

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT, IN AND
FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 05 2025 CF 034362 AXXXBC

vs.

JUDGE: **PEACOCK**

DONOVAN WINTER,

Defendant.

_____ /

MOTION FOR DISQUALIFICATION OF TRIAL JUDGE

The Defendant, through the undersigned attorney, pursuant to Florida Rule of General Practice and Judicial Administration 2.330(e), now files this motion for disqualification of the trial judge and, as grounds, states the following:

Grounds, and Facts.

Subsection (e) of the rule cited above states that the grounds upon which to file a motion for disqualification of trial judge are “not limited to” those examples listed.

1. The trial judge in this matter, whose six-year term as a County Court Judge began in January of 2023, has been appointed as ‘acting’ Circuit Judge for the 18th Judicial Circuit in dozens of successive, 60-day administrative orders since approximately June of 2023.

2. In June of 2023, six months after County Court Judge Aaron Peacock's term began, the Chief Judge of the 18th Judicial Circuit began signing successive, 60-day 'temporary' appointments naming County Court Judge Aaron Peacock as an 'acting' Circuit Court judge for the Circuit. Copies of the identical, successive, signed administrative orders are incorporated herein; the most recent one is attached to this motion.

3. The authority of chief judges in the State to temporarily appoint County Court judges as 'acting' Circuit Court judges is derived from Fla. Stat. 26.57, which states that a "county court judge may be designated on a temporary basis to preside over circuit court cases by the Chief Justice of the Supreme Court upon recommendation of the chief judge of the circuit." The Supreme Court has designated that authority to the chief judges of each circuit.

4. Case law has also addressed the practice of chief judges appointing County Court judges to serve as 'acting' Circuit Court judges. While the Supreme Court has even authorized repeated, "six month" appointments, which, in some cases, span several years, what distinguishes all of those cases from the instant matter is that, in all of those other preceding cases, the County Court judges serving as 'acting' Circuit Court judges also were handling his or her assigned County Court cases at the same time, so as to not create a de facto Circuit Court position.

5. In the instant case, the undersigned verified on or about August 20, 2025,¹ what a person at the Clerk's office confirmed, and what online website searches all reveal: 'acting' Circuit Court Judge Aaron Peacock does not handle *any* County Court duties. While there are notations on the 18th Circuit website which appear to designate Judge Aaron Peacock as a "County Court Judge", the position he was elected to, it is clear that this "division 9" is made up *entirely* of Circuit Court cases. Also attached is the division procedures page for Judge Aaron Peacock, confirming that the Judge is assigned to "Circuit Court Division 9", and also confirming what the judicial assistant stated on August 20th, specifically, that Judge Aaron Peacock does not have any assigned County Court cases.

6. Unlike the judges in the case law opinions which affirm this practice, Judge Aaron Peacock's assigned cases have been *solely* and *exclusively* circuit court matters and, as an 'acting' Circuit Court judge, Judge Aaron Peacock is not assigned any County Court cases.

¹ The undersigned spoke to 'acting' Circuit Court Judge Aaron Peacock's judicial assistant via telephone on 8/20/2025 who confirmed that the Judge is not assigned *any* County Court cases.

Argument.

The primary concern expressed by the Florida Supreme Court regarding the subject of assigning county court judges to temporarily serve as circuit judges is that the circuits are cautioned to not use the temporary appointment process to create a new, de facto Circuit Court position. That the judges in the case law opinions also handled County Court cases simultaneously was a key basis for the opinions; not just a mere coincidence. By not assigning *any* County Court cases to Judge Aaron Peacock, and at the same time signing repeated, successive 60-day assignment orders, the 18th Circuit has created a de facto Circuit Court position. The very harm the Supreme Court cautioned about has taken hold in the 18th Circuit.

This error is not harmless and, in this particular case (a charge of 1st Degree Murder), the Defendant has been prejudiced by not having a Circuit Court judge that was placed into what is effectively a permanent, full-time Circuit Court position *only* after thorough vetting by either the voters, or the Judicial Nominating Commission (“JNC”). Moreover, the case law recommends only “relatively short time periods” (i.e., “60 days”) for instances where an ‘acting’ Circuit Court judge will not also be presiding over any County Court cases at the same time. But a 1st Degree Murder case is always likely to take much longer than 60 days before it is ready for trial.

