Amendmendts to the Florida Rules of Judicial Administration

NEXT ON THE COURT'S CALENDAR ARE THE AMENDMENTS TO FLORIDA RULES OF JUDICIAL ADMINISTRATION.

THANK YOU. MAY IT PLEASE THE COURT. PAUL REGENSDORF, ON BEHALF OF THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE. QUITE FRANKLY, I AM SURPRISED THAT ATTORNEYS AREN'T WAIT WITH BAITED BREATH FOR THESE RULES. I KNOW IT IS TRUE WITH ME. I KNOW THAT YOU WANTED A STIMULATING SET OF RULES, SO THAT YOU COULD GO INTO YOUR LUNCH BREAK CHARGED UP. THERE ARE SEVEN RULES CHANGES, ESSENTIALLY, THAT ARE PROPOSED IN THE RULES OF JUDICIAL ADMINISTRATION PACT. OF THOSE -- PACKET. OF THOSE SEVEN, I THINK, FOUR WOULD MERIT COMMENT, ALTHOUGH I DON'T WANT TO WASTE THE COURT'S TIME ON THE FOUR THAT I THINK HAVE SOME INDEPENDENT SIGNIFICANCE. MR. TRAWICK HAS COMMENTED UPON TWO, ONE OF WHICH, I THINK, HAS SIGNIFICANCE, AND ONE OF WHICH I AM NOT SURE HAS A GREAT DEAL OF SIGNIFICANCE, AND, SO PERHAPS, JUST TITS ANSTEAD -- JUSTICE ANSTEAD, LET ME ADDRESS MR. TRAWICK'S COMMENTS OR THE ONES THAT HE TOUCHED UPON, AND THEN IF I HAVE TIME, I WILL COMMENT ON, PERHAPS, SOME OF THE SIGNIFICANCE. THE RULE FOR LOCAL AMENDMENT, 2 .0 20, MR. TRAY -- 2.020 SAYS HE IS NOT AWARE OF ANY DEFINITION OF LOCAL RULES OF THE THE DEFINITION AS IT STANDS NOW DEAL WITH LOCAL RULES AND STATEWIDE PRACTICE, FOR SOME PARTICULAR REASON. THERE ARE AREAS, ARTICLE V SECTION 20, DEALS WITH THE PURPOSE OF LOCAL RULES FOR ESTABLISHING COURT. THAT DOESN'T NECESSARILY FALL INTO THE DEFINITION OF LOCAL RULE AS IT WAS DRAFTED, WHICH IS A VARIATION OF THE RULE OF PROCEDURE. THAT IS WHY THE VARIATION OF THE AMENDMENT WAS PROPOSED. THERE ARE, ALSO, SOME JURY STATUTES, JURY SELECTION, TECHNICAL AUTOMATION SYSTEMS, ESSENTIALLY, CREATE A LOCAL RULE, SO THE REASON THE AMENDMENT WAS CHANGED OR PROPOSED IS SIMPLY TO SHOW THAT THERE ARE OTHER THING THAT IS ARE CALLED LOCAL RULES THAT AREN'T EXACTLY THE SAME TYPE OF DEFINITION, IN 2.020. THE SECOND RULE THAT MR. TRAWICK COMMENTED ON IS THE RULE THAT I THINK IS VERY SIGNIFICANT, AND THAT IS RULE 2.060 AND 2.061. THIS MATTER IS BEFORE YOUR HONORS IN A VERY COMPARABLE WAY. I BELIEVE. FOR RULE 1-3.10 OR 3.10 OF THE RULES REGULATING THE FLORIDA BAR. I THINK THAT IS BEFORE YOUR HONORS. I DON'T THINK IT HAS BEEN DECIDED. I THINK THE ORAL ARGUMENT IN THAT MATTER HAS BEEN EITHER DONE AWAY WITH OR TEMPORARILY CANCELLED FOR SOME REASON. I THINK THIS IS AN IMPORTANT RULE. THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE CREATED IT, LARGELY BECAUSE THE RULES REGULATING THE FLORIDA BAR HAS BEEN PROPOSED, AND IF YOU WILL COMPARE THE TWO, THEY TRACK FAIRLY CLOSELY, EACH OTHER. THE PURPOSE OF IT IS TO BETTER REGULATE THE LAWYERS THAT PRACTICE IN OUR FLORIDA COURTS, TO ENSURE THAT THEY ARE REGULAR -- IF THEY ARE REGULAR PRACTITIONERS, THAT THEY ARE MEMBERS OF THE FLORIDA BAR, AND THAT FLORIDA LAWYERS, AND I USE THAT TERM IN QUOTES, WHO ARE UNDER DISCIPLINARY SANCTION OF THIS COURT, ARE NOT ALLOWED TO USE THE PRO-HAC VICHEA RULE TO GET IN THE BACK DOOR. MR. TRAWICK MAKES A COUPLE OF COMMENTS THAT I DON'T TECHNICALLY AGREE WITH BUT I THINK THERE IS, PERHAPS, SOME MERIT TO. THE CERTIFICATION, WHICH IS REQUIRED IN SUBSECTION G, I BELIEVE, THE RULE, AS PROPOSED, SAYS THAT "SHALL CERTIFY THAT COPIES GO TO COUNSEL OF RECORD", AND I DON'T THINK THAT IS APPROPRIATE, BECAUSE THERE MAY NOT BE COUNSEL OF RECORD AT THE TIME AN ATTORNEY ATTEMPTING TO APPEAR SEEKS TO GET LOCAL COURT APPROVAL, SO THEREFORE THE CERTIFICATION SHOULD, I CAN, BE IN ACCORDANCE WITH THE -- I THINK, BE NORNKS WITH THE RULES OF CIVIL PROCEDURE, WHICH, I THINK, IS 1.080, CERTIFICATION TO INTERESTED PARTIES OR COUNSEL OF TITLE. I DON'T LIKE LAT ANYONE TITLES. ON THE OTHER

