Amendments to Florida Rules of Appellate Procedure

> NEXT ON THE COURT'S CALENDAR ARE THE AMENDMENTS TO FLORIDA RULES OF APPELLATE PROCEDURE.

GOOD MORNING. I AM SUSAN FOX FROM THE TAMPA LAW FIRM OF FOX, FERGUSON AND McMULLIN. I AM PREVIOUS CHAIR OF THE RULES COMMITTEE, AND ON BEHALF OF THE COMMITTEE, I PREPARED THE REPORT THAT IS BEFORE YOU. I PREPARED THAT, WITH THE ASSISTANCE OF DEBORAH BROOKEHEIMER, WHO IS THE CURRENT CHAIR, AND WE HAVE DIVIDED UP OUR RESPONSIBILITIES ON THIS. I AM GOING TO ADDRESS ALL OF THE CIVIL RULES, AND ADMINISTRATIVE, AND EVERYTHING EXCEPT RULE.140, 9.14 -- RULE 9.140, 9.141, WHICH ARE THE CRIMINAL SECTIONS OF THE APPELLATE RULES, AND IF THERE ARE ANY QUESTIONS ON THE MAILBOX RULE, DEBORAH BROOKEHEIMER WILL ADDRESS THOSE.

IF YOU WILL KEEP TRACK OF YOUR TIME.

YES, WE WILL. I AM NOT GOING TO DISCUSS, IN DETAIL, ALL OF THE DIFFERENT CHANGES THAT HAVE BEEN PROPOSED. I THINK MOST OF THEM ARE SELF-EXPLANATORY, NONCONTROVERSIAL, DON'T NEED A LOT OF DISCUSSION. SOME OF THEM ARE OF A TECHNICAL AND EDITORIAL NATURE. AND SOME HAVE RESPONDED TO PROBLEMS THAT HAVE BEEN ADDRESSED BY THE COURTS, IN OPINIONS WHERE WE HAVE PICKED UP AREAS WHERE CLARIFICATIONS WERE NEEDED AND RESPONDED TO THOSE. BUT I WANT TO ADDRESS A FEW THAT I THINK ARE SIGNIFICANT. AND TWO OF THEM RELATE TO THE CONTENTS OR THE MANNER OF PRESENTING APPELLATE BRIEFS. STANDARD OF REVIEW, AND THE FONTS THAT ARE USED. THEN I WOULD LIKE TALK ABOUT THE APPELLATE VENUE RULE, AND THEN, FINALLY, THE ONE THAT HAS DRAWN SOME COMMENTARY, WHICH WOULD BE REPEAL OF NONFINAL ORDERS DETERMINING LIABILITY.

THERE IS ONE OTHER RULE I WOULD LIKE -- I KNOW YOU HAVE LIMITED TIME, BUT THERE IS SOME CONCERN ABOUT RULE.020, THE NEW SUBDIVISION THAT -- RULE 9.020, THE NEW SUBDIVISION THAT SAYS IF MOTIONS HAVE BEEN FILED IN DISTRICT COURT, THE FINAL ORDER SHOULD NOT BE DEEMED RENDERED AS TO THE PARTY OF THE APPEAL, UNTIL THE FILING OF THE FINAL WRITTEN ORDER, AND IT SAYS THAT IT IS TO CORRECT THE PROBLEM OF ST. PAUL FIRE AND MARINE. THE QUESTION, WHICH, REALLY, SAID PRETTY SPECIFICALLY, THAT IF A NOTICE OF APPEAL DIDN'T HAVE TO EVOLVE IN THIS COURT, UNTIL A MOTION FOR REHEARING WAS DISPOSED OF. HAD THE COMMITTEE CONSIDERED ANY CONