In re: Amendments to the Florida Small Claims Rules

MARSHAL: ALL RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THIS GREAT AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING. GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. OUR FIRST CASE ON THE DOCKET, IS IN RE AMENDMENTS TO THE FLORIDA SMALL CLAIMS RULES, AND THE COURT HAD REQUESTED ORAL ARGUMENT, TO ADDRESS A COUPLE OF CONCERNS, AND I VERY MUCH APPRECIATE BOTH OF YOU BEING HERE TODAY. JUDGE, ARE YOU GOING, AND JUDGE, ARE YOU GOING TO, BOTH, MAKE COMMENTS? THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT. I APPRECIATE THE COURT CONSIDERING THE OTHER RULES AND APPROVING THEM. HOWEVER, WE ARE CONCERNED THAT THE SMALL CLAIMS RULES COMMITTEE, TO GIVE YOU A LITTLE BIT ABOUT THE GENESIS OF THIS RULE ON SEPTEMBER 5, 2003, WHEN THE SMALL CLAIMS COMMITTEE MET, THE JUDGE WHO PRESIDES IN BROWARD COUNTY, BROUGHT TO THE ATTENTION OF THE COMMITTEE, THAT THERE WERE ATTORNEYS WHO WERE SHOWING UP AT THE PRETRIAL CONFERENCE, WITHOUT AUTHORITY TO SETTLE. THEY WOULD COME TO COURT AND SIMPLY SAY THE ONLY REASON WE ARE HERE, SO THAT THE DEFAULT WOULD NOT BE ENTERED. THEREFORE, THE COMMITTEE DISCUSSED THIS AND SAID THAT THE RULE 7.09-F, BE AMENDED TO ADD THE LANGUAGE, MEDIATION MAY TAKE PLACE AT THE PRETRIAL CONFERENCE, WHOEVER APPEARS FOR THE PARTY MUST HAVE ABILITY TO SETTLE. IT MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING COSTS, ATTORNEYS FEES, ENTRY OF JUDGMENT OR DISMISSAL.

NOW, CORRECT ME IF I AM WRONG, BUT FROM MY RECOLLECTION, THE PRETRIAL CONFERENCE IS STIPULATIONS AT LEAST SCHEDULED, SOMETIMES WITHIN 20 DAYS OF THE FILING OF THE COMPLAINT, VERY SOON AFTER THE COMPLAINT IS FILED, AND EVEN THOUGH THESE ARE SMALL CLAIMS, SOMETIMES THEY INVOLVE LARGE CORPORATIONS, INSURANCE COMPANIES AND THINGS LIKE THAT, THAT HAVEN'T HAD THE OPPORTUNITY TO INVEST CLAIM, MUCH LESS DEPOSE A PLAINTIFF OR ASK FOR INTERROGATORIES BEFORE THE PRETRIAL CONFERENCE, SO HOW ARE THEY SUPPOSED TO HAVE I IDEA OF THE AMOUNT OF SETTLEMENT VALUE OF THE CASE, 20 OR 30 DAYS AFTER THE COMPLAINT IS FILED?

THAT IS A GOOD OBSERVATION. THE MAJORITY OF THE CLAIMS IN SMALL CLAIMS COURT, ACTUALLY FALL IN SEVERAL CATEGORIES. WE HAVE THE DEAD COLLECTION CATEGORY, AND THE CATEGORY THAT YOU ARE SPEAKING OF, INVOLVES WHAT WE CALL PIP CASES, PERSONAL INJURY CASES.

THERE ARE OTHER CASES FALL UNDER SMALL CLAIMS CASES.

YES, BUT WHAT HAPPENED TO THE JUDGES, BECAUSE THERE ARE TWO ATTORNEYS ON EACH SIDE, THOSE ATTORNEYS ACTUALLY CALL THE JUDGE'S OFFICE AND LET THAT JUDGE KNOW WHEN THAT CASE IS RIGHT FOR SETTLEMENT. THE MAJORITY OF THOSE CASES, HOWEVER, THE ONES THAT THE SMALL CLAIMS COMMITTEE WAS CONCERNED ABOUT, WERE THE PRO SE LITIGANTS SUING FOR SERVICES, THOSE CASES WHERE SOMEONE IS SUED FOR A PARTICULAR DEBT OR FILL YOUR TO PERFORM A SERVICE.

CHIEF JUSTICE: SO NOT EVERY CASE, EXPLAIN HOW THE JUDGES DETERMINE WHEN A CASE IS SET FOR A PRETRIAL CONFERENCE. THIS IS AUTOMATIC IN ALL OF THE CIRCUITS,, ARE ON DOES IT DEPEND, AND I THINK THAT IS WHAT WE WERE CONCERNED WITH, IS THAT IF IT IS AUTOMATIC 20 DAYS, KIND OF PUTTING AN ATTORNEY INTO AN UNREALISTIC POSITION.

IF YOU WOULD LIKE, I CAN GIVE YOU A BRIEF HISTORY OF WHAT ACTUALLY HAPPENED. WHEN THE CASE IS FILED AT PRETRIAL, THERE IS A PRETRIAL NOTICE THAT IS CURRENTLY FILED IN THE RULES, AND IT SAYS THAT, WHEN YOU COME TO PRETRIAL, MEDIATION MAY TAKE PLACE, AND YOU NEED TO BE ABLE TO DEFINE YOUR PARTICULAR ISSUES. THE RULES OF SMALL CLAIMS, ALSO, PROVIDES IT DOESN'T REALLY PROVIDE FOR AN ANSWER, SO IT IS DIFFERENT FROM YOUR CIVIL CASE, WHERE YOU FILE, AND THEN THERE ARE ANSWERS REQUIRED. NO ANSWER IS REQUIRED TO BE FILED IN THE SMALL CLAIMS COURT.