The Defendant is prejudiced by having a County Court Judge who has presided solely on Circuit Court cases for over two years’ worth of 60-day assignment orders in what is effectively a new, de facto Circuit division that did not undergo the usual scrutiny by the voters or the JNC. Moreover, as him being the one responsible for raising this issue of the current Judge presiding without being duly authorized to do so under the

established case law, the Defendant also has that additional, well founded fear to add to his concerns of not receiving a fair trial.

Further, simply assigning some County Court cases to ‘acting’ Circuit Court Judge Aaron Peacock, in response to this motion, will not remove the aforementioned prejudice to the Defendant, nor the objectively reasonable and understandable concerns it has caused within the Defendant of having been “the one” who raised the issue of the presiding Judge not being duly authorized to preside over the case - unless being assigned more work (i.e., being assigned some County Court cases).

Two Florida Supreme Court cases are cited in this Circuit’s administrative order. In the first one, Crusoe v. Rowls, 472 So. 2d 1163 (Fla. 1985), the case which first suggested the “60 day” and “6 month” assignment periods, it is not stated whether that judge also handled County Court cases at the same time. However, in Wild v Dozier, 672 So. 2d 16 (1996), the other case cited in the 18th Circuit’s own administrative order, as well as in other cases, the Supreme Court noted that the judges therein *did* continue to preside over County Court cases.

Regarding the judge in Wild, the Supreme Court noted three times that the trial judge was still presiding over County Court cases at the same time: “During this period, Judge Wild has ***continued to handle a county court docket.***”; “In multi-county circuits the county judges in the less populous counties are often underutilized, yet they are willing to do circuit judge work. In some instances there are no circuit judges resident within those counties. The most efficient use of scarce judicial resources dictates the assignment of county judges to handle limited aspects of circuit judge work in such counties, ***provided that the assignments do not interfere with the full performance of***

county judge duties.”; and “In the instant case, Judge Wild *continues to do all of his county judge work.*”

Similarly, in J.G. v Holtzendorf, 669 So.2d 1043 (Fla. 1996) (emphasis added), the Florida Supreme Court noted *twice* that the Judge still continued to perform his County Court duties:

“Since 1991, the Chief Judge of the Twelfth Judicial Circuit has made successive six-month assignments of County Judge Holtzendorf to sit as a circuit judge in cases brought before him in DeSoto County. Pursuant to these assignments, he has heard most, though not all, of the juvenile cases in the county and a few other circuit court actions. He *continues to perform his county court duties.* We believe these assignments are consistent with those in Wild in which we upheld successive six-month assignments of a county judge to hear half of the felony cases in Indian River County *in addition to his duties as a county judge.* Wild v. Dozier, ___ So.2d ___, 21 Fla.L. Weekly S57 [1996 WL 48419] (Fla. Feb. 8, 1996).”

The opinions on this issue emphasize that the continued handling of County Court cases (i.e., that judge’s constitutionally-elected duty) was a major factor in the decisions.

In Wild, the Florida Supreme Court had answered the following certified question in the affirmative: “MAY A COUNTY COURT JUDGE BE ASSIGNED SUCCESSIVELY AND REPEATEDLY IN SIX MONTH ASSIGNMENTS OVER SEVERAL YEARS TO PRESIDE IN THE CIRCUIT COURT OVER HALF OF ALL FELONY CASES IN A COUNTY?”

In addition to answering the question in the affirmative, the Wild Court cited to its opinion in Crusoe, holding that:

"Temporary" is an antonym for "permanent." It is a comparative term. It can be said that if a duty is not permanent it is temporary. If a county judge is assigned to perform **solely circuit court work**, the assignment must be for a relatively short time for it to be temporary. If a county judge is assigned to spend a **portion of his time performing circuit work**, the assignment can be longer, but the assignment cannot usurp, supplant, or effectively deprive circuit court jurisdiction of a particular type of case on a permanent basis.” (Emphasis added)

The use of “60 day” time periods by Circuits in Florida is derived from Crusoe, but in this Circuit, it has been misapplied, and the Defendant is being prejudiced by it, as discussed earlier. Signing successive, 60-day orders for a period of 27 months, while at the same time not assigning any County Court cases to that ‘acting’ Circuit Court judge, has basically created a de facto Circuit Court division.