HAND, SOME LATIN PHRASES HAVE ACHIEVED SIGNIFICANCE IN -- SIGNIFICANCE IN LAW WHICH MOST PEOPLE UNDERSTAND. IT WOULD NOT BOTHER ME. THE COMMITTEE TITLED IT, AND IT WOULDN'T BOTHER ME, PERSONALLY, TO SEE THE RULE TITLED "LAWYERS NOT ADMITTED TO PRACTICE IN FLORIDA." THE BALANCE OF THE RULE, IN COMMENTS --

WAS THERE ANY DISCUSSION AT ALL CONCERNING FLORIDA ATTORNEYS WHO DO MEDIATIONS AND ARBITRATION?

THERE WAS NOT. I AM NOT SURE. THE ANSWER IS THERE WAS NOT. THIS WAS ONLY INTENDED -- IT WAS ONLY DISCUSSED AS LAWYERS WHO WERE APPEARING AS COUNSEL FOR PARTIES IN FLORIDA STATE COURT PROCEEDINGS. THERE IS TWO SETS OF RULES. SUBSECTION A, AS MR. TRAWICK POINTS OUT, ESTABLISHES THOSE CATEGORIES THAT PRECLUDE YOU FROM BEING A LAWYER WHO IS ALLOWED TO APPEAR PRO HAC VICEA.

WHAT ABOUT THE INQUIRY, IF THEY ARE DISCIPLINED UNDER ANOTHER STATE, THAT A GROUND, ANOTHER THE RULE, FOR NOT ADMITTING THEM, UNDER THIS RULE, BECAUSE IT DOESN'T --

IT IS NOT A GROUND FOR AUTOMATIC EXCLUSION. THIS RULE, AS WITH MANY IN THE JUDICIAL RULES OF ADMINISTRATION, AND YOU HAVE HEARD THEM TALKED ABOUT BEFORE, FOCUSES ON THE TRIAL COURT DISCRETION AND THE REASON FOR THE OUT-OF-STATE DISCIPLINARY REPORT, IF YOU WILL, WAS FOR THE PURPOSE OF GIVING THE LOCAL TRIAL JUDGE INFORMATION THAT HE OR SHE COULD USE IN THE TRIAL COURT'S DISCRETION. IT IS NOT A GROUNDS. THE GROUNDS TO EXCLUDE A LAWYER AUTOMATICALLY IS THAT THE LAWYER IS A FLORIDA RESIDENT, THAT THE LAWYER IS A FLORIDA BAR MEMBER BUT NOT IN GOOD STANDING, SUSPENDED OR WHATEVER, A LAWYER WHO HAS PREVIOUSLY BEEN DISCIPLINED, WHILE PRACTICING AS A PRO HAC VICEA IN THE STATE OF FLORIDA, THOSE ARE THE GROUNDS FOR EXCLUDING A FLORIDA LAWYER.

WITHOUT DISCRETION.

ESSENTIALLY WITHOUT DISCRETION ALTHOUGH THE GENERAL PRACTICE RULE CONTAINS A PROVISION THAT, IF YOU PRACTICE MORE THAN THREE TIMES IN ONE YEAR THAT, THE TRIAL JUDGE CAN, ON GOOD SHOWING, DETERMINE THAT EITHER IT WOULD BE A HARP TO THE CLIENT OR THAT THE THREE OR MORE APPEARANCES ARE NOT INDEED GENERAL PRACTICE, SO THERE IS SOME DISCRETION IN THE FOURTH. THE OTHER INFORMATION, JUSTICE PARIENTE, WHICH COMES IN THE VERIFIED MOTION, IS TO GIVE THE TRIAL JUDGE INFORMATION TO ALLOW THE EXERCISE OF DISCRETION. I KNOW THAT, IN MY PRACTICE IN STATE COURT, THESE MOTIONS FREQUENTLY COME IN WITH ABSOLUTELY NO INFORMATION. FREQUENTLY THEY ARE DONE ORALLY, AND FRANKLY THE TRIAL JUDGES USUALLY GRANT THEM, AND SOMETIMES THEY REGRET THE DAY.

WOULDN'T IT BE BETTER TO INCLUDE SOMETHING, WHERE IT SAYS MAY BE PERMITTED TO APPEAR IN PARTICULAR CASES, UPON SUCH CONDITIONS THAT, THE COURT, IN EXERCISING DISCRETION MAY CONSIDER THE SDIP NARY -- DISCIPLINARY, THE PENDING DISCIPLINARY MATTERS IN OTHER STATES? IN OTHER WORDS IF I WERE LOOKING AT THIS, I DON'T KNOW THAT, AS A JUDGE, I WOULD KNOW THAT I HAD THE ABILITY TO DO THAT, BUT, MAYBE, JUDGES KNOW THAT.

