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Amendments to the Florida Rules of Evidence

THE NEXT CASE ON THE COURT'S CALENDAR AN AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE.

MAY IT PLEASE THE COURT. TERRENCE O'CONNOR, CITING THE FLORIDA AMENDMENTS. THE FIRST RULE DEALS WITH DEFENSES. THE RATIONALE FOR THIS AMENDMENT IS TO COMPORT WITH FLORIDA STATUTE 61.052 -- 61.052 AND THIS COURT'S DECISION IN FERNANDEZ VERSUS FERNANDEZ.

CAN I ASK YOU A QUESTION, THOUGH?

YES.

IT SEEMS IN FERNANDEZ, THAT OCCURRED BEFORE THE BIFURCATION. AS I UNDERSTAND, YOU CAN STILL GO IN AND GET THE JUDGMENT, AFTER THE DEATH.

PERSONALLY I DON'T THINK THE RULE FITS, BUT THE COMMITTEE'S CHARGE IS, AND I WILL TELL YOU WHY I DON'T THINK THE RULE FITS. FIRST, IT IS NOT A DEFENSE. IT IS UNDER THE HEADING OF DEFENSES. SECOND, IT DOESN'T COMPORT WITH 61.052,ES, WHICH READS THERE IS ONE EXCEPTION WHERE YOU CAN RELY ON THE PLEADINGS, AND IT SAYS IF THERE IS NO MINOR CHILD TO THE MARRIAGE, AND IF THE RESPONDING PARTY DOES NOT, BY ANSWER TO THE PETITION FOR DISSOLUTION, DENY THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN, THEN THE COURT CAN ENTER A JUDGMENT. THAT IS THE ONLY EXCEPTION WHERE YOU CAN RELY ON THE PLEADINGS, AND IN FERNANDEZ THAT IS WHAT HAPPENED. THEY KNEW THAT THE WIFE WAS DYING. THEY FILED A MOTION TO BIFURCATE. THE HUSBAND AGREED TO THE BIFURCATION. THE COURT ENTERED A FINAL JUDGMENT, AND THE ISSUE WAS, BECAUSE THE WIFE WAS NOT THERE TO TESTIFY AT THE FINAL HEARING, EVEN THOUGH THERE WAS CORROBORATING RESIDENCY TESTIMONY, I THINK THE COURT MADE A RARE EXCEPTION THAT, BASED UPON THOSE CIRCUMSTANCES, WHERE SHE HAD FILED A SWORN PETITION FOR DISSOLUTION OF MARRIAGE, THERE WAS REQUISITE EVIDENCE IN SUPPORT OF THE DISSOLUTION OF MARRIAGE. PERSONALLY I DON'T THINK THE RULE MAKES SENSE. I DON'T THINK IT FITS. BUT AS THE COMMITTEE CHAIR, MY CHARGE IS TO ADVOCATE THE RULE.

WAS THAT PROBLEM THAT JUSTICE LEWIS HAS PROPERTY UP DISCUSSED DURING THE COMMITTEE?

NO. THE RULE CAME ABOUT BECAUSE ONE MEMBER OF THE COMMITTEE WAS ENACTING CIRCUIT -- WAS AN ACTING CIRCUIT JUDGE, SAID THAT PEOPLE WERE COMING IN AND ASKING FOR JUDGMENTS ON THE PLEADINGS IN DIVORCE CASES. IN OTHER WORDS ONE PARTY WOULD FILE A PETITION FOR DISSOLUTION OF MARRIAGE, AND THE OTHER PARTY WOULD FILE AN ANSWER, AND THEY WOULD COME IN AND MOVE FOR A JUDGMENT ON THE PLEADINGS, AND THAT WAS THE GENESIS OF THE RULE.