If a County Court judge is assigned **solely** to preside over Circuit Court cases, the Florida Supreme Court stated in Crusoe that a “sixty-day” assignment is acceptable. And, where a Judge is ordered to spend only a **portion** of the time handling Circuit Court cases, the Court suggested that a “six-month” assignment was acceptable. Crusoe at 1165. And, since Crusoe, the Court has noted repeatedly that the ‘acting’ Circuit Court judges in the subsequent cases have *also* simultaneously presided over County Court cases assigned to them at the same time.

The intent behind the case law and the statute that these assignments be temporary and that they not create de facto Circuit Court divisions is subverted by the use of

successive, 60-day orders, year after year, when the ‘acting’ judge in that scenario does not have *any* County Court cases assigned to him during that time period. Here, the exclusive Circuit Court work that began with that first, 60-day administrative order back in June of 2023 has been going on now for over two years: 27 months total, out of the 33 months of the Judge’s judicial term.

The 18th Circuit’s administrative orders themselves are for 60-day durations, thus revealing the intent was to have Judge Aaron Peacock preside solely over Circuit Court cases. However, by not *also* handling any County Court cases at the same time, by never assigning any County Court cases to Judge Aaron Peacock during these 27 consecutive months, the 18th Circuit has, in fact, created a new, de facto, Circuit Court position, contrary to the case law which consistently has shown that the ‘acting’ Circuit Court judge must also have some County Court cases assigned as well. The 18th Circuit did not do that here.

Because Judge Aaron Peacock does not handle any County Court cases, these facts more closely resemble “indefinite assignments”, which have been held to be impermissible. Shortly after the decision in Crusoe, the Supreme Court reviewed Payret v. Adams, 500 So.2d 136 (Fla. 1986), where a County Court judge had been annually reassigned for a five-year period to be the ‘acting’ Circuit Judge for a specially created district of the Fifteenth Judicial Circuit. The Supreme Court noted:

“Rather than being assigned to aid or assist the circuit judges in a limited class of cases, respondent has been assigned to hear all circuit court matters in the Glades district. Indeed, respondent has conceded that for all intents and purposes, he is the circuit judge for the Glades district.” Id. at 138.

The Supreme Court held those successive one-year assignments “invalid as a de facto permanent assignment.” Id. at 138.

In this case, for all intents and purposes, Judge Peacock is *exclusively* a Circuit Court Judge. Not only is Judge Aaron Peacock not assigned any County Court cases at all, and has not been for the past 27 months of his 33-month term, Judge Aaron Peacock’s own “Division Procedures” page (attached) similarly has a heading declaring him as presiding over “Circuit Criminal Division 9”.

Successive and repetitive assignments “will not be considered temporary where their practical effect is to create a de facto permanent circuit judge by administrative order.” Payret, 500 So. 2d at 138.

Rule 2.330(h) of the Florida Rule of General Practice and Judicial Administration provides that this Court shall "determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action." A trial court presented with a motion to disqualify must limit its review of the motion to making a "bare determination of legal sufficiency." Bundy v. Rudd, 366 So. 2d 440, 442 (Fla. 1978).

In Livingston v. State, 441 So. 2d 1083, 1086 (Fla. 1983) the Florida Supreme Court reiterated this principle:

Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself. . . . The judiciary cannot be too circumspect; neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of the litigants in a fair and impartial adjudication of the issues raised.

For all of these reasons, a different Circuit Court judge should be randomly assigned.

WHEREFORE, the undersigned requests that 'acting' Circuit Judge Aaron Peacock immediately recuse himself from this case and that the Clerk randomly reassign this case to a Circuit Court judge.

Per Fla.R.2.330(c)(5), Fla.R.Gen.Pr. and Jud.Admin., the undersigned certifies that this motion and the Defendant's statements are made in good faith.

Attached below is a sworn affidavit of the Defendant, as required by Rule 2.330(c)(3).