A, I WOULDN'T HAVE ANY QAU QUARREL WITH MAKING IT CLEAR, BUT THE OPENING PARAGRAPH SETS FORTH THAT THE TRIAL COURT "MAY", AND THAT WAS VERY CAREFULLY CONSIDERED TO BE THE DISCRETIONARY ITEM TO GIVE THE COURT THAT POWER, AND THEN IT GOES ON TO SAY NO ATTORNEY MAY APPEAR, IF, AND THEN THERE ARE CATEGORIES THAT IF, AS A MATTER OF LAW, YOU CAN'T APPEAR, UNDER ANY CIRCUMSTANCES.

SHOULD IT SAY MAY?

THE FIRST PART IS THE COURT MAY ALLOW YOU TO APPEAR. THAT IS DISCRETIONARY. THE

SECOND SENTENCE OR THE NEXT SENTENCE SAYS, HOWEVER, YOU CAN'T APPEAR, IF YOU FALL UNDER OBEVER THESE DESIGNATED THREE -- UNDER ONE OF THESE DESIGNATED THREE CATEGORIES.

SHOULD THAT SAY SHALL? YOU ARE SAYING MAY MEANS DISCRETION.

I AGREE THAT, IN RULE DRAFTING, MAY IS GENERALLY PERMISSIVE AND SHALL IS GENERALLY MANDATORY. I THINK THE SENTENCE "NO ATTORNEY MAY APPEAR", DETERMINES THAT IS MANDATORY. I WOULD HAVE NO DIFFICULTY, NOR DO I THINK THE COMMITTEE WOULD, IF THAT USE OF THE WORD "MAY", WERE ELIMINATED AND ANOTHER COMPLEMENTARY MANDATORY LANGUAGE IS SELECTED. BUT THE MOTION, SUBPARAGRAPHS 1 THROUGH 8, ARE DESIGNED TO GIVE THE TRIAL JUDGE THE INFORMATION APPROPRIATE, SO THAT THAT JUDGE CAN DETERMINE WHETHER OR NOT, IN ITS DISCRETION THIS ATTORNEY IS GOING TO BE ALLOWED TO COME INTO THE STATE OF FLORIDA AND PRACTICE. WHETHER OR NOT THEY ARE OBVIOUSLY GOING TO HAVE TO BE BILTHSED TO PRACTICE. THEY -- ENTITLED TO PRACTICE. THEY ARE NOT GOING TO BE ABLE TO FALL INTO ONE OF THE THREE CATEGORIES.

MAY, MEANING MAY BE AUTHORIZED. NO ATTORNEY IS AUTHORIZED.