SO WHAT YOU ARE SAYING IS IT SORT OF HAD A NARROW PURPOSE, BUT, AS IT, NOW, READS, IT IS, FIRST OF ALL, AN ADDITIONAL QUESTION I HAVE IS, IF DRAFTED SO BROADLY THAT IT WOULD REQUIRE A HEARING IN ALL FAMILY LAW MATTERS, INCLUDING TEMPORARY INJUNCTION IN A DOMESTIC VIOLENCE CASE, WHICH HAS BEEN TRADITIONALLY EXPARTE. SO AS DRAFTED, IT IS EVEN BROADER THAN THE COMMITTEE MAY HAVE INTENDED.

I DON'T THINK IT MAKES SENSE. EVEN THE LANGUAGE IS CONSISTENT WITHIN THE FOUR CORNERS OF THE PROPOSED RULE, ITSELF.

SO WITH YOU AS A NOW-CHAIR, YOU WOULD HAVE AUTHORITY TO SAY THAT WE DON'T ADOPT THIS AMENDMENT?

I DON'T THINK I HAVE THE AUTHORITY AS THE NOW-CHAIR. I AM CHARGED WITH ADVANCING THE POSITION, BUT PERSONALLY I DON'T THINK IT MAKES SENSE. I THINK IT IS A POOR RULE. I DON'T THINK IT BELONGS, BUT I DON'T KNOW WHAT ELSE TO TELL YOU.

IS THAT HAPPENING OUT THERE, BY THE WAY, IN THE REAL WORLD? ARE JUDGES GRANTING JUDGMENTS ON THE PLEADINGS IN THESE CASES?

I HAVE NO PERSONAL EXPERIENCE WITH T AT THE COMMITTEE MEETING, WHEN IT WAS DISCUSSED -- WITH IT. AT THE COMMITTEE MEETING, WHEN IT WAS DISCUSSED, THE CIRCUIT JUDGE WAS THE ONLY ONE THAT HAD IT HAPPEN TO HIM. HE WAS THE PROPONENT OF THE RULE.

YOU ARE NOT AWARE OF A WIDE-SPREAD PRACTICE, NOW, AFTER OUR DECISION IN THAT CASE, THAT PEOPLE ARE FLOODING THE COURTS, NOW, WITH MOTIONS FOR JUDGMENT ON THE PLEAD SOMETHING.

I DON'T, AND YOU NEED TO HAVE THE REQUISITE TESTIMONY OR EVIDENCE BEFORE THE JUDGE, TO GET A DIVORCE, ALONG WITH THE RESIDENCY.

SO, AS FAR AS YOU KNOW, THAT HAS CONTINUED TO BE THE PRACTICE.

AS FAR AS I KNOW, AND I HAVE NEVER SEEN IT PERSONALLY. I AM NOT A JUDGE, BUT I HAVE NEVER SEEN IT FROM THE LAWYER PERSPECTIVE. THE SECOND PROPOSED RULE DEALS WITH RECORDING OF EXPARTE PROCEEDINGS, AND IT IS A NEW RULE THAT HAS BEEN ADVANCED. THE BASIC RATIONALE BEHIND THE SUGGESTED RULE IS THAT, IF THERE IS ANY TYPE OF HEARING PROCESS, WHERE ONE SIDE IS THERE AND THE OTHER SIDE IS NOT PRESENT, THE COMMITTEE FELT THAT IT WAS APPROPRIATE TO HAVE THE PROCEEDING RECORDED. NOW, THERE IS A DISTINCTION BETWEEN WHAT I WOULD CONSIDER WHERE YOU SUBMIT, LIKE, A REQUEST FOR AN INJUNCTION TO THE JUDGE, TO HIS JUDICIAL ASSISTANT AND SHE BRINGS IT INTO COURT, THAT IS NOT A SITUATION WHERE THE REPORTER WOULD BE REQUIRED, BUT IF THE COURT SUMMONED YOU IN BEFORE THE COURT, TO GIVE ADDITIONAL INFORMATION, ARGUMENT OR WHATEVER, IT IS THE COMMITTEE'S POSITION THAT THAT SHOULD BE RECORDED, TO PROTECT THE INTEGRITY OF THE JUDICIARY AND TO PROVIDE PROTECTION FOR THE NON-APPEARING PARTY.