CHIEF JUSTICE: BUT IT SAID MEDIATION MAY TAKE PLACE.

MAY TAKE PLACE.

CHIEF JUSTICE: SO HOW IS IT DETERMINED IF IT IS GOING TO TAKE PLACE?

THE JUDGE BASICALLY ASKS THE PARTIES TO APPROACH THE BENCH. THERE IS A JUDGE THAT PRESIDES AT PRETRIAL, AND THE JUDGE ASKS THE PARTIES WHETHER OR NOT THEY ARE READY TO ENTER INTO MEDIATION. SURPRISINGLY, THE MAJORITY OF THOSE CASES CAN GO TO MEDIATION, BECAUSE THEY ARE SMALL CASES THAT INVOLVE WHETHER OR NOT SOMEONE PAID ON A CREDIT CARD DEBT.

I GUESS THE CONCERN, HERE, IS WHETHER, WHEN YOU PUT THIS IN THE RULE, THAT SOMEONE HAS TO BE THERE WITH SETTLEMENT AUTHORITY, THAT THAT PUTS THE BURDEN ON A PARTY TO DO JUST THAT.

OKAY.

AND THAT, SO THAT THE JUDGES WILL THINK THAT, AT THE TIME OF THE PRETRIAL, SOMEBODY HAS GOT TO BE THERE THAT CAN SETTLE THE CASE, AND JUSTICE CANTERO POINTS OUT, IT MAY WE WILL NOT BE THE SITUATION.

SOMETIME AGO, I ASKED THAT ALL OF THE MEMBERS OF THE COMMITTEE AND ALL OF THE COUNTY COURT JUDGES COMPLETE A SURVEY FOR ME, TO ASK THEM THE EFFECTIVENESS OF MEDIATION, AND IF I MAY SHARE SOME OF THAT FOR YOU, FOR EXAMPLE IN SEMINOLE COUNTY, LESS THAN 10 PERCENT OF THE CASES ARE ACTUALLY SET FOR PRETRIAL, WHICH MEANS MEDIATION IS ACTUALLY TAKING PLACE THERE. ALSO I PULLED --

ARE THEY TAKING PLACE, THE PARTIES ON THEIR OWN?

BECAUSE THE PARTIES ARE READY AT THAT PARTICULAR TIME. YOU AREN'T PENALIZED. FOR EXAMPLE, IF YOU TELL THE JUDGE THAT WE AREN'T READY FOR MEDIATION AND THAT WE WANT TO PARTICIPATE IN DISCOVERY, YOU ARE NOT PUNISHED FOR THAT.

CHIEF JUSTICE: YOU SEE, THE RULE AS IT IS WRITTEN, DOESN'T SAY THAT THE ATTORNEY CAN, ALSO, SAY THEY ARE NOT READY FOR MEDIATION. IT SAYS THAT THE ATTORNEY MUST BE THERE WITH SETTLEMENT AUTHORITY. ISN'T THAT HOW IT IS WRITTEN IN A MANDATORY --

NO. THE ADR IS MORE MANDATORY. OURS IS NOT MANDATORY. OUR GROUP OF PROGRAMS SAYS MEDIATION MAY TAKE PLACE.

HOW IS A PARTY GOING TO KNOW IF IT IS OR ISN'T? ONE OF THE PROBLEMS HERE IS, IF YOU DON'T

KNOW IF IT IS GOING TO TAKE PLACE, HOW DO YOU KNOW WHO TO BRING, WHEN YOU COME TO THAT CONFERENCE?

YOU, BEFORE THE PRETRIAL, A LOT OF COUNTIES, WE HAVE WHAT IS CALLED AN EDUCATIONAL PROCESS OR VIDEO. FOR EXAMPLE IN DUVAL COUNTY THERE IS AN INTRODUCTION TO SMALL CLAIMS COURT. WHEN YOU COME TO THE PRETRIAL CONFERENCE, THE ISSUES ARE NARROW. IT IS DIFFERENT THAN THE CIVIL RULES OF PROCEDURE, IN THAT THE MAJORITY OF THE CASES ARE NOT CASES THAT INVOLVE ATTORNEYS ON BOTH SIDES. ATTORNEYS ON BOTH SIDES, PIP CASES, ARE NOT PENALIZED. THOSE CASES NEVER MEDIATE AT THE PRETRIAL. MR.^CHIEF JUSTICE

READING THE RULE OBJECTIVELY, HOW IS THAT COMMUNICATED IN THE RULE AS IT IS PROPOSED OR ANY COMMITTEE NOTES? I MEAN, IT SEEMS TO ME, I GUESS THE WAY I WOULD THINK THAT, RATIONALLY, THAT IT WOULD BE, THAT YOU WOULD MAKE THE DECISION THESE ARE PRETRIALS THAT ARE GOING TO GO TO MEDIATION, AND WHEN A JUDGE SETS A CASE FOR MEDIATION, THE ATTORNEY THAT APPEARS SHALL HAVE SETTLEMENT AUTHORITY.

IF YOU ARE GOING TO MEDIATION P IF YOU DON'T WANT TO GO TO MEDIATION, THERE IS NO MANDATORY MEDIATION. YOU ARE NOT ORDERED TO MEDIATION, IF YOU DON'T WANT TO. THAT LANGUAGE THAT WE PROPOSE, BASICALLY SAYS --

THE LANGUAGE SAYS MAY TAKE PLACE --

MAY TAKE PLACE. WHOEVER APPEARS MUST HAVE FULL AUTHORITY TO SETTLE. YOU HAVE FULL AUTHORITY TO SETTLE OR TO ENTER INTO NEGOTIATIONS, OR YOU ARE REPRESENTING THAT YOU ARE GOING TO CONTINUE WITH THE CASE.