THAT IS A MANDATORY LANGUAGE THAT WOULD BE ABSOLUTELY SATISFACTORY, BUT THE P -- THE PRO HAC CASES OVER THE LAST FIVE YEARS IS TO GIVE THE JUDGE A HISTORY OF THIS ATTORNEY, EVEN IF THEY ARE NOT ENGAGED IN PRACTICE. THE REASON IS TO GIVE THE TRIAL JUDGE SOME INFORMATION ABOUT THIS ATTORNEY. THE DATE OF RETENTION IS TO ESTABLISH WHAT KIND OF A RELATIONSHIP MIGHTY BE INTERFERING WITH? FOR EXAMPLE IF THE LAWYER IS THE NATIONAL TRIAL COUNSEL ON BREAST IMPLANT LITIGATION AND I HAVE BEEN DOING THIS FOR EIGHT YEARS AROUND THE COUNTRY, THERE IS GOING TO BE SOME HARP, SO IT GIVES -- SOME HARDSHIP, SO IT GIVES THE JUDGE THE INFORMATION WITH RELATION TO THE ATTORNEY. SECOND, WITH RESPECT TO THE RULES, MR. TRAWICK SUGGESTS THAT GETTING LOCAL COUNSEL, FLORIDA COUNSEL, IS SUFFICIENT TO DO AWAY WITH THE REQUIREMENT THAT THE ATTORNEY APPEARING FROM OUT-OF-STATE CERTIFY THAT HE OR SHE HAS READ THE RULES AND WILL FOLLOW THEM. I DON'T THINK SO. THE FEDERAL COURTS DON'T BUY THAT, AND I THINK IF AN ATTORNEY IS COMING IN FROM OUT-OF-STATE, THE DETERMINATION OF THE PURPOSE OF THIS RULE IS, HEY, THE ATTORNEY CAME IN FROM OUT-OF-STATE AND SAID I AGREE. I HAVE READ THE RULES OF THE FLORIDA BAR AND I HAVE READ THE RULES OF CIVIL PROCEDURE OR WHATEVER, AND I AGREE TO COMPLY WITH THEM. LOCAL COUNSEL DO NOT APPEAR AT ALL PROCEEDINGS. LOCAL COUNSEL DO NOT APPEAR AT ALL ACTIONS. AND THE OUT-OF-STATE ATTORNEY IS NOT SAID TO HAVE FOR FAMILIARIZE THEMSELVES WITH RULES IN THE STATE OF FLORIDA. THOSE ARE WHY I BELIEVE THE FLORIDA BAR PROPOSED RULE 1.3-10 AND WHY THEY ATTEMPT TO IMPLEMENT IT. IT IS NOT AN AMENDMENT TO EXCLUDE NONFLORIDA LAWYERS. I THINK IT IS A REASON TO ASSURE THAT THOSE THAT COME INTO FLORIDA COME IN WITHOUT GETTING INTO PRACTICE, WITHOUT COMING IN THE BACK DOOR, AND HAVING ESTABLISHED THEMSELVES AS QUALIFIED, IN THE COURT'S DISCRETION TO APPEAR IN THE COURTS IN THE STATE OF FLORIDA. THE OTHER RULES, VERY QUICKLY, THAT I THINK ARE JUST WORTH NOTE, AND IF THE COURT HAS ANY QUESTIONS, I WILL BE HAPPY TO TALK ABOUT IT. AMENDING THE RULES 2.130, A COUPLE OF FAIRLY SIGNIFICANT CHANGES. FIRST OF ALL, WE HAVE SUBSTANTIALLY BROADENED THE PUBLICATION EFFORTS OF PROPOSED RULES AND THE HEARINGS ON PROPOSED RULES. SECONDLY, WE HAVE CHANGED FROM A FOUR-YEAR PSYCH TOLL A TWO-YEAR CYCLE. THE JUDICIAL MANAGEMENT COUNSEL HAD ASKED FOR AN ONE-YEAR CYCLE. OUR COMMITTEE, IN ITS WISDOM, FELT THAT IT WAS BETTER TO TAKE A TWO-YEAR CYCLE AND DO IT ON A STAGGERED BASIS, SO THAT THIS COURT, SO THAT YOU UNDERSTAND WHAT YOU ARE GOING TO BE FACED, WITH YOU WILL HAVE ONE OF THESE DAYS EVERY YEAR. THAT DAY WILL BE -- WILL ADDRESS HALF OF THE RULES COMMITTEES, HOPEFULLY A SMALLER PACKAGE OF RULES, BECAUSE IT IS NOT GOING TO AND FOUR-YEAR COLLECTION OF THINGS. THE ATTRACTIVENESS, WE THINK, IS THAT IT GETS THINGS TO THE COURT QUICKER. THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE,

PARTICULARLY, HAS BEEN DISTRESSED, THAT A NUMBER OF RULES GET TO THE COURT WITHOUT THE RULES COMMITTEE'S PARTICIPATION, THROUGH EMERGENCY PROCEEDINGS OR PETITIONS FROM OTHER PEOPLE, AND WE FEEL IT IS BETTER TO CREATE A SYSTEM THAT GETS THE RULES TO THE COURT QUICKER BUT WITH THE INPUT OF THE COMMITTEES THAT WERE DESIGNED AND CREATED, AND WITH SOME EXPERTISE CONCERNING THOSE SUBJECT MATTERS. THAT IS WHY THE TWO-YEAR CYCLE HAS BEEN SUGGESTED.

IF A PARTICULAR COMMITTEE THAT IS LESS ACTIVE THAN OTHERS, I MEAN, IF THEY ARE JUST TECHNICAL THINGS, IS THERE DISCRETION ON THE PART OF THE COMMITTEE TO WAIT FOR THE FOUR YEARS? THIS THING -- WE HAVE SEEN A VARIETY OF RULES THIS FOUR-YEAR CYCLE, AND SOME, YOU KNOW, ARE --

-- LESS IMPORTANT THAN OTHERS.

WELL, THERE SEEMS LIKE THERE IS LESS ACTIVITY INSERT AREAS THAN OTHERS.