BECAUSE EXPARTE HEARINGS ARE SUCH A RARITY, AND WE ARE TALKING, NOW, THIS IS JUST FOR FAMILY LAW MATTERS, WHAT PARTICULAR HEARINGS ARE WE REFERRING TO, AND SHOULD WE BE SPECIFIC, IF IT IS NOT MEANT TO JUST COVER THE SITUATION YOU ARE MENTIONING, WHERE SOMEONE GOES IN TO, GIVE SOMEONE AN ORDER?

FOR EXAMPLE, I COULD FORESEE A SITUATION WHERE A PARTY WAS FEARFUL THAT THEIR SPOUSE WAS GOING TO REMOVE ASSETS FROM THE JURISDICTION OF THE STATE, AND THEY WENT IN, ON AN EXPARTE BASIS, AND SUBMITTED THE SWORN PLEADINGS TO THE COURT. DIDN'T GO IN BEFORE THE JUDGE, BUT DELIVERED IT TO THE JUDICIAL ASSISTANT. THE JA BRINGS IT INTO THE JUDGE. THE JUDGE LOOKS AT THE FOUR CORNERS OF THE SWORN PLEADING AND DECIDES YES OR NO. IF THE COURT FINDS THAT THERE IS A BASIS, THE COURT WOULD, THEN, ENTER THE IN JAUNKS. IF IT -- -- THE INJUNCTION AND GIVE IT BACK TO THE JUDICIAL ASSISTANT, WHO WOULD, THEN, GIVE IT BACK TO THE ATTORNEY. THE OTHER SCENARIO WOULD BE THE SAME SET OF FACTS, EXCEPT THE JUDGE SAYS I WANT TO TALK TO YOU, JOE LAWYER, AND FIND OUT MORE ABOUT WHAT IS GOING ON, AND THAT IS THE SITUATION WHERE THE COMMITTEE FELT THAT THE REPORTER SHOULD BE PRESENT. I CAN SEE A SITUATION WHERE SOMEONE IS GOING TO REMOVE A

CHILD FROM THE JURISDICTION.

SO YOU ARE, ALSO, TALKING ABOUT HEARINGS WHERE EVIDENCE IS TAKEN? ARE WE TRYING TO LIMIT THIS TO EVIDENTIARY HEARINGS?

WELL, IT IS DESIGNED TO DEAL WITH A SITUATION WHERE ONE PARTY IS IN CHAMBERS WITH THE JUDGE, WITHOUT THE OTHER SIDE BEING PRESENT. THAT IS THE SITUATION THAT THEY ARE TRYING TO ADDRESS.

ISN'T THAT -- BUT IT SORT OF -- I GUESS IT IS EXPRESSED, AT LEAST BY ONE COMMENT ABOUT THE FISCAL IMPACT. IT SEEMS TO ME THAT THAT EXPARTE, WOULD THERE BE ANY TEMPORARY INJUNCTION IN CIVIL CASES AND ALL SORTS OF MATTERS. I AM JUST TRYING TO UNDERSTAND WHAT MAKES THIS MORE PROBLEM IN FAMILY MATTERS AND SHOULD WE BE CONCERNED ABOUT THE FISCAL IMPACT TO THE LITIGANTS?

THE COMMITTEE, REALLY, DID NOT ADDRESS THE FISCAL IMPACT, AND THE RULE, AS DRAFTED, IS WITH A RESERVATION OF JURISDICTION MIND-SET. IN OTHER WORDS THE MOVING PARTY, WHO IS ATTENDING THE HEARING, WILL INITIALLY BEAR THE COST OF THE REPORTER, WITH THE COURT DECIDING, AT A LATER TIME, WHO SHOULD ULTIMATELY BE RESPONSIBLE FOR THAT EXPENSE.

PLEASE KEEP TABS OF YOUR TIME, IF JUDGE McNEIL IS GOING TO HAVE AN OPPORTUNITY.

