in a motion for summary judgment), that is not the salient issue. The only question is whether the assignment of the case to a retired judge at this point constitutes a temporary assignment. Clearly it does. The

assignment is limited in nature (this case for a period of approximately 2 ½ weeks), does not involve the usurping of circuit court jurisdiction over a particular type of case, and the practical effect of the assignment is to aide and assist the assigned circuit judge.

Given the Court's *Wild* and *Crusoe* holdings that successive, temporary assignments for a cumulative two and one-half year period or for successive six (6) month periods, respectively, constituted valid temporary assignments, there really can be no dispute that the assignment of this single, complex case to a retired judge constitutes a temporary assignment. Unlike *Crusoe* and *Wild*, where whole sets or types of cases were assigned on a temporary basis to a certain judge, the assignment here constitutes one complex case. As stated in *Wild*, in creating the retired judges docket and assigning this case to it, the Chief Judge was exercising the Chief Justice's constitutional power, as allowed under Rule 2.050, to make temporary judicial assignments to ensure the speedy, efficient and property administration of justice within the circuit. The type of case covered by the assignment - a complex medical malpractice action involving numerous defendants and complex medical and legal issues - justifies the assignment, and the practical effect of the assignment on the circuit court actually benefits the residents of the circuit. If the circuit judge to whom these cases were initially assigned were forced to try these cases (which will take at

least two and one-half weeks to try) on a standard three, four or five week docket, the case would essentially consume the entire docket. Circuit court dockets routinely contain thirty, forty or even fifty cases.

Moreover, the practical effect of the assignment of this case to the retired judges docket is that many of the other cases on the assigned judges' docket will go to trial, such that more cases will be decided during that docket period than would have been decided had the assigned judges been forced to try to this case. Given all of the foregoing, there can be no good faith dispute that the Chief Judge was well within his power and discretion to assign this case to the retired judges docket and that the assignment passes constitutional and common law muster.

A few other cases should be brought to the Court's attention. In *Holsman v. Cohen*, 667 So. 2d 769, 771-72 (Fla. 1996), the Court approved an administrative order implemented by the Chief Judge which assigned Circuit Judge Cohen and County Judge Rothschild to handle cases in the domestic violence court. The Court cited to its opinion in *Wild* and the need to ensure that cases in the division were heard in an expeditious, efficient and deliberative manner in approving the Chief Judge's implementation of the administrative order and assignment of Judges Cohen and Rothschild. Because "the assignment is directed to a specific class of cases, it is used to maximize the efficient administration of justice and supplements and assists the

domestic violence county court judge, rather than replace it,” the assignment constituted a proper, temporary assignment. *Id.* at 772. In *Rivkind v. Paterson*, 672 So. 2d 819, 820 (Fla. 1996), this Court approved of the creation of a domestic violence department of the Family Division of the Eleventh Judicial Circuit, and the exclusive and perpetual monthly assignment, continuing over several years, of county court judges to hear all permanent and temporary injunctions in those cases. The Court commented that the assignment “constituted logical and lawful means to insure expeditious and efficient resolution of domestic violence issues in the Eleventh Circuit.” *Id.* at 821. Finally, in *J.G. v. Holtzendorf*, 669 So. 2d 1043 (Fla. 1996), this Court approved the assignment by the chief judge of the Twelfth Judicial Circuit of County Judge Holtzendorf to sit as a circuit judge in cases brought in Desoto County, where the assignment consisted of most if not all juvenile cases in the county. The court cited *Wild, supra.*, and upheld the assignment as a constitutional temporary assignment.

Petitioners’ reliance on *Payret, supra.*, is misplaced. First, this Court clarified its holding in that case and on temporary assignments in general in its *Wild* decision. Moreover, *Payret* is easily distinguished on its facts, in which a special “Glades jury district” was created such that a defendant accused of a felony within the “district” could obtain a jury trial in the “district,” rather than in West Palm Beach. County

Judge Adams had been assigned for five (5) years as the circuit judge for the “district,” such that for all practical purposes he was the circuit judge for the “district.” These facts stand in marked contrast to the facts of the instant case where a senior judge has been temporarily assigned to try this case for the limited duration of the trial itself. Finally, contrary to Petitioners’ assertions, there is no evidence that the retired judge assignment in this case was made as a matter of convenience, as was the case in *Payret*. For all these reasons, this Court can essentially ignore the *Payret* decision.

### **CONCLUSION**

For all of the foregoing reasons, Petitioners have failed to show that a writ of prohibition should be issued. The assignment of this case to the senior judges’ docket is constitutional and in accord with applicable law, and Petitioners have made no showing that the order making the assignment should be vacated. By implementing the senior judges docket, and assigning this case to it, the Chief Judge of this circuit was ensuring that “the speedy, efficient, and proper administration of justice” was effectuated. Since the system meets constitutional muster, and the assignment was temporary, the sole remaining ground asserted by Petitioners is that the system causes inordinate delay. Factually, that assertion is belied by the record; as a matter of law, delay is not a sufficient ground for prohibition. Therefore, Respondents respectfully submit that the Court should decline to grant prohibition and reaffirm that the

administrative assignment of certain circuit court cases to senior judges is constitutional.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the aforementioned was served via U.S. mail on this \_\_\_ day November, 2001 to: Louise H. McMurray, MCINTOSH, SAWRAN, PELTZ, AND CARTAYA, Attorneys for Petitioner, Biscayne Building, 19 West Flagler Street, Suite 920, Miami, FL 33130; Michael Freedland, Esq., THE LAW OFFICES OF KRATHEN, FREEDLAND & OBERTS, 2665 Executive Park Drive, Suite 3, Weston, FL 33331; Nancy Gregoire, Esq. BUNNELL, WOLFE, et al., 888 East Las Olas Boulevard, Suite 400, Fort Lauderdale, FL 33301; Kevin O'Connor, Esq., O'CONNOR, CHIMPOULIS, RESTANI, MARREO & MCALLISTER, P.A., 2801 Ponce de Leon Boulevard, Suite 900, Miami, FL 33134; Mark Morrow, Esq., MORROW & MILBERG, P.A., P O Box 15698, Plantation, FL 33318-5698; F. Bryant Blevins, Esq., MARLOW, CONNELL, VALERIUS, ABRAMS, ADLER & NEWMAN, 2950 Southwest 27<sup>th</sup> Avenue, Suite 200, Miami, FL 33133; Charles M. Fahlbusch, Esq., ASSISTANT ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, 110 Southeast Sixth Street, 10<sup>th</sup> Floor, Fort Lauderdale, FL 33301; and CHIEF JUDGE DALE ROSS, Broward County Courthouse, 201 Southeast Sixth Street, Fort Lauderdale, FL 3330.

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