NO QUESTION. THE ANSWER IS I SUPPOSE A COMMITTEE COULD SAY, TO THE COURT, WE HAVE NO PROPOSAL THIS YEAR, THIS TWO-YEAR CYCLE, BUT THE IDEA WAS THAT EVERY COMMITTEE WOULD BE OFFERED THE OPPORTUNITY TO COME TO THE COURT, EVERY TWO YEARS, WITH WHATEVER THEY HAVE COLLECTED. IT DOES SEEM KIND OF SILLY, AND IT IS WHAT CREATES THE PRESSURE FOR EMERGENCY RULES, THAT YOU COME UP WITH A GREAT IDEA THE DAY AFTER THE SUBMISSION IN THE LAST FOUR-YEAR CYCLE. IT IS A GREAT IDEA THAT, REALLY, WOULD BE IMPROVED BY THIS SUGGESTION. YOU HAVE GOT TO WAIT FOUR YEARS BEFORE YOU TELL THE COURT ABOUT IT. THE PROBLEM IS THAT THE LAWYERS WHO COME UP WITH THOSE GREAT IDEAS, THEN, FILE EMERGENCY PETITIONS, AND I DON'T KNOW THAT THERE HAS BEEN A GREAT DEAL OF EXPOSITION BY THIS COURT AS TO WHAT CONSTITUTES AN EMERGENCY, YOU KNOW, THE LEGISLATURE PASSES A NEW STATUTE THAT REQUIRES A LAW, A CHANGE IN THE CRIMINAL RULES OF PROCEDURE, SURE. THAT IS AN EMERGENCY. BUT SOME LAWYER COMES UP WITH A GREAT IDEA FOR A CHANGE IN HIS OR HER ASPECT OF THE LAW, IS THAT, REALLY, AN EMERGENCY, OR SHOULD THAT GO THROUGH THE CYCLE, GO TO THE COMMITTEE, BE REVIEWED, BE REVIEWED TWICE, APPROVED AND COME BEFORE THIS COURT IN THE COMMITTEE'S PROPOSAL. THAT IS OUR PREFERENCE AND HAS BEEN FOR A NUMBER OF YEARS, AND WE THINK THE TWO-YEAR CYCLE IMPROVES THAT PROCESS. I DID SEND A LETTER TO THE COURT, JUST YESTERDAY, IN REVIEWING THE RULE 2.130, I THINK THERE ARE SOME TIMING QUESTIONS THAT ARE UNCLEAR. FOR EXAMPLE, IT SAYS IN OCTOBER OF THE REPORTING YEAR. I BELIEVE THAT IS THE VERY FIRST PART OF 2.130-B, I BELIEVE. ACTUALLY THAT SHOULD READ IN OCTOBER OF THE YEAR PRIOR TO THE REPORTING YEAR, AND YOU WILL SEE THAT THE SEQUENCE GOES THROUGH, AND I HAVE SUGGESTED A NUMBER OF PHRASE ADDITION THAT IS SIMPLY SHOW THAT THE PROPOSALS START IN OCTOBER OF THE YEAR BEFORE AND THEN GO THROUGH THE YEAR THEREAFTER.

YOU KNOW, WE HAVE HAD THIS CYCLE, LOTS OF VOTES SHOWN, THE BOARD OF GOVERNORS VOTES 36-0, I THINK, FOR SOMEONE IN THE APPELLATE RULES, THAT THERE WERE 13 VOTES AGAINST EVERY SINGLE CHANGE, AND THERE IS NO EXPLANATION, AND THE SAME THING IN THE COMMITTEE. THERE IS, YOU KNOW, VOTES THAT WIDELY VARY AND THERE IS NO EXPLANATION. IS THERE ANY THOUGHT TO AT LEAST, FOR THE BOARD OF GOVERNOR'S INPUT IS SUPPOSED TO BE MEANINGFUL, IF THERE IS A SIGNIFICANT DISSENT OF IT BEING EXPLAINED WHEN IT IS SENT TO US?

THERE HAS BEEN NO DISCUSSION ABOUT INCLUDING THAT IN THE RULE. AS A COMMITTEE MEMBER AND SOMEONE WHO IS, ON OCCASION, SUBMITTED PROPOSALS TO THE COURT, I THINK IT IS IMPORTANT THAT THE COURT KNOWS WHY THE SPLIT EXISTED. MOST OF OUR PROPOSALS ARE 26-0 OR WHATEVER IT IS, BUT YOU ARE RIGHT. IT COMES UP 13-12 WITHOUT EXPLANATION, YOU KIND OF WONDER WHAT IDEA THOSE 12 PEOPLE HAD. THERE WAS NO THOUGHT GIVEN, CANDIDLY, TO THAT, TO INCORPORATING IT INTO THE RULE, EXCEPT THAT YOU HAVE AN

OPPORTUNITY TO COMMENT. THE MAJORITY AND THE MINORITY HAVE AN OPPORTUNITY TO COMMENT TO THE COURT. THE BOARD OF GOVERNORS, TRADITIONALLY, DOES NOT ISSUE A REPORT, I DON'T THINK, THAT EXPLAINS WHY THEY SPLIT 28-12, AND DO I THINK IT IS A GOOD IDEA THAT THEY TELL YOU WHY A SIGNIFICANT MINORITY DISAGREED? YES. DID WE CONSIDER IT? NO. SO THEREFORE CAN I SAY THAT IS WAS UNIMPORTANT? I CAN'T, ALTHOUGH THERE WAS THE OPPORTUNITY TO COMMENT.

THANK YOU.

ACTUALLY A LITTLE MORE THAN TWO YEARS.

THANK YOU. MR. TRAWICK.