I AM NOT SURE THAT, ON THE PRACTICAL SIDE, YOU KNOW, JUST EXACTLY HOW THIS IS GOING TO WORK, EITHER. YOU KNOW, YOU HAVE DESCRIBED THOSE SCENARIOS, BUT IF IT IS A SITUATION WHERE THE JUDGE DECIDES, WELL, NO, I WANT THE LAWYER TO COME IN AND GIVE ME SOME FURTHER EXPLANATION, YOU ARE TALKING ABOUT EVERY TIME A LAWYER, THEN, GOES TO THE J.A., THAT, WITH SOMETHING THAT HE IS GOING TO TRY TO GET THE JUDGE TO SIGN THAT, THE LAWYER HAS TO BRING THE COURT REPORTER EVERY TIME, JUST IN CASE THE JUDGE ASKS THE LAWYER TO COME IN, AND, OF COURSE, THIS IS A VERY, VERY DELICATE AREA, ANYWAY. YOU KNOW, WE ARE CONSTANTLY, YOU KNOW, DRAWING LINES AND TRYING TO BE VERY CAREFUL THAT WE VERY NARROWLY CIRCUMSCRIBE THOSE KINDS, THAT THERE CAN BE ANY EXPARTE CONTACTS, ANYWAY. I AM JUST WONDERING ABOUT HOW, YOU KNOW, HOW IN THE WORLD THIS IS -- THIS IS GOING TO WORK, AS A PRACTICAL MATTER.

WELL, PRACTICALLY SPEAKING, IT DOES, CLEARLY, PRESENT PROBLEMS, BUT THE COMMITTEE FELT THAT THE PROBLEMS THAT IT PRESENTED WERE SUPERSEDED BY THE PROTECTIONS AFFORDED TO THE PEOPLE WHO WEREN'T THERE. I MEAN, EVERY PERSON HAS BEEN INVOLVED IN SOME TYPE OF SITUATION WHERE SOMEONE HAS BEEN BEFORE A JUDGE, WITHOUT THEM HAVING KNOWLEDGE. RIGHT OR WRONG, GOOD OR BAD, IT HAS HAPPENED, AND THE COMMITTEE'S POSITION IS, IF IT THAT IS GOING TO HAPPEN, FINE. IT SHOULD AT LEAST BE REPORTED, BUT FROM A PRACTICAL PERSPECTIVE, I AGREE WITH YOU, JUDGE. WHAT DO YOU DO? DO YOU HAVE A REPORTER ON STANDBY DOWNSTAIRS, IN CASE THE JUDGE WANTS TO SEE YOU IN PERSON? I DON'T KNOW. I DON'T KNOW, PRACTICALLY, HOW IT IS GOING TO PAN OUT, BUT THE COMMITTEE'S FOCUS WAS, MORE, ON THE PROTECTIONS FOR THE NONAPPEARING PARTY THAN IT WAS FOR THE PRACTICAL CONSIDERATIONS.

AND PRACTICALLY, WHO WOULD BE DOING THE RECORDING? I MEAN, I UNDERSTAND THAT, IF YOU ARE HAVING IT DONE BY A COURT REPORTER, STENOGRAPHICALLY DONE, BUT WHO WOULD DO THE ACTUAL RECORDING, OR DOES THAT NEED TO BE ADDRESSED?

WELL, IF IT WAS A COURT REPORTER, THEN, OBVIOUSLY, THE APPEARING COURT REPORTER WOULD TRANSSCRIBE THE TRANSCRIPT, IF NECESSARY, I MEAN, THE REPORTER WOULD TAKE IT DOWN F IT WERE BEFORE A GENERAL MASTER, IT WOULD BE ELECTRONICALLY RECORDING, I WOULD IMAGINE, YOUR HONOR.

OUR TIME IS SOMEWHAT LIMITED. THERE IS A GROUP OF AMENDMENTS TO 12.560-B THROUGH E, ON, I GUESS, POST JUDGMENT DISCOVERY. A LOT OF WHAT WAS EXPRESSED WAS, IF IT FAMILY, THE ISSUES POINTED OUT BY THOSE AMENDMENTS WILL MAKE THOSE ISSUES APPLIED ACROSS THE BOARD UNIQUE AND, IN FAMILY, WE WILL HAVE THE CIVIL RULES NOT MATCHING. WAS ANY THOUGHT GIVEN TO THAT BY THE COMMITTEE?

