Order

Michigan Supreme Court
Lansing, Michigan

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

February 8, 2008

Administrative Order

Partial Rescission of the
Third Judicial Circuit Court's
Local Administrative Order 2006-12

On order of the court, we hereby rescind in part Third Judicial Circuit Court Local Administrative Order 2006-12 (LAO 2006-12), dated November 1, 2006.

The Third Judicial Circuit Court's LAO 2006-12 is valid to the extent that it reassigns all *general* constitutional challenges to the circuit's jury pool summoning and qualification procedures for the "limited purpose of adjudicating the challenge[s]" in order to "avoid the risk of inconsistent rulings, and to avoid the possibility of the Court's administrative staff being subject to inconsistent requirements." LAO 2006-12. The chief judge may order such reassignment as the chief judge has "administrative superintending control over the judges of the court and all court personnel," MCR 8.110(C)(3), and authority to "direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111," MCR 8.110(C)(3)(b), and to "perform any act or duty or enter any order necessarily incidental to carrying out the purposes of" MCR 8.110, MCR 8.110(C)(3)(i).

The chief judge's authority to reassign challenges to the circuit's jury pool summoning and qualification procedures is not inconsistent with MCR 8.111 because these general issues are common to each case in the circuit, they implicate administrative policy and practice, and their resolution does not require dispositive rulings in individual cases. See *Schell v Baker Furniture Co,* 461 Mich 502, 511, 513-515 (2000) (under MCR 8.110[C] and MCR 8.111 a chief judge "had authority to issue . . . a directive for cases pending before other judges of the court" but not "to enter dispositive orders in these cases, which had been assigned to other judges of the circuit"). Reassignment limited to resolution of the common issues is not inconsistent with the requirements that all *cases* be assigned by lot, MCR 8.111(B), and that *cases* be reassigned only under certain circumstances, MCR 8.111(C). Moreover, to the extent such reassignment could implicate the rule requiring assignment by lot, that rule expressly permits "a different system" if the system is adopted by local court administrative order. MCR 8.111(B).

Because a defendant has a right to be tried by a jury drawn from a fair cross-section of the community, *Taylor v Louisiana,* 419 US 522, 527 (1975); *People v Smith*, 463 Mich 199, 214 (2000), resolution of constitutional challenges to the jury venire may not be abeyed until after trial.

Accordingly, we rescind the Third Judicial Circuit Court's LAO 2006-12 to the extent it postpones resolution of challenges to jury venires in individual cases until after trial and to the extent it purports to reassign resolution of issues unrelated to the Third Judicial Circuit's overall jury summoning and qualification procedures. The chief judge may hold any proceedings necessary to resolve common issues raised in challenges to these overall procedures. The chief judge also remains empowered to enact administrative policies or issue local administrative orders consistent with this order, MCR 8.110, MCR 8.111 and MCR 8.112, in the interest of establishing consistency among the circuit judges in resolving challenges to jury venires in particular cases.

CAVANAGH and WEAVER, JJ. We concur with the result of the order.

KELLY, J. *(dissenting)*. I would have remanded *People v Hopson*, 480 Mich ___ (entered February 8, 2008, Docket No. 134018), to the Court of Appeals for a ruling on the validity of Local Administrative Order No. 2006-12 before the Supreme Court takes action on it. The defendant in *Hopson* made several good arguments. Among them was that the language of MCR 8.111 and this Court's decision in *Schell v Baker Furniture Co,* 461 Mich 502 (2000), prohibit a chief judge from reassigning a case to himself or herself in order to make a substantive ruling. The Court of Appeals has not had the opportunity to address this issue. This Court's partial rescission of the local administrative order sanctions the reassignment that occurred in the *Hopson* case. The Court rescinded the order without hearing oral argument and without the benefit of analysis by the Court of Appeals.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 8, 2008

Corbin R. Davis

Clerk