BUT IT SEEMS TO IMPLY THAT, WHOEVER APPEARS AT THE PRETRIAL CONFERENCE, MUST HAVE FULL AUTHORITY TO SETTLE, WHICH IS THE PROBLEMATIC IMPLICATION HERE.

RIGHT. THERE WAS A COMMENT, I DON'T KNOW IF YOU HAVE THAT COMMENT OR NOT, THAT AN ATTORNEY RESPONDED TO THAT SIMPLY BY SAYING THAT I MAY NOT HAVE AUTHORITY. I MAY NOT HAVE SPOKEN TO MY ATTORNEY, TO MY CLIENT ABOUT THIS PARTICULAR CASE. THE RESPONSE TO THAT WAS, IF YOU SHOW UP WITHOUT AUTHORITY TO SETTLE, AND YOU HAVE A GOOD CAUSE FOR THAT, THEN YOU ARE NOT PENALIZED.

CHIEF JUSTICE: IS THAT IN THE RULE?

WELL, NOT SPECIFICALLY.

CHIEF JUSTICE: IT SEEMS TO ME THAT THAT IS REALLY WHAT HAS TO HAPPEN, WHICH IS TO SAY THAT THERE HAS GOT TO BE A GOOD-FAITH ATTEMPT TO SETTLE, UNLESS THE ATTORNEY ADVISES THAT FURTHER DISCOVERY IS NECESSARY. SOMETHING LIKE THAT.

RIGHT. I DON'T THINK WE WOULD HAVE PROBLEM WITH THAT.

CHIEF JUSTICE: MAYBE WE NEED TO SEND IT BACK, JUST FOR THAT LANGUAGE TO BE CRAFTED, BECAUSE OBVIOUSLY HERE WE ARE, UP HERE NOT AS FAMILIAR WITH THE DAY-TO-DAY MATTERS. ANOTHER ISSUE THAT WE WERE CONCERNED WITH, IS THIS ISSUE OF DROPPING PAPERS WITH THE CLERK, OR WHATEVER THE RULE, I THINK IT IS 7.080 THAT SAYS THAT, IF YOU DON'T KNOW WHERE THE ADDRESS IS FOR THE PARTY, THAT THEY CAN JUST LEAVE PAPERS WITH THE CLERK?

THAT IS THE AREA SUMMONS THAT YOU ARE SPEAKING OF.

CHIEF JUSTICE: WELL, WE ARE TRYING TO UNDERSTAND, IS THIS SOMETHING THAT, WHERE THIS CLERK, IT IS AS IF THEY ARE THE SUBSTITUTE PARTY, THAT THEY ARE JUST SUPPOSED, WHAT IS

THE CLERK SUPPOSED TO DO WITH IT?

THAT IS SIMILAR TO WHEN THE INSURANCE COMPANIES ARE UNABLE TO SERVE A PARTICULAR PARTY, IT IS SERVED ON THE SECRETARY OF STATE.

CHIEF JUSTICE: RIGHT, BUT THERE ARE PROCEDURES.

RIGHT, AND THAT REALLY HAPPENS, IN TERMS OF THE PAPERS, BUT THAT IS A AREA SUMMONS THAT IS REQUESTED, TO GIVE NOTICE IF YOU CANNOT FIND A PARTICULAR INDIVIDUAL.

BUT THIS DOESN'T APPLY TO SERVICE OF THE INITIAL --

NO, IT DOESN'T INVOLVE THE INITIAL AT ALL.

CHIEF JUSTICE: SO IS THE CLERK JUST SUPPOSED TO FILE THESE IN THE FILE?

WELL, PRO SE LITIGANTS, IT IS DIFFICULT TO EXPLAIN, BUT A PRO SE LITIGANT, SOMETIMES SIMPLY FILES A RESPONSE IN THE CLERK'S FILE, WITHOUT PROVIDING THAT INFORMATION.

CHIEF JUSTICE: ARE YOU INTENDING FOR THE CLERK, THEN, TO SEND IT OUT TO CERTIFY --

NO, NO, NO, NO, NO, NO. THE ATTORNEYS WILL PULL THE FILE AND HAVE NOTICE OF THE PLEADINGS, AND THEY GENERALLY DO THIS. THE ATTORNEYS WHO ROUTINELY PRACTICE IN SMALL CLAIMS COURT ARE FAMILIAR WITH THE FACT THAT PRO SE LITIGANTS AREN'T FULLY FAMILIAR WITH THE RULES OF PROCEDURES, AND SOMETIMES AS OPPOSED TO SENDING OUT THE NECESSARY COPIES OR MAKE THREE COPIES, THEY WILL FILE IT IN THE CLERK'S OFFICE. THIS IS NOT GOING TO PUT A BURDEN ON THE CLERK'S OFFICE.

YOU ARE SAYING A PERSON WHO IS FILING A PLEADING WHO DOESN'T KNOW THE ATTORNEY'S ADDRESS IS THE ONE THAT GETS TO FILE THIS WITH THE CLERK'S OFFICE?

OR NOT SURE WHERE TO PUT IT. IT IS PUT IN THE CLERK'S FILE.

I THOUGHT THEY HAVE THE OBLIGATION OF SERVING THE OTHER PARTY.

THEY STILL MUST SERVE THE OTHER PARTY WITH THE INITIAL PLEADING, BUT IF THEY DON'T PUT ALL OF THE INFORMATION IN THAT PARTICULAR FILE, IT STILL IS OF NOTICE. I KNOW IT IS A BIT DIFFICULT TO UNDERSTAND WITH PRO SE LITIGANTS. THAT IS WHY A LOT OF COUNTIES, INCLUDING DUVAL, HAVE SET UP WORKSHOPS FOR INDIVIDUALS TO UNDERSTAND THE PROCESS OF SMALL CLAIMS COURT.