AFFIDAVIT OF DEFENDANT

DONOVAN WINTER, after being duly sworn, states as follows:

1. I am the defendant in the case of State of Florida v. DONOVAN WINTER, Case 05-2025-CF-034362-AXXXBC.
2. I am charged with Felony Murder, and Aggravated Child Abuse.
3. I am represented by Sean Conway.
4. On September 2nd, 2025, my attorney told me that the ‘acting’ Circuit Court judge presiding over my case, the Hon. Aaron Peacock, has been serving in that capacity since June of 2023. He also told me that, for ‘longer’ assignments, the case law states that those judges also were assigned County Court cases at the same time, so as to not basically create a whole new Circuit division. My attorney did some research and told me that the County Court Judge presiding over my case, Judge Aaron Peacock, exclusively handles only Circuit Court matters and has done so for the past 27 out of 33 months.
5. I feel that if the judge has already been presiding over my case contrary to the law, then he should recuse himself. I have a genuine fear of not receiving a fair trial for this Murder charge and feel I am being prejudiced in that I do not have a Circuit Court judge that was placed into what is effectively a permanent, full-time Circuit Court position only after thorough vetting by either the voters, or the Judicial Nominating Commission (“JNC”). I feel my case is prejudiced by having a County Court Judge presiding solely on Circuit Court cases for most of his term in what is effectively a new, de facto Circuit division that did not undergo the usual scrutiny by the voters or the JNC.

6. Moreover, as the one responsible for raising this issue of the current Judge presiding without being duly authorized to do so under the established case law, I also have that additional, well founded fear to add to my concerns of not receiving a fair trial.

I have read the Motion for Disqualification of Judge and the affidavit, and certify that it is an accurate representation of my understanding of what has occurred in this case.

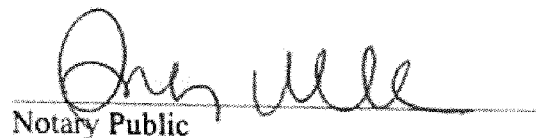
State of Florida)

County of Brevard)

Before me, the undersigned authority, this day personally appeared DONOVAN WINTER, who first being duly sworn, says that he is the Defendant in the above styled cause, and that he has read the foregoing, and that all of the matters are true and correct.

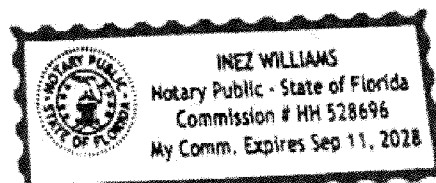

DONOVAN WINTER

Sworn and Subscribed before me
this 3 day of Sept, 2025


Notary Public

☐ Personally known
☒ Produced Identification: Jail inmate ID

Type of Identification : Brevard Sheriff's Office Inmate Movement Card with Photo



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Disqualification of Judge, including Affidavit of Defendant and all attachments, has been furnished by email to **Julia Lynch**, Office of the State Attorney, Brevard County [jlynch@sa18.org]; and to the **Hon. Aaron Peacock** via email [tina.derwitsch@flcourts18.org] on this 4th day of September, 2025.

/s/ SEAN CONWAY
SEAN CONWAY
Florida Bar No. 101028
120 S. Woodland Blvd.
Suite 200
DeLand, FL 32720
(386) 469-9571
seanconwaylaw@gmail.com

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR
BREVARD COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO.:
25-03-B 3RD AMENDED
SUPERSEDES 25-03-B 2ND AMENDED

**IN RE: JUDGES – TEMPORARY APPOINTMENT OF COUNTY COURT JUDGE AARON J.
PEACOCK TO HANDLE CIRCUIT FELONY CRIMINAL CASES**

In order to maximize the efficient administration of justice and judicial labor in Brevard County in the Eighteenth Judicial Circuit, and to ensure timely and prompt disposition of circuit felony criminal matters, pursuant to Rule 2.215(b)(4), Florida Rules of General Practice and Judicial Administration, it is thereupon, ORDERED:

1. The Honorable Aaron J. Peacock, a qualified county court judge in Brevard County, is hereby temporarily assigned to supplement and aid the circuit judges in Brevard County by hearing, conducting, and determining all matters in circuit felony criminal division cases in Brevard County.
2. This cross-assignment to the circuit felony criminal division is to aid and assist this specific division in Brevard County on a temporary basis only. This assignment is for sixty (60) days in duration. Crusoe v. Rowls, 472 So. 2d 1163, n. 2 (Fla. 1985); Wild v. Dozier, 672 So. 2d 16 (Fla. 1996). Judge Peacock will preside over this circuit felony criminal division at the Moore Justice Center in Viera.
3. The service of this county court judge in the circuit court is restricted to a specific, limited class of cases; specifically, only one-sixth of the pending cases in the circuit felony criminal division.
4. This assignment is necessary to provide additional judicial resources to promptly hear and dispose of circuit felony criminal matters. The purpose of this temporary assignment is to assist and supplement, not to be a permanent assignment that usurps, supplants, or replaces a circuit judge in the circuit felony criminal division in Brevard County.