12.560 WAS PROMULGATED BY THE COMMITTEE, AND WHAT OUR COMMITTEE DID WAS LOOK AT IT AND TRY TO FIGURE OUT HOW IT FIT INTO THE FAMILY SCENARIO, AND THE CHANGES THAT WERE SUGGESTED WERE BASICALLY TRYING TO TAYLOR THE RULE TO CIRCUMSTANCES THAT ARISE IN FAMILY CASES.

FOR EXAMPLE, DIVISION C IS ASKING THAT SOMETHING BE IN A FINAL HEARING OR WHATEVER, AND IT DOESN'T SEEM UNIQUE TO FAMILY LAW. BECAUSE IT IS TALKING ABOUT IN ANY FINAL JUDGMENT WHICH AWARDS MONEY DAMAGES.

THE RULE, IN THE CIVIL SENSE, WAS DESIGNED TO ENABLE ACCREDIT TORE TO OBTAIN -- A CREDITOR TO OBTAIN MONEY FROM A DEBTOR. ON THE CIVIL SIDE, YOU COULD HAVE THINGS BESIDES MONEY DAMAGES. YOU COULD HAVE CUSTODY AND THINGS OF THAT NATURE, SO OUR COMMITTEE FELT THAT IT SHOULD SPECIFY THAT IT WAS LIMITED TO MONEY DAMAGES, AND WE, ALSO, FELT THAT IT SHOULD BE AFTER A MONEY JUDGMENT OR AFTER A SUBSEQUENT HEARING, TO FIT WITHIN THE PARAMETERS OF WHAT WE TYPICALLY DEAL WITH.

YOU FEEL THESE NEED TO BE TAILORED, BECAUSE THERE IS SOMETHING UNIQUE IN THE FAMILY LAW.

THAT'S CORRECT, YOUR HONOR. AND THE OTHER CHANGE THAT WE SUGGESTED HAD TO DO WITH THE DISCOVERY OF A PRESENT SPOUSE, AND IT WAS FELT THAT INSERT FAMILY CASES, YOU ARE NOT SWILTHSED TO -- ENTITLED TO DISCOVERY, UNLESS IT IS THE PRESENT SPOUSE'S INCOME OR THE PARTY TO THE PROCEEDING IS NOT FULLY EMPLOYED OR THINGS OF THAT NATURE, AND THE COMMITTEE FELT THAT IT WAS APPROPRIATE TO AT LEAST HAVE THERE BEEN A SHOWING, BEFORE YOU INVAD E THE FINANCIAL BACKGROUND OF A CURRENT SPOUSE, BEFORE PERMITTING THE DISCOVERY TO TAKE PLACE, BECAUSE IF YOU PERMIT IT IN EVERY CASE, IT WILL TAKE PLACE IN EVERY CASE. I MEAN, IT IS JUST NATURE OF THE BEAST. IT WILL HAPPEN, AND OUR COMMITTEE FELT THAT THAT WASN'T APPROPRIATE. IT WILL JUST TAKE ONE HEARING FOR THE JUDGE TO MAKE A DETERMINATION AS TO WHETHER OR NOT THE DISCOVERY SHOULD BE PERMITTED. THE BALANCE OF THE SUGGESTED CHANGES ARE NOMINAL INNATE, IF THE COURT DOES NOT HAVE ANY FURTHER QUESTIONS, I WILL SIT DOWN. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS RAYMOND McNEAL, AND I AM CHAIR OF THE FAMILY COURT STEERING COMMITTEE. IT WAS GIVEN TO A STEERING COMMITTEE AND REPORTED BACK TO THE COMMITTEE. THE ISSUE WAS ON WHETHER THESE RULES SHOULD BE ADOPTED. WE DID MAKE ONE COMMENT THAT, IF THE COURT APPLIES PROVES -- APPROVES RULE 12.140, THAT IT SHOULD BE AMENDED TO MAKE IT A LITTLE CLEARER WHAT IS GOING ON, AND THE REASONS FOR THE CHANGE SHOULD BE ADOPTED AS A COURT COMMENT TO THE RULE, AND THAT IS THE TOTAL REPORT THAT WE HAVE BEFORE THE COURT.