CHIEF JUSTICE: WE APPRECIATE THAT THIS IS A, THIS IS SOMETHING WHERE YOU ARE TRYING TO ACCOMMODATE THOSE THAT MAY NOT KNOW THE RULES, BUT THE WAY, THE CHANGES, IT SAYS "OR IF NO ADDRESS IS KNOWN, BY LEAVING IT WITH THE CLERK OF COURT." SO IT DOESN'T REALLY ADDRESS THE SITUATION THAT YOU ARE TALKING ABOUT, WHICH IS THAT THEY KNOW THE ADDRESS BUT THEY JUST DON'T KNOW THEY ARE SUPPOSED TO CERTIFY IT, SO THIS WOULDN'T, THE WAY IT IS WRITTEN, WOULDN'T COVER YOUR CONCERN.

OKAY.

CHIEF JUSTICE: I MEAN, AT LEAST, AND, AGAIN, NOT THAT YOU DON'T THINK THIS IS A BURDEN TO THE CLERKS AND THE CLERKS HAVEN'T APPEARED, BUT WE ALL KNOW THAT WE DON'T WANT TO DO SOMETHING ADDITIONAL TO BURDEN THE CLERK, UNLESS THERE IS A GOOD REASON TO DO IT.

WELL, SOMETIMES, QUITE HONESTLY, IN SMALL CLAIMS COURT, THE PRO SE LITIGANT WILL

DIRECT A LETTER TO THE JUDGE, AND, AGAIN, THE BULK OF THESE CASES ARE, PEOPLE WHO ARE BEING SUED, BECAUSE THEY FAIL TO PAY A CAR NOTE OR CREDIT CARD DEBT OR THE LIKE.

CHIEF JUSTICE: MOST RESPECTFULLY, IF THEY DON'T REALLY KNOW THE RULES, WHY WOULD WE PUT SOMETHING, I MEAN, THEY ARE NOT GOING TO READ THIS, EITHER, AND I AM CONCERNED, BECAUSE IT SAYS OR IF NO ADDRESS IS KNOWN, BY LEAVING IT WITH THE CLERK, THAT DOESN'T SEEM TO ADDRESS THE PROBLEM THAT YOU HAVE IDENTIFIED.

WELL, ACTUALLY IN SOME INSTANCES, THOUGH, IT DOES ASSIST THE ATTORNEY, IN PULLING THE FILE, BECAUSE ONCE THEY MEET THE PRO SE LITIGANT AT THE PRETRIAL, THE ATTORNEYS ARE VERY ASTUTE, AND THEY SOMEHOW GET THE IDEA THAT MAYBE WE SHOULD GO A LITTLE FURTHER, MAYBE WE SHOULD EXPLAIN WHAT WE ARE DOING, AND IF THEY FILE ANYTHING, IF THEY DON'T KNOW EXACTLY WHERE TO FILE IT, THEN THEY WILL PULL THE FILE AND THAT INFORMATION WILL BE AVAILABLE TO THEM.

SO THIS WOULD, REALLY, BE, IN KEEPING WITH THE PRACTICE THAT IS GOING ON NOW.

RIGHT.

A PRO SE LITIGANT COMES IN AND FILES SOMETHING, EVEN THOUGH IT HASN'T BEEN SERVED ON THE OTHER PARTY, IT IS PUT INTO THE COURT FILE. IS THAT WHAT YOU ARE SAYING?

THAT IS EXACTLY WHAT HAPPENS NOW. IF SOMEONE WRITES A LETTER TO ME, I IMMEDIATELY SEND IT BACK DOWNSTAIRS TO THE CLERK'S OFFICE. SOMETIMES AS A COURTESY, WE WILL FORWARD IT ON TO THE ATTORNEY, BUT THESE CASES ARE DISPOSED OF RATHER QUICKLY IN SMALL CLAIMS COURT. THESE ARE NOT THE KIND OF CASES THAT YOU WILL ROUTINELY SEE ON A JUDGE'S DOCKET FOR MONTHS AND MONTHS AND MONTHS. WE ASK THE PRO SE LITIGANT AT THAT TIME WHETHER OR NOT YOU ADMIT OR DENY THE DEBT. MOST OF THE TIME, I WOULD SAY 85 PERCENT OF THE TIME, THEY ADMIT THAT THE DEBT IS OWED. THEY ONLY DISPUTE, IN THE MAJORITY OF CASES, INTEREST DUE AND OWING. THEY DON'T BELIEVE THAT INTEREST SHOULD CONTINUE TO ACCRUE, SO THEY SAY, JUDGE, WELL, I HAD CREDIT CARD TO ABC CREDIT COMPANY. I LOST MY JOB. I GOT SICK. I COULDN'T PAY IT.

NOW, IS YOUR PRACTICE IN THIS, SAY YOU HAVE ONE ATTORNEY THAT REPRESENTS ONE MAJOR CREDITOR, THAT YOU WILL SAY THAT ATTORNEY MAY HAVE 15 CASES, ANNUL SET THAT ATTORNEY'S CASES AT ONE TIME.

RIGHT.

AND THE DEBTORS WILL COME IN.

THE DEBTORS COME IN. THEY MEET THE ATTORNEY, AND THEY ENTER INTO STIPULATIONS AT THAT PRETRIAL. THE ONLY TIME WE ACTUALLY END UP TRYING ONE OF THESE CASES, IS WHEN THE INDIVIDUAL SAYS THAT IS NOT MY SIGNATURE, I DON'T BELIEVE I OWE THAT MONEY, I DON'T KNOW WHAT THEY ARE TALKING ABOUT.

CHIEF JUSTICE: THANK YOU VERY MUCH, JUDGE DRAYTON.