MAY IT PLEASE. HENRY TRAWICK. SARASOTA. ON THE QUESTION OF THE LOCAL RULE CHANGE, I NEED TO GIVE YOU A BIT OF HISTORY. SOMETIME IN, I THINK, THE EARLY 1970s, AT ANY TIME WHEN JUSTICE THORNAUL WAS CHIEF JUSTICE, HE CALLED ME, AND HE SAID WE HAVE A PROBLEM WITH LOCAL RULES. WOULD YOUR COMMITTEE -- HE WAS, THEN, CHAIRMAN OF THE CIVIL RULES COMMITTEE -- GO OVER THE LOCAL RULES. WE WILL GET YOU SETS OF ALL OF THEM, AND TELL US WHAT THE PROBLEM IS. WELL, THE PROBLEM WAS THAT LOCAL RULES DEALT WITH EVERY CONCEIVABLE THING, AND IN ESCAMBIA COUNTY THERE WAS A REQUIREMENT FOR THREE CORROBORATING WITNESSES IN A DIVORCE ACTION, WHICH IS, OBVIOUSLY, CONTRARY TO THE STATUTE THAT WAS, THEN, IN EXISTENCE, WHICH REQUIRED TWO, AND COURT DECISIONS. THE COURT DECIDED, AT THAT TIME, THAT IT WANTED TO LIMIT LOCAL RULES, AND THERE IS A GOOD REASON FOR THAT. WE HAVE A LOCAL RULE IN SARASOTA. LOCAL RULE 5, THAT SAYS IF YOU HAVE AN OBJECTION TO DISCOVERY, YOU HAVE TO CONFER WITH OPPOSING COUNSEL, AND THEN YOU HAVE TO DO CERTAIN THINGS WITH SPECIFICITY AND MAKING YOUR MOTION TO COMPEL. THE PROBLEM OF COURSE, IS THAT NOBODY, OUTSIDE OF MANATEE ANSAR A SOCIETY A COUNTIES KNOWS ABOUT OUR LOCAL RULE, AND THAT IS NOT, REALLY, A LOCAL RULE, BECAUSE IT APPLIES TO ALL CASES, ALL COUNSEL AND ALL PARTIES, AND THAT IS THE DEFINITION OF ATATE WIDE RULE. I DON'T DE -- OF A STATEWIDE RULE. I DON'T DEBATE WITH YOU THE EFFECTIVENESS OR THE DESIRABILITY OF IT, BUT IT SHOULDN'T AND LOCAL RULE. THE REASON GIVEN, WHICH IS NOT GIVEN UNTIL TODAY, AS FAR AS I KNOW, AND THAT IS THAT THE CONSTITUTION SAYS SOMETHING ABOUT IT, WITH RESPECT TO DIVISIONS OF COURT. THAT IS HANDLED BY ADMINISTRATIVE ORDERS. WHAT DIFFERENCE DOES THE TERMINOLOGY MAKE? BESIDES THAT, HOW CAN THIS COURT ADOPT A RULE, ONE WAY OR THE OTHER, THAT COULD BE CONTRARY TO WHAT THE CONSTITUTION SAYS? GENERAL LAW. IF GENERAL LAW SAYS YOUR CIRCUIT IS SUPPOSED TO ADOPT A LOCAL RULE, THEN IT IS BASED ON THE STATUTE AND NOT ON THIS RULE, SO IT IS NOT NECESSARY TO HAVE THIS ADDITION. THIS ADDITION IS VAGUE, AND IT OPENS A DOOR THAT SHOULD, I SUBMIT, REMAIN FIRMLY CLOSED, BECAUSE THE NEXT THING YOU WILL BE DOING OR YOUR SUCCESSORS IN OFFICE HERE, IN ABOUT FIVE OR SIX YEARS, YOU WILL BE ASKING A CHAIRMAN OF THE CIVIL RULES COMMITTEE TO PICK UP ALL THESE LOCAL RULES, AGAIN, AND REVIEW THEM AND TELL YOU HOW THEY GOT OUT OF CONTROL. THAT IS THE REASON FOR MY OBJECTION. THIS -- I SERVED ON THE ORIGINAL COMMITTEE FOR JUDICIAL ADMINISTRATION RULES. THIS WAS VERY CAREFULLY THOUGHT OUT AND PUT IN AND LIMITED, BECAUSE IT WAS INTENDED TO BE LIMITED. NEXT I HAVE SAID EVERYTHING I THINK I NEED TO SAY ABOUT FOREIGN ATTORNEYS AND THE -- WHAT I HAVE SAID IN MY BRIEF, WITH ONE MINOR THING THAT I NEED TO CORRECT MY LEARNED COLLEAGUE ON. IT IS PRO WHO CAN VICEA. LATIN DID NOT HAVE A -- WHO HOC VICEA. LATIN DOESN'T HAVE A SOFT "C". I THINK WE AGREE THAT THE LATIN IS UNNECESSARY. WE DON'T USE LATIN ANYMORE, AND PEOPLE WHO USE LATIN NUMBERS, GOING UP TO 35 AND 40 AND 50, I CAN'T TOUNT KOUPT THEM, AND I DON'T THINK THEY CAN, EITHER, EXCEPT BY FOLLOWING IT IN ROTE. I WOULD LIKE TO COMMENT ON ONE THING THAT I MISSED IN MY BRIEF BUT THAT COUNSEL HAS COMMENTED ON, AND THAT IS HISTORY, AGAIN, AND THAT IS THE TWO-YEAR RULE CHANGE CYCLE. WHEN WE ADOPTED THE FOUR-YEAR CYCLE, THIS COURT SAID MAYBE EVERY TEN YEARS. A SOME DEBATE WITH THE MEMBERS --

AFTER SOME DEBATE WITH THE MEMBERS OF THE COURT AT THIS TIME, THEY SAID, PERHAPS, EVERY SIX YEARS, AND THE CHIEF JUSTICE, AT THE TIME, SAID WE HAVE HAD NOTHING BUT COMPLAINTS FROM THE LAWYERS OF FLORIDA, BECAUSE WE HAVE HAD THREE CHANGES OF RULES IN FOUR YEARS. AND WE DON'T WANT THAT. WE DON'T WANT TO FOOL WITH IT, AND WE DON'T THINK THE LAWYERS OF FLORIDA SHOULD HAVE TO FOOL WITH THAT MANY CHANGES, AND THE ONLY PEOPLE WHO ARE GOING TO MAKE MONEY FROM THIS WILL BE THE BOOK PUBLISHERS. YES, JUSTICE SHAW.