CAN YOU SHARE WITH US, AS A CIRCUIT JUDGE, IS THAT A PROBLEM THAT WAS NOTED? IS THAT A WIDESPREAD PROBLEM, AND DO YOU SHARE SOME OF THE TERNS CONCERNS ABOUT THIS RULE ENDING UP BEING, REALLY, MUCH BROADER, AND, POTENTIALLY, CREATING CONFUSION?

I HAVE A LOT OF CONCERNS ABOUT RULE 12.140, BUT LET ME, FIRST, JUST SAY, IF YOU ADOPT THIS RULE, AND TWO LITIGANTS WHO HAVE LAWYERS, WHO ENTER INTO A AGREEMENT, HAVE TO GO TO THE COURTHOUSE TO GET THEIR DIVORCE. BUT IF ONE OF THEM DIES, THEN NO ONE HAS TO GO TO THE COURTHOUSE TO GET A DIVORCE, SO IT JUST DOESN'T MAKE SENSE. THE QUESTION JUSTICE ANSTEAD, I THINK, ASKED, IS DO WE HAVE A LOT OF PEOPLE TRYING TO GET DIVORCES

WITHOUT HAVING A HEARING? BECAUSE DOCKET TIME IS THE MOST PRECIOUS RESOURCE IN A FAMILY COURT, SOME JUDGES HAVE ADOPTED A POLICY OF ALLOWING LITIGANTS WHO HAVE ATTORNEYS, WHO WAIVE THEIR HEARING, TO FILE THEIR COPY OF THEIR DRIVER'S LICENSE AND EVIDENCE OF RESIDENCY, TO GET THEIR DIVORCE, WITHOUT HAVING AN ACTUAL COME TO THE COURTHOUSE AND LET'S SIT DOWN AND HAVE A HEARING, WHERE THEY ARE REPRESENTED, AND SO IF YOU FEEL LIKE THAT THIS SHOULD NOT TAKE PLACE, THEN, CERTAINLY, A RULE SAY HAD GONE THAT YOU MUST HAVE A HEARING IN EVERY SDWORS CASE, WOULD MAKE SENSE, AND I AM -- IN EVERY DIVORCE CASE, WOULD MAKE SENSE, AND I AM NOT SUGGESTING WE DO THAT, BUT THAT IS SOMETHING THAT IS GOING ON, AND I THINK THAT IS SOME OF THE CONCERN THAT WAS BEHIND THIS RULE, BUT AS WORDED, THE RULE HAS FAR GREATER IMPLICATIONS, BECAUSE THIS COURT, JUST IN JULY, RULED IN THE GAINS CASE, THAT THE QUESTION OF WHETHER THE COURT HAS JURISDICTION TO ENTER A DISSOLUTION OF MARRIAGE, AFTER THE DEATH OF ONE PARTY, IS A SUBSTANTIVE RULE OF LAW. OF COURSE WE JUST HEARD A LOT OF SUBSTANTIVE AND PROCEDURAL, BUT, STILL, IF THIS IS ALLOWED, I THINK THAT IT WOULD CHANGE THE LAW, AND I DON'T THINK THAT WOULD BE THE COURT'S INTENTION. AND, ALSO, I GUESS, THAT IF YOU DO CHANGE THE LAW, THEN IT HAS IMPLICATIONS, AS FAR AS INHERITANCE GOES. IT WILL ALLOW PEOPLE TO DECIDE, OKAY, MY SPOUSE HAS DIED, SO NOW I AM GOING TO DECIDE DO I WANT TO GO FORWARD WITH MY DIVORCE AND GET EQUITABLE DISTRIBUTION, OR DO I WANT TO DISMISS MY DIVORCE AND INHERIT UNDER THE PROBATE CODE. SO MY PERSONAL OPINION, AS A CIRCUIT JUDGE AND AS A MEMBER OF THE BAR, IS THAT THIS RULE SHOULD NOT BE APPROVED. THE ONLY OTHER COMMENT THAT I WOULD MAKE, AND IT IS AFTER REVIEWING THESE PROPOSED RULES, THE QUESTION ABOUT THE EXPARTE PROCEEDINGS BOTHERS ME, BECAUSE WE KNOW THAT JUDGES ARE PROHIBITED FROM HAVING EXPARTE COMMUNICATIONS, AND I WOULD SUGGEST THAT, IF YOU APPROVE A RULE LIKE HAS BEEN PROPOSED, THAT RATHER THAN USING THE WORDS EXPARTE, THAT YOU USE A HEARING WITHOUT NOTICE, BECAUSE THE WORDS EXPARTE ARE SUBJECT TO QUESTION. EXPARTE, SOMETIMES, IS USED WHEN WE ARE TALKING ABOUT A SITUATION WHERE THE OTHER SIDE ISN'T THERE, BUT WHAT WE CUSTOMARILY MEAN IS THAT THE OTHER SIDE DID NOT RECEIVE ANY NOTICE AND HAVE AN OPPORTUNITY TO APPEAR, AND IN THOSE SITUATIONS, I DON'T HAVE ANY OBJECTION TO HAVING THOSE RECORDED. I THINK THEY SHOULD BE RECORDED, FOR EVERYONE'S PROTECTION.