YOU ARE WELCOME.

CHIEF JUSTICE: WELCOME.

THANK YOU. GOOD MORNING. I AM SHAWN BRIESE AND I CHAIR THE COURT'S POLICY RULES AND COMMITTEE, AND THE SUGGESTED CHANGES ARE ALL IN RULE 7.090 IN THE NEW FORM FOUND IN 7.321. THE CHANGES ARE RATHER STRAIGHTFORWARD. WHOEVER APPEARS FOR A PARTY, NEEDS

TO HAVE FULL AUTHORITY TO SETTLE, FROM ZERO TO THE FULL AMOUNT OF THE CLAIM, WITHOUT FURTHER CONSULTATION. WE FELT THAT LANGUAGE WAS IMPORTANT, BECAUSE IF IT WAS JUST FULL AUTHORITY TO SETTLE, PEOPLE WILL SHOW UP AND SAY, WELL, I HAVE GOT FULL AUTHORITY TO SETTLE BUT ONLY FOR $500. CHIEF JUSTICE:

WHAT ABOUT THIS ISSUE, THOUGH, THAT WE ARE DISCUSSING, ABOUT THE FACT THAT THERE MAY BE CASES SET 20 DAYS OUT, AND THAT THERE MAY BE CASES THAT REQUIRE MORE DISCOVERY OR SOMETHING ELSE? HOW DO WE ADDRESS THAT? CAN WE ADDRESS THAT IN THE --

WELL, RULE 7.010 SAYS SMALL CLAIMS RULES SHOULD BE DESIGNED TO MAKE THE PROCEDURE SIMPLE, SPEEDY, AND INEXPENSIVE. AND A LOT OF THE PRIVATE PARTIES WHO SHOW UP DESPITE WHAT IS IN THE NOTICE OF THE PRETRIAL CONFERENCE, THEY BRING THEIR WITNESSES. THEY BRING ALL THE DOCUMENTS. THEY ARE READY TO TRY THE CASE, SO THEY ARE READY TO GO. THOSE CORPORATIONS OR ENTITIES, THERE IS SOMEBODY IN THAT ENTITY, HIGH ENOUGH UP, WHO HAS THE AUTHORITY TO SETTLE THE CASE FOR UP TO THE JURISDICTIONAL LIMITS, RECOGNIZING THAT, AT THAT TIME THEY MAY NOT HAVE ALL OF THE FACTS! THERE IS STILL SOMEBODY THAT HAS GOT THE AUTHORITY TO SETTLE THAT CASE, AND IF THESE CASES ARE SUPPOSED TO BE SIMPLE AND SPEEDY AND INEXPENSIVE, THAT PERSON CAN BE THERE. A 7.090-B, SAYS MEDIATION MAY OCCUR AT THE PRETRIAL CONFERENCE. IT IS NOT REQUIRED. THERE IS NOTHING -- CHIEF JUSTICE

OKAY. YOU GET THE NOTICE. THE PRETRIAL CONFERENCE. YOU GOT THE CASE. HOW DO YOU KNOW WHETHER YOU NEED TO GO, SPEND THE TIME TO SPEAK WITH YOUR CLIENT, TO DECIDE WHETHER THERE IS GOING TO BE AUTHORITY TO SETTLE, IF YOU DON'T KNOW WHETHER MEDIATION IS GOING TO TAKE PLACE?

I WOULD HOPE THAT PARTIES WHO ARE REPRESENTED BY ATTORNEYS AT PRETRIAL CONFERENCES, HAVE CONSULTED WITH THEIR CLIENTS PRIOR TO WALKING INTO THAT COURTROOM.

JUDGE BRIESE, YOU KNOW THAT THAT DOESN'T ALWAYS HAPPY. IT DID MAYBE 50 YEARS AGO, BUT CLIENTS CALL AND SAY I HAVE GOT THIS NOTICE. YOU HAVE TO BE THERE, AND YOU DON'T HAVE AN OPPORTUNITY TO TALK TO THEM. I MEAN, AS A PRACTICAL MATTER, IT DOESN'T HAPPEN ALL THE TIME. IT MAY, IF IT IS JUST A ONE-ON-ONE THING, BUT IN SITUATIONS WHERE THERE ARE CLAIMS FILED, A BUSINESS ORGANIZATION THAT EXISTS TO HAVE CLAIMS FILED IN, LIKE, INSURANCE, FOR EXAMPLE, THEY DON'T KNOW IF EVERY CLAIM SOUTH THERE. CLAIMS ARE FILED ALL OF THE TIME THAT THEY HAVE NEVER EVEN HEARD OF.

I WILL ALSO SAY THAT PART B OF THE RULE SAYS MEDIATION MAY OCCUR. THERE IS NOTHING THAT PREVENTS THE ATTORNEY OR THE PARTY FROM SAYING WE JUST FOUND OUT ABOUT THIS, I HAVEN'T HAD TIME TO CONSULT -- CHIEF JUSTICE

THEN SHOULDN'T WE ADD IN THE RULE THAT THE ATTORNEY, IF GOOD CAUSE IS SHOWN, SOMETHING THAT AT LEAST EXPLAINS WHAT BOTH YOU AND JUDGE DRAYTON ARE SAYING, WHICH IS THAT IF AN ATTORNEY SHOWS UP AND SAYS I JUST GOT THIS CALL YESTERDAY, WE ARE NOT GOING TO SANCTION THE ATTORNEY, BUT RIGHT NOW THAT IS NOT HOW THE RULE IS WRITTEN. OR PROPOSED.

THE, PART B OF THE RULE, 7.090 SAYS "MAY".

CHIEF JUSTICE: BUT THAT SEEMS TO REQUIRE THAT THE JUDGE MAY ORDER MEDIATION, NOT THAT YOU GET THERE AND SAY "I DO" NOT WANT MEDIATION!

