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FILED

SID J. WHITE

APR 22 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF
FLORIDA

CASE NO. 77,623

IN RE: COMMISSION ON FAMILY COURT RECOMMENDATIONS **
**
** THE CREATION OF A SEPARATE FAMILY COURT FOR THE ELEVENTH JUDICIAL DISTRICT OF FLORIDA (DADE COUNTY) WOULD BE IN ITS WORST INTEREST

TO: The Honorable the Justices of the Supreme Court of Florida

On July 1, 1990, the Florida Legislature established a Commission on Family Courts, chaired by the Honorable Ben F. Overton, Justice of this Honorable Court. The Commission recommends, among other things, that this Honorable Court require separate family courts in each judicial circuit. While I do not doubt the Commission's well-meaning intentions and feel that many of its recommendations would be highly beneficial, Heaven help the citizens if the recommendation for a separate family court is imposed upon the Eleventh Judicial Circuit (Dade County).

For three years ending January 1981, Dade maintained separate family courts. The judges hated it and abolished it. Although only six judges served at one time, nevertheless, in that short period, 16 judges were expended. Dade's litigants were the big losers. Unhappy judges render unhappy judgments.

The Commission recognizes the judicial burn-out problem, recommending rotation of judges every three years, but that will not cure the problems. To understand how unpleasant it is for a judge to have to decide only matrimonial lawsuits, as distinct from judging all types of civil cases, we recall the film "The War of the Roses" in which a bitter divorce case

caused the death of one dog, one cat, Michael Douglas and Kathleen Turner.

The highly regarded New York Ninth Judicial Circuit, which governs Westchester County, also recently abolished its family courts. The Florida Commission on Family Courts report failed to discuss the reasons for Westchester's decision.

Family cases comprise one-third of Dade's litigation. The almost unlimited discretion granted to judges to decide equitable distribution between husband and wife is awesome. A veteran judge likened the power to that possessed by an "800 pound gorilla." As this Honorable Court can well appreciate, very few of a circuit judge's discretionary rulings can be reversed on appeal. Unless the aggrieved party can demonstrate a "clear abuse of discretion" by the lower court -- a heavy burden -- appellate courts won't substitute their opinion for that of the trier of fact. Therefore, it is crucial that the trial judge be impartial and as free from biases and prejudices as humanly possible.

Richard Feder, a respected Circuit Court jurist, and Dade's Family Division Administrative Judge, supports the Commission's report. He correctly observes that one of the reasons for the previous failure in Dade was that no support services were provided to the over-burdened judges.

However, thanks to the inspired leadership of Dade's Chief Judge Gerald T. Wetherington (assisted by Honorable Herbert M. Klein, and others), who capably presides over the

fifth largest court system in America, the Eleventh Judicial Circuit several years ago, developed a superb support system providing expeditious professional services in family cases. These include mediation, child custody, home study, General Masters, and civil domestic violence protection.

Hence, in Dade, a separate family division is unnecessary, as this Circuit already provides the benefits which the family court supporters espouse.

My additional objections:

1. It detracts from the benefits afforded by the blind-filing system. Today, in Dade, each new lawsuit is randomly assigned to one of 32 judges representing a wide mix of jurists with diverse backgrounds and philosophies. Lawyers can't select the judge. If Dade is compelled to create a separate family division, the pool of judges for family law cases will shrink to a much smaller number. Because the judges will be limited to a single field of law, their past judgments will be easily analyzed and their perceived biases in favor of either husbands or wives will be readily documented. This may lead to wholesale motions -- meritorious or not -- to disqualify one or another of the matrimonial judges. Chaos!

2. It may encourage cliques of lawyers, create cronyism, and possibly result in fraternization with family court judges. Court-awarded fees will inevitably rise. Young lawyers will have little chance to break in. Many hispanic, black and women lawyers will be locked out of big money cases.

3. Because the pool of family law judges will be reduced, there will be an increased tendency for litigants to hire lawyers based on their perception that the assigned judge favors that lawyer. That practice undermines the confidence of the public in the bench and bar, brings the court into disrepute, and destroys its power to perform adequately. The public may acquire the perception that it's not what you know, but who you know that counts.

I do not question the high integrity and impartiality of Dade's Circuit Court Judges. Nor do I suggest that Dade's lawyers, as a whole, do not adhere to the highest ethical standards of their profession. However, I think it is ill-advised to institutionalize a separate bench and bar for family law matters that may inevitably foster the appearance of impropriety.

My criticisms are not sour grapes. The fact that I will be in the "in" or "favored" group causes me to be even more concerned about appearances. Many outstanding divorce lawyers, including Paul Louis and Irwin Block, agree with me. It is our opinion that the vast majority of judges and lawyers in the Eleventh Judicial Circuit oppose the Commission's recommendation for a separate family court.