JUDGE, WOULD YOU ADDRESS THE PRACTICAL END, WITH REGARD TO FOLKS COMING IN. I HAVE GOT AN EMERGENCY. YOU KNOW. HERE IS THE PLEADING. YOUR JA BRINGS IT IN TO YOU. WHAT IS THIS REALLY ABOUT? JUST AS A HUMAN? THAT IS JUST NORMAL RESPONSE, JUST ON AN EVERYDAY BASIS, AND SOMEBODY STICKS THEIR AHEAD AROUND A CORNER. HERE IS WHAT IS HAPPENING. IT IS A GOOD IDEA TO HAVE THOSE RECORDED, DO YOU THINK?

I THINK THOSE SHOULD BE RECORDED. THAT IS REALLY HARD TO RESIST, AND I CAN TELL YOU IT COMES UP EVERYDAY IN DOMESTIC VIOLENCE REQUESTS FOR INJUNCTIONS, AND THE PROPOSED RULE THAT YOU WOULD HAVE BEFORE YOU, AS IT RELATES TO DOMESTIC VIOLENCE INJUNCTIONS, BRINGS THE RULE IN CONFORMITY WITH THE STATUTE. IT SAYS THAT YOU CAN'T DO THAT, BECAUSE YOU LOOK -- YOU ARE LOOKING AT A PRO SE AFFIDAVIT AND PETITION, AND YOU ARE SAYING, WAIT A MINUTE. IT DOESN'T -- DOES THE HUSBAND LIVE IN THIS HOUSE OR DOES HE NOT LIVE IN THIS HOUSE? THERE ARE THINGS YOU WANT TO KNOW, AND THE TENDENCY IS TO SAY GO OUT THERE AND ASK THEM WHAT THE ANSWERS TO THESE QUESTIONS ARE.

BECAUSE YOU WANT TO HAVE THE RIGHT RESULT, AND THAT IS WHAT YOU ARE CONCERNED WITH.

WHAT I DO AND WHAT I THINK IS THE PROPER THING TO DO IS TO SAY I NEED SOME MORE INFORMATION. HAVE THEM WORK ON THIS PAPER AND SEND IT TO ME IN WRITING, AND SO THEY HAVE AN OPPORTUNITY TO AMEND THEIR PETITION, TO CLEAR UP ANY PROBLEMS THAT WE HAVE. NOW, IS THAT AN EXPARTE COMMUNICATION? I GUESS YOU CAN ARGUE THAT THAT, ALSO, IS AN EXPARTE COMMUNICATION, BUT AS A PRACTICAL MATTER, IF THE JUDGE IS GOING TO

CONDUCT A HEARING WITHOUT THE PRESENCE OF ANOTHER SIDE, THEN I THINK IT SHOULD BE RECORDED.