WELL, I THINK MAY, PLUS THE JUDGE'S INHERENT AUTHORITY AS A JUDGE, CAN DELAY THE MEDIATION, IF THERE IS GOOD REASON TO DO IT.

WELL, HOW ABOUT COMMENTING ON. THAT IN OTHER WORDS, I THINK YOU ARE IN A POSITION TO TELL US WHAT DAMAGE IT WOULD CAUSE TO THE PROCEDURE, IF ANY, IF THERE WAS A RELIEF VALVE IN THERE, THAT IS IF THERE WAS THE GOOD CAUSE THING EXPRESSED IN THE RULE. IN OTHER WORDS WE NEED YOUR COMMENT WHETHER OR NOT, ON YOUR EXPERIENCE, IF YOU PUT A GOOD CAUSE IN THERE, ALL OF A SUDDEN, EVERYBODY IS GOING TO SAY I HAVE GOT GOOD CAUSE OR WHETHER YOU THINK THAT THAT WOULD BE WORKABLE WITH THE JUDGE, OBVIOUSLY, THE ONE DETERMINING WHETHER GOOD CAUSE HAS BEEN DEMONSTRATED.

JUDGES KNOW WHAT GOOD CAUSE MEANS. NOTICE, I THINK, IS ALWAYS GOOD. THE CONCERN, I THINK, IS EXPRESSLY, AND I DON'T KNOW THAT THERE IS ANY DETRIMENT TO DOING, IT BUT THE THOUGHT PROCESS IS --

WE KNOW THE SMALL CLAIMS COURT IS PROACTIVE. THAT IS THAT THEY HAVE REALLY TAKEN CHARGE AND DONE AN INCREDIBLY GOOD JOB OF PROCESSING THIS HUGE VOLUME OF CASES, AND SO THAT IS CLEARLY A FACTOR ON ONE SIDE, SO I THINK WE ARE ASKING YOU WHETHER OR NOT WE WOULD, REALLY, BE THROWING A MONKEY WRENCH INTO THIS, IF YOU SAID WE HAVE GOT A SIMPLE, YOU SAID WE DO THAT, ANYWAY, MAKE THAT A PART OF THE RULE AND THEN LEAVE IT TO THE JUDGES, WHO ARE TRYING TO GET THESE CASES DONE, TO RESOLVE THAT, WOULDN'T THAT TAKE CARE OF THAT?

I GUESS MY CONCERN WOULD BE, SINCE THESE PROCEEDINGS ARE SUPPOSED TO BE SIMPLE, SPEEDY, AND INEXPENSIVE, THAT THE ATTORNEYS WHO ARE APPEARING WHO NEED THE TIME, KNOW THAT IT IS "MAY", KNOW THE JUDGE HAS THE INHERENT POWER, DOES THE RULE GIVE MORE NOTICE? SURE. DOES IT SAY WHAT YOU CAN DO? SURE. WILL IT BUILD IN AN AUTOMATIC WAY TO STEP AWAY FROM MEDIATION? MAYBE. AND THESE THINGS PROCEED RATHER QUICKLY. A LOT OF COUNTIES HAVE MEDIATORS RIGHT THERE, SITTING THERE, WAITING FOR THE JUDGE TO SAY HERE IS A CASE TO MEDIATE.

ONE OTHER CONCERN THAT I HAVE IS THAT, IN ALL OF THE MEDIATION TRAINING THAT I HAVE LISTENED TO, WE HAVE, WE MAKE A STRONG POINT OUT OF THE FACT THAT NO ONE IN MEDIATION IS FORCED TO SETTLE, AND I THINK THE LANGUAGE NEEDS TO BE MASSAGED HERE, SO THAT, WHERE IT SAYS WHOEVER APPEARS FOR A PARTY, MUST HAVE FULL AUTHORITY TO SETTLE, THAT PERSON STILL HAS GOT TO HAVE THE RIGHT TO SAY, YOU KNOW, JUDGE, WE ARE NOT GOING TO SETTLE THIS CASE BECAUSE WE DON'T HAVE ANY LIABILITY.

THERE IS NO QUESTION, IF THE JUDGE SENDS IT TO MEDIATION, THEY CAN GO INTO MEDIATION AND SAY I HAVE GOT FULL AUTHORITY TO SETTLE. WE ARE NOT SETTLING BECAUSE WE DON'T HAVE ANY LIABILITY, AND THAT IS WHERE IT ENDS! I MEAN THAT IS A SAFETY VALVE.

YOU ARE PROPOSING IT GO EVEN FARTHER, BECAUSE NOT ONLY DO YOU HAVE TO HAVE FULL AUTHORITY TO SETTLE, YOU HAVE TO HAVE FULL AUTHORITY TO SETTLE FOR ALL AMOUNTS FROM ZERO TO THE AMOUNT OF THE CLAIM, WITHOUT FURTHER CONSULTATION.

CORRECT.

SO IF A DEFENDANT THINKS THAT HE OWES NOTHING, HOW IS HE SUPPOSED TO AUTHORITIES AN ATTORNEY OR ANYBODY ELSE TO SETTLE FOR THE FULL AMOUNT OF THE CLAIM. IT SEEMS TO BE MUTUALLY EXCLUSIVE TO THINK THAT YOU AUTHORIZE SOMEBODY TO SETTLE FOR EVERYTHING.

THERE IS A DIFFERENCE BETWEEN HAVING THE AUTHORITY TO FULLY SETTLE AS OPPOSED TO SHOULD WE SETTLE. THOSE ARE TWO DISTINCT THINGS, AND SOMEBODY HIGH ENOUGH --

BEFORE THAT GETS FROM THE COMPANY TO THE ATTORNEY, IT GOES THROUGH AN INTERNAL

PROCESS, AND THAT --

I AM SURE.