WHAT WOULD BE THE OUTER PARAMETERS OF A LOCAL RULE, IN YOUR OPINION?

I THINK LOCAL RULES ARE THINGS THAT SET UP, FOR EXAMPLE, THE SCHEDULING OF THE COURTS. IF THEY HAVE TO CREATE A DIVISION, MANY COURTS HAVE DIFFERENT DIVISIONS. WE HAVE, FOR EXAMPLE, A SPECIAL TRIAL DIVISION THAT HANDLES TRIALS THAT LAST FIVE DAYS OR MORE IN OUR CIRCUIT. THINGS OF THAT NATURE. I DON'T THINK A LOCAL RULE SHOULD BE ONE THAT REQUIRES A NONCIRCUIT LAWYER TO COME IN AND FILE HIS MOTION TO COMPEL AND THEN ONE OF OUR JUDGES SIMPLY SUMMARILY DENNIS THE MOTION, IF IT DOESN'T COMPLY -- DENIES THE MOTION, IF IT DOESN'T COMPLY WITH LOCAL RULE 5, AND SENDS HIM A LETTER SAYING YOU CAN DO IT ALL OVER AGAIN AND DO IT MY WAY AND I WILL CONSIDER IT. I THINK IF IT IS IMPORTANT ENOUGH TO BE A LOCAL RULE OF GENERAL PROCEDURE, THEN IT OUGHT TO BE IN THE SET OF RULES. BACK, AGAIN, TO THE FOUR-YEAR CYCLE I THINK YOU WILL FIND, IF YOU GO TO A TWO-YEAR CYCLE THAT YOU WILL BE AFFLICTED WITH THE SAME COMPLAINTS FROM THE BAR AT LARGE. THE JUDICIAL MANAGEMENT COUNSEL IS NOT A CONSUMER OF THIS COURT'S RULE PRODUCTION, AND SO THAT MAKES A VERY BIG DIFFERENCE, WHEN LAWYERS HAVE TO BUY NEW SETS OF RULES AND LEARN MINOR DEVIATIONS THAT COME UP EVERY TWO YEARS. WE COMPROMISED, I MIGHT ADD, ON THE FOUR-YEAR CYCLE, WITH THE COURT, AS IT, THEN, EXISTED, AND THAT IS THE REASON WHY WE HAVE THE FOUR-YEAR CYCLE, BECAUSE IT WAS A COMPROMISE BETWEEN CONFLICTING VIEWPOINTS, BECAUSE WE HAD THE QUESTION ARE A RISE. WE WANT TO DO IT EVERY TWO YEARS, LIKE THE LEGISLATURE. THE LEGISLATURE, IN THOSE DAYS, MET EVERY TWO YEARS. I WILL ADD, IN SUPPORT OF THAT, THAT I TOLD JUSTICE FIELD SMITH, WHEN THEY PROPOSED THE NEW ANNUAL SESSIONS, THAT WAS A SERIOUS MISTAKE, ONE OF THE TWO GREATEST MISTAKES MADE IN THE NEW CONSTITUTION. SEVEN OR EIGHT YEARS LATER, WHEN HE AND I WERE HAVING DINNER HERE, IN TALLAHASSEE, HE SAID I AGREE WITH YOU, HE SAID, ON THE ANNUAL SESSIONS. HE SAID WE SHOULD NEVER HAVE DONE. THAT I THINK YOU WILL FIND THE SAME THING TRUE ON BIANDIAL ADOPTION OF THE RULES -- ON BIENNIAL ADOPTION OF THE RULES. IF THE COURT HAS A QUESTION, I WILL BE GLAD TO RESPOND. THANK YOU.

THANK YOU VERY MUCH, MR. TRAWICK. MR. REGENSDORF.

JUST TO TOUCH LIGHTLY ON THE LOCAL RULES FORM THE LOCAL COURT RULE, AS IT IS PRESENTLY DRAFTED -- LOCAL RULES. THE LOCAL COURT RULE, AS IT IS PRESENTLY DRAFTED, IS DETERMINED TO CONSIDER RULES OF STATEWIDE APPLICATION, AND I THINK THE RULE IN MR. TRAWICK'S COUNTY THAT REQUIRES CERTAIN THINGS TO BE DONE BEFORE YOU CAN FILE A MOTION TO COMPEL IS A CLASSIC APPLICATION OF A LOCAL RULE T HAS GONE THROUGH THE LOCAL RULE COMMITTEE AND, I ASSUME, APPROVED BY THIS COURT. THE ONLY REASON FOR THIS ADDITION IS THAT THE PHRASE "LOCAL RULE" IS FOUND ELSEWHERE IN THE LAW IN FLORIDA. THE CONSTITUTION AND IN STATUTES, USING THAT PHRASE DOES NOT APPLY TO THE TYPE OF LOCAL RULES HERE, AND WE SIMPLY WANTED TO MAKE CERTAIN THAT, IN THE AREA OF JUDICIAL ADMINISTRATION, WE HAVE A SET OF RULES THAT INCLUDE THE, BOTH MEANINGS OF THE PHRASE THAT IS USED ELSEWHERE "LOCAL RULE." IT WAS NOT INTENDED TO GIVE ANY APPLICATION, OTHER THAN DEFINITION.