I GUESS I AM THINKING OF ALL SORTS OF TEMPORARY INJUNCTION HEARINGS. THAT IS A GOOD IDEA. WHY SHOULD IT BE UNIQUE IN FAMILY CASES, AND ARE WE NOT CONCERNED, ESPECIALLY, BECAUSE, NOW, WE ARE DEALING WITH SOMETHING THAT DOMESTIC VIOLENCE AREA, A LOT OF PRO SE LITIGANTS, THAT, MAYBE, WE ARE PUTTING SOME FINANCIAL BURDEN, THAT IS NOT IMPOSED ON OTHER LITIGANTS.

ARE YOU ASKING ME?

I AM JUST CONCERNED ABOUT, AGAIN, YOU POINTED OUT, AGAIN, WHAT IS GOING TO BE DEEMED, WHERE THERE ARE MANDATORY PROCEEDINGS AND HOW DO YOU DEFINE IT? YOU HAVE GOT DIFFERENT PRACTICES OF DIFFERENT JUDGES, AND I JUST HIM CONCERNED. I WOULDN'T WANT IT TO HAVE ANY KIND OF CHILLING EFFECT ON THE ABILITY OF SOMEONE WHO IS GETTING CONCERNED ABOUT THEIR OWN SAFETY, TO GET A TEMPORARY INJUNCTION.

I DON'T THINK THAT IT WOULD. PERSONALLY I DON'T THINK THAT IT WOULD, BECAUSE THE FACT THAT I DON'T HAVE SUFFICIENT INFORMATION IN THE DOMESTIC VIOLENCE CASE IS NOT GOING TO CAUSE ME TO SAY, OKAY, YOU CAN'T GET YOUR INJUNCTION. YOU ARE DISMISSED. GO YOUR OWN WAY AND DON'T COME BACK. THAT DOESN'T HAPPEN, AS PRACTICAL MATTER. AT LEAST IN MY EXPERIENCE. IF I LOOK AT THE PETITION IN THE AFFIDAVIT AND I FIND THAT IT IS INSUFFICIENT OR SOMETHING, I SEND IT BACK TO THE CLERK'S OFFICE AND ASK THEM TO HAVE THE LITIGANT FILL OUT MORE COMPLETELY.

BUT, THEN, YOU ARE GIVING -- THAT IS A PRACTICE THAT IS DIFFERENT THAN IF IT WAS A LITIGANT IN ANOTHER KIND OF CASE. IF THE PLEADING IS INSUFFICIENT, IT IS DISMISSED. YOU DON'T TELL A LITIGANT YOU FORGOT TO PUT THIS IN OR YOU FORGOT TO PUT THAT IN.

NO. WE DON'T TELL THEM THAT YOU FORGOT TO PUT SOMETHING IN. IT WOULD BE JUST LIKE IF AN ATTORNEY CAME UP AND PRESENTED YOU WITH AN EXPARTE MOTION TO ENJOIN A PARENT FROM REMOVING A CHILD FROM THE STATE OR DISPOSITION OF ASSETS AND THINGS LIKE. THAT WE WOULD LOOK AT IT, AND IF THERE IS SUFFICIENT EVIDENCE ON THE FACE OF THAT PLEADING, TO GRANT THE MOTION, THEN WE WOULD DO IT. IF THERE ISN'T, WE WOULD DENY IT. THAT WOULD NOT PROHIBIT THEM FROM AMENDING IT AND COMING BACK AND SAYING, WELL, HERE IS SOME MORE INFORMATION. WILL YOU CONSIDER THIS ADDITIONAL INFORMATION? ANY OTHER QUESTIONS?

THANK YOU. MR. O'CONNOR, DO YOU HAVE ANYTHING FURTHER?

NO.

I APPRECIATE, VERY MUCH, BOTH OF YOUR BEING HERE AND SPEAKING TO THESE IMPORTANT ISSUES. THE COURT WILL BE IN RECESS FOR 15 MINUTES.