-- AND THAT COMPANY REPRESENTATIVE IS NOT GOING TO HAVE AUTHORITY TO SETTLE FOR THE FULL AMOUNT OF THE CLAIM, IF THE COMPANY DOESN'T BELIEVE IT OWES ANYTHING.

THERE IS SOMEBODY IN THAT COMPANY WHO CAN SAY WE WILL SETTLE THE CLAIM FOR WHATEVER AMOUNT, ZERO UP TO $5,000, BUT THEY, ALSO, HAVE THE RIGHT TO COME IN THROUGH COUNSEL OR BY AN OFFICER OF THE CORPORATION, AND SAY WE DON'T OWE A PENNY.

I THINK THIS IS, IN A SMALL CLAIMS, UNLIKE IN THE OTHER ONES, YOU DON'T, IF IT IS A CORPORATION, YOU DON'T HAVE TO SEND IN AN ATTORNEY, DO YOU?

YOU DO NOT.

A REPRESENTATIVE OF THE CORPORATION COULD COME IN, AND ISN'T WHAT YOUR CONCERN IS, SOMEBODY, A CORPORATION HAS A LOT MORE MONEY THAN THE AVERAGE PERSON, IS JUST SENDING AN ATTORNEY THERE, JUST AUTOMATICALLY GETTING A DELAY, WITHOUT SENDING SOMEBODY WHO IS AN AVERAGE PERSON WHO CAN SETTLE IT, JUST LIKE YOU DO DAY IN AND DAY OUT.

THAT'S CORRECT. THE CONCERN IS HAVING PEOPLE SHOW UP WITH NO AUTHORITY TO DO ANYTHING, BUT THEY ARE THERE SO THE CASE ISN'T DISMISSED. WELL, THAT DOESN'T FALL WITHIN THE INTENT OF THE RULES OF MAKING IT SIMPLE AND SPEEDY AND IN EXPENSIVE.

JUDGE BRIESE, HOW QUICKLY AFTER THE FILING OF THE CLAIM IS THIS DATE SET?

I DON'T KNOW THAT I CAN ANSWER THAT. I WOULD SUSPECT THAT IT IS AT LEAST 20 DAYS AFTER THE FILING OF THE CLAIM.

AT LEAST. WHAT IS THE MAXIMUM?

I HONESTLY DON'T KNOW.

I MEAN, WE ARE SAYING THIS IS GOING TO BE SPEEDY, BUT WE ARE SPEEDING IT UP. THEN SHARE WITH ME WHAT, WHAT IS THE TIME INVOLVED, TO GET SERVED ON SOME OF THESE CORPORATE ENTITIES? AFTER THE FILING.

I WOULD IMAGINE THE CORPORATE ENTITIES CAN BE SERVED RELATIVELY QUICKLY, BECAUSE THEY HAVE A RESIDENT AGENT SOMEWHERE.

DON'T MOST OF THEM GO, IF IT IS AN INSURANCE COMPANY, GO TO TALLAHASSEE. DO YOU REALIZE HOW LONG IT TAKES TO GET THROUGH THAT PROCESS.

SURE. THAT IS, ALSO, A POSSIBILITY.

YOU REALIZE HOW LONG IT TAKES TO WORK BACK DOWN, BY THE TIME THAT OFFICE SENDS IT TO THE OFFICE OF THE INSURANCE CARE YES, AND THEN THAT CARRIER FINDS THE OFFICE TO WHICH IT NEEDS TO SEND THIS, AND THE AMOUNT OF TIME INVOLVED, AND THE EVENING BEFORE SOMEONE GETS A CALL THAT YOU NEED APPEAR. NOW, DOES THAT TO YOU, IS IT RATIONAL TO HAVE ALL OF THESE REQUIREMENTS UNDER SCENARIOS THAT HAPPEN LIKE THAT?

IT IS, BECAUSE OF THE FACT THAT THIS IS SMALL CLAIMS. WE ARE NOT DEALING WITH LARGE AMOUNTS OF MONEY. WE ARE NOT DEALING WITH MILLIONS OF DOLLARS, AND THE CORPORATION CAN COME IN AND SAY, LOOK, JUDGE, WE ARE NOT READY. WE HAVEN'T HAD TIME

TO CONSULT. WE HAVE NO DISCOVERY. WE WANT TO MEDIATE THE CASE BUT WE DON'T WANT TO DO IT TODAY. CAN YOU SET IT FOR ANOTHER DAY, AND THERE IS NOTHING THAT PREVENTS ANY OF THAT. MEDIATION IS NOT MANDATORY HERE. IT IS, CERTAINLY, WITHIN THE DISCRETION OF THE JUDGE, BASED UPON WHAT THE JUDGE HEARS. NOW, MY ARGUING FERVENTLY AGAINST A GOOD-CAUSE PROVISION, NO, NOT PARTICULARLY, BUT I THINK THE "MAY" IN CONJUNCTION WITH THE AUTHORITY OF THE JUDGE, IS SUFFICIENT PROTECTION FOR THE CONCERNS THAT THE COURT APPEARS TO BE CONCERNED ABOUT.

SO LET'S SAY AN INSURANCE COMPANY GETS SERVED THE DAY BEFORE PRETRIAL CONFERENCE AND GETS AN ATTORNEY, AND IT IS A $5,000 CLAIM. THE CORPORATION HAS NO IDEA WHAT THIS CLAIM IS ABOUT, BUT THE PRETRIAL CONFERENCE IS TOMORROW, SO THE CORPORATION IS SUPPOSED TO TELL THE ATTORNEY, WELL, UNDER THE RULE, I NEED TO GIVE YOU FULL AUTHORITY TO SETTLE FOR $5,000. HOWEVER, WE HAVE NO IDEA WHAT THIS CASE IS ABOUT SO I DON'T WANT TO REALLY SETTLE FOR ANYTHING, SO THE ATTORNEY GETS THERE. HE IS NOT SURE IF HE HAS AUTHORITY TO SETTLE FOR 5,000 OR FOR NOTHING OR FOR WHAT, BECAUSE THE DEFENDANT HAS NO IDEA WHAT THE CLAIM IS ABOUT.