CONCLUSION

If this Honorable Court decides to approve the recommendations of the Commission on Family Courts and requires the creation of a separate family court in each judicial circuit, we

respectfully pray this Honorable Court exercise its discretion to allow Dade County's Circuit Judges to vote whether or not they believe it is in the best interest of the citizens of their judicial district to create a separate family court; in short, a local option privilege.

A PERSONAL APOLOGY

Because of an irreconcilable conflict, the undersigned will be unable to file a request to participate in oral argument set for June 3, 1991.

I have specialized in matrimonial matters for more than 40 years. Some of those cases resulted in landmark appellate decisions, including some by this Honorable Court. Therefore, as an Officer of the Court, I had wanted to be as much help to the Court as possible, including oral argument.

I trust my inability to appear will not be misconstrued as a lack of conviction on my stated position.

Respectfully submitted,

HELLER AND KAPLAN
14 N.E. First Avenue
Suite 1205
Miami, Florida 33132
(305) 358-5544

By: 
Daniel Neal Heller
Fla. Bar No. 035100

DATED: Miami, Dade County, Florida, April 19, 1991

O.A. 6-3-91

047

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SID J. WHITE

APR 25 1991

CLERK, SUPREME COURT

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IN THE SUPREME COURT OF
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IN RE: COMMISSION ON FAMILY **

COURT RECOMMENDATIONS **

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SUPPLEMENT
TO THE OPPOSITION TO
THE CREATION OF A SEPARATE
FAMILY COURT FOR DADE COUNTY

TO: The Honorable the Justices of the Supreme Court of Florida

The undersigned respectfully submits this Supplement to his Opposition to the Creation of a Separate Family for Dade County, dated April 19, 1991.

Attached hereto is an article published on op-ed page 19A of The Miami Herald on Wednesday, April 24, 1991.

Respectfully submitted,

HELLER AND KAPLAN
14 N.E. First Avenue
Suite 1205
Miami, Florida 33132
(305) 358-5544

By: *Daniel Neal Heller*
Daniel Neal Heller
Fla. Bar No. 035100

DATED: Miami, Dade County, Florida, April 25, 1991

A separate family court would be in public's worst interest

By DANIEL NEAL HELLER

ON JULY 1, 1990, the Florida Legislature established a Commission on Family Courts, chaired by Justice Ben F. Overton of the Florida Supreme Court. The commission recommends, among other things, that the Supreme Court require separate family courts in each judicial circuit. While I do not doubt the commission's well-meaning intentions and feel that many of its recommendations would be highly beneficial, heaven help the citizens if the recommendation for a separate family court is imposed upon Dade County.

[Bar-association groups in Broward are proposing that its circuit court adopt a family-court system as a pilot program for the state.]

For three years ending in January 1981, Dade maintained separate family courts. The judges hated it and abolished it. Although only six judges served at one time, nevertheless, in that short period, 16 judges were expended. Dade litigants were the big losers. Unhappy judges render unhappy judgments.

The commission recognizes the burn-out problem, recommending rotation of judges every three years, but that will not cure the problems. To understand how unpleasant it is for a judge to have to decide *only* matrimonial lawsuits, as distinct from judging *all* types of civil cases, recall the film *The War of the Roses*, in which a bitter divorce case caused the death of one dog, one cat, Michael Douglas, and Kathleen Turner.

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Daniel Neal Heller is a prominent Miami civil-trial litigator.

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commission's report. He correctly observes that one of the reasons for the previous failure in Dade was that no support services were provided to the overburdened judges.

However, thanks to the inspired leadership of Dade Chief Judge Gerald Wetherington, who capably presides over the fifth-largest court system in America, our county, several years ago, developed a superb support system providing expeditious professional services in family cases. These include mediation, child custody, home study, general masters, and civil domestic-violence protection.

Hence, in Dade, a separate family division is unnecessary, as we already provide the benefits that the family-court supporters espouse.

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rise. Young lawyers will have little chance to break in. Many Hispanic, black, and women lawyers will be locked out of big-money cases.

- Because the pool of family-law judges will be reduced, there will be an increased tendency for litigants to hire lawyers based on their perception that the assigned judge favors that lawyer. That practice undermines the confidence of the public in the bench and Bar, brings the court into disrepute, and destroys its power to perform adequately. The public may acquire the perception that it's not what you know, but whom you know that counts.

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The Supreme Court will conduct a hearing on June 3. Let us hope that Dade's judges will be given the chance to vote on whether or not it is in our citizens' best interest to create a separate family court in our county.