I JUST HAVE ONE QUESTION, SINCE WE MAY NOT SEE YOU FOR A COUPLE OF MORE YEARS.

YOU CAN MAKE IT EVERY YEAR, IF YOU WOULD LIKE, JUSTICE.

IN TRANSCRIPTS, THE TRANSCRIPTS OF ALL JUDICIAL PROCEEDINGS, YOU HAD, JUST ONLY CHANGE WAS A RENUMBERERING AND I WAS READING THESE RULES LAST NIGHT, AND I NOTICE THAT IT TALKS ABOUT, THAN IS FOR ALL TRANSCRIPTS AND ALL JUDICIAL PROCEEDINGS, INCLUDING DEPOSITIONS. IT IS G OF -- I DON'T KNOW WHAT PAGE. IT IS RULE -- COURT REPORTER. AND IT TALKS ABOUT THINGS AS IF WE HAVEN'T GOTTEN INTO THE COMPUTER AGE. IT HAS TYPE, SIZE OR PRINT SHALL BE PIC A OR CONSIDERABLE TYPE OF PRINT. YOU KNOW, I HAVE SEEN THOSE REALTIME COURT REPORTING. WE HAVE GOT ISSUES, NOW, WITH COMPATIBILITY WITH TRANSCRIPTS AND WHAT GETS FILED ON DISC. WAS ANY THOUGHT GIVEN TO THE FACT THAT THIS NEEDED TO BE UPDATED TO COMPORT WITH WHAT IS ACTUALLY BEING DONE OUT THERE?

THE ANSWER IS NO, BECAUSE THAT IS -- DOES IT NEED TO BE ADDRESSED? YES. DID WE COME BACK, FOUR YEARS AGO, AND ASK THIS COURT TO ADOPT AND APPROVE OF MINISTRIPTS FOUR TO A PAGE OR SIX TO A PAGE THAT REQUIRE US TO HAVE GLASSES, LIKE THIS, AS WE GET OLDER AND OLDER, AND THE COURT SAID, NO, WE ARE NOT GOING TO DO THAT, AND I UNDERSTAND. THIS RULE IS PRETTY MECHANICAL. A COUPLE YEARS AGO, WHEN WE WERE GOING TO TRY TO GET CERTIFIED COURT REPORTERS IN, YOU WROTE THE RULE SUBJECT TO THE FUNDING. WHEN THE FUNDING DIED, THERE WERE A NUMBER OF REORGANIZATIONS OF THE RULE, UNRELATED TO THE CERTIFIED COURT REPORTER RULE, THAT NEED TO GET IMPLEMENTED, OR THE LEGISLATURE DID, THE CERTIFIED COURT REPORTER RULE, SO CANDIDLY, ALL THIS RULE IS, 2.070, IS SIMPLY PUTTING ALL OF THOSE PIECES BACK TOGETHER IN THE RIGHT ORDER, TAKING OUT ALL OF THE STUFF FOR THE CERTIFIED COURT REPORTER. THE ANSWER TO YOUR QUESTION IS NO. IT WAS NOT SPECIFICALLY ADDRESSED. SHOULD THE QUESTION OF TECHNOLOGY BE APPLIED, WITH RESPECT TO COURT REPORTERS? I THINK IT CERTAINLY SHOULD AND CERTAINLY IT IS A TOPIC THAT I WILL TAKE BACK TO THE COMMITTEE, BUT IT WAS CERTAINLY NOT MEANT TO BE A MODERNIZATION OF THE RULE. IT WAS SIMPLY TO CLEAN UP THE 1998 RULE PROVISION.

THANK YOU VERY MUCH. MR. TRAWICK, I WOULD CALL TO YOUR ATTENTION THAT, WITHIN THE RULES OF JUDICIAL ADMINISTRATION, THIS COURT ISSUED A OPINION, TODAY, WHICH HAS TO DO WITH OR RISING OUT OF THE EXINGICIES OF ARTICLE VII -- OF THE ARTICLE V FUND, PROVISION SEVEN.

IS THAT THE BUDGET COMMISSION? WE HAVE ADDRESSED THAT AS A SUBCOMMITTEE AND APPROVED IT. IT IS PROBABLY MOOT. THE COMMITTEE WILL ADDRESS IT, IF FURTHER --

LOOK AT THE OPINION TODAY. EYE WILL LOOK AT THE OPINION.

THANK YOU VERY MUCH. WE -- I WILL LOOK AT THE OPINION.

THANK YOU VERY MUCH. WE APPRECIATE YOUR EFFORTS AND YOUR EFFORTS, AGAIN, MR. TRAWICK. THE COURT WILL BE ADJOURNED UNTIL TOMORROW MORNING AT 8:30. THE MARSHAL: PLEASE RISE.

THANK YOU.