THE ATTORNEY CAN SHOW UP WITH FULL AUTHORITY TO SETTLE. THERE IS NOTHING THAT PREVENTS THAT ATTORNEY FROM TELLING THE COURT THOSE FACTS AND ASKING THE COURT FOR A SEPARATE DAY FOR MEDIATION, WHEN WE HAVE GOT DISCOVERY, WHEN WE KNOW MORE ABOUT THE CASE. NOTHING THAT PREVENTS THAT. AND AS I SAID --

YOU THINK THE COMPANY IS GOING TO GIVE THE ATTORNEY AUTHORITY TO SETTLE FOR 5,000 WHEN THEY JUST HEARD ABOUT THE CLAIM. THEY HAVEN'T EVEN BEEN ABLE TO INVESTIGATE THE CLAIM, AND IF THEY SETTLE FOR 5,000, THAT REPRESENTATIVE MAY NO LONGER BE A REPRESENTATIVE OF THAT COMPANY, BECAUSE HE SETTLED THE CLAIM FOR 5,000, HE DIDN'T KNOW THE MERITS OF.

I HAVE NO DOUBT THAT ATTORNEYS, IN CONSULTATION WITH CLIENTS, WILL BE GIVEN DIRECTION AS TO THE CORPORATE WISHES, AS TO WE DON'T KNOW ENOUGH ABOUT THE CASE TO KNOW WHAT THE MONETARY VALUE IS. WE NEED MORE TIME TO DO. THAT THERE IS NOTHING PREVENTING THAT TO BE TOLD TO THE JUDGE WHO IS HEARING THE CASE.

RIGHT NOW THE RULE SAYS HE HAS THAT FULL AUTHORITY TO SETTLE.

THAT'S CORRECT.

SO THE JUDGE CAN SAY, COUNSEL, YOU KNOW THE RULE. YOU ARE SUPPOSED TO HAVE FULL AUTHORITY TO SETTLE HERE. I AM GOING TO IMPOSE SANCTIONS ON YOU, BECAUSE YOU CAME IN HERE WITHOUT FULL AUTHORITY TO SETTLE.

THAT HAS BEEN IN THE RULE, WE ARE NOT CHANGING THAT PART OF THE RULE, HERE, ARE WE? THE FULL AUTHORITY TO SETTLE?

THE FULL AUTHORITY TO SETTLE, I DON'T RECALL, I KNOW OUR CONCERN WAS THAT IT WAS FROM ZERO TO THE AMOUNT OF THE CLAIM.

I MEAN, THE RULE AS IT STANDS NOW, SAYS IN SMALL CLAIMS ACTIONS AN ATTORNEY MAY APPEAR ON BEHALF OF A PARTY AT MEDIATION, IF THE ATTORNEY HAS FULL AUTHORITY TO SETTLE.

CORRECT, BUT THE FULL AUTHORITY TO SETTLE WAS NOT IN THE APPEARANCE PROVISION OF THE RULE, AS I RECALL. I THINK THAT PROVISION, WITH REGARD TO FULL AUTHORITY TO SETTLE, WAS THERE.

THE CHANGE AT THE PRETRIAL CONFERENCE, YOU MAY DIVERT IT AT THE PRETRIAL, IF THE PARTIES SAY WE ARE READY TO SETTLE, NEGOTIATION, YOU HAVE GOT MEDIATORS WAITING, AND THE JUDGE SAYS, OKAY, YOU ALL ARE READY, YOU KNOW WHAT THE ISSUES ARE, YOU THINK IT IS READY TO SETTLE, THEN --

EXACTLY.

-- YOU REFER THEM TO THE MEDIATORS WHO ARE STANDING BY IN DIFFERENT ROOMS IN THE COURTHOUSE.

THAT'S CORRECT.

WHAT YOU ARE TRYING TO AVOID IN THAT IS SIMPLY, LET'S SAY THAT YOU HAD A YEAR'S NOTICE OF THE MEDIATION BUT THAT SOMEBODY ENDS UP SHOWING UP AT THE MEDIATION, THEN, AND THEY SAY, WELL, I AGREE WITH YOU THAT WE OUGHT TO SETTLE AT THAT OR WHATEVER, BUT I DON'T HAVE ANY AUTHORITY, AND --

EXACTLY.

THE WHOLE BOTTOM FALLS OUT OF ALL OF THE WORK THAT IS DONE TO TRY TO GET THE THING RESOLVED, AND SOMEBODY ENDS UP SAYING, WELL, YOU ARE RIGHT, AND THAT IS A REASONABLE THING TO DO, EVEN BASED ON MY OWN INVESTIGATION, BUT I DON'T HAVE ANY AUTHORITY.

I RECOGNIZE REALITIES, I THINK ALL THE INTENT OF THE SMALL CLAIMS RULES IS TO HAVE SOMEBODY SHOW UP AS PREPARED AS POSSIBLE, TO MOVE THE CASE FORWARD.

BUT YOU DON'T HAVE ANY STRONG OBJECTION TO A GOOD-CAUSE --

I DON'T NOR WOULD I THINK THAT THE COMMITTEE WOULD. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. NEXT CASE ON THIS MORNING'S CALENDAR IS RALEIGH VERSUS STATE OF FLORIDA.