5. When conducting circuit court felony criminal division matters, the county court judge assigned in this Order shall have all powers and authority of a circuit judge in every respect. This authority includes but is not limited to, the issuing of orders in the circuit court so assigned, as deemed necessary and appropriate. However, no capital cases in which the State is seeking the death penalty shall be assigned to Judge Peacock. If the State files a Notice to Seek the Death Penalty within forty-five (45) days of arraignment, pursuant to Fla. R. Crim. P. 3.181, the Clerk of the Court shall reassign the case to the next circuit judge on the rotation list. The case shall be reassigned promptly after the filing of the Notice.
6. This Order shall be in effect for a period of sixty days from that date of its rendition.

DONE and ORDERED this 1st day of July, 2025.

MELANIE CHASE
MELANIE CHASE
CHIEF JUDGE

Distribution:

All Circuit and County Judges (Brevard County)
Court Administration (Brevard County)
Clerk of Court (Brevard County)
Public Defender (Brevard County)
State Attorney (Brevard County)
Sheriff (Brevard County)
Bar Association (Brevard County)
Law Library (Brevard County)

**Judge Aaron J. Peacock
Circuit Criminal Division 9**

Location/Contact Information:

Aaron J. Peacock
County Court Judge
Moore Justice Center
2825 Judge Jamieson Way
Viera, Florida 32940
(321) 617-7236
Courtroom 4A

Attendance Policies:

Docket Sounding:

TEAMS appearances are allowed for Private Docket Sounding only.

Attorneys must request a TEAMS link 48 hours prior to docket sounding.

Late requests may not be authorized and the attorney may need to seek alternative coverage.

Privately represented Defendants are excused from Docket Sounding if defense attorney so waives.

Inmates will not be transported for Docket Sounding (PRIVATE OR PD) unless specifically requested by the Defense attorney.

Defendants may appear for PD Docket Sounding, however, attorneys can waive/excuse.

Calendar Call:

All attorneys and defendants must appear in person for Calendar Call.

All Inmates will be transported.

VOP ARRAIGNMENTS, VOP HEARINGS, BOND HEARINGS, MOTIONS, PLEAS, and JURY TRIALS

Attendance is required in person unless previously excused by the Court.

TEAMS/special exceptions:

Parties may request special exception TEAMS/remote appearances by efileing a Motion with the Clerk of Court and copying opposing and the Judicial Assistant at least 48 hours prior to the Court event.

Motions:

Motions must be efiled, copied to the opposing side for objection/input before sending to the Court. If no objection, then, the attorneys shall email the motion to the Judicial Assistant, copying opposing and including the language of “no objection”. The Judicial Assistant will prepare an Order if appropriate.

Motions and orders are not to be submitted through the E-Portal – they are to be emailed to the JA directly.

Please provide complete case style information in the subject line when emailing the JA. (Case Number, Defendant's Name, etc.)

Hearing times/JACS:

Judge Peacock uses JACS, Judicial Automated Calendaring System, for the attorneys to coordinate and schedule hearings. Attorneys can view available hearing times as well as our daily calendar for Judge Peacock on JACS.

Instructions for JACS are available on the 18th Circuit Website, www.flcourts18.org, as well as from the Judicial Assistant.

When hearing time is coordinated and confirmed, the moving party must immediately efile the Notice of Hearing and email a copy to the Judicial Assistant. Failure to timely efile a Notice of Hearing with service upon opposing may result in the cancellation of the hearing.

Email is the preferred method to contact the JA, including after hours, at tina.derwitsch@flcourts18.org.

Mission Statement of the Judicial Branch

*To protect rights and liberties, uphold and interpret the law,
And provide for the peaceful resolution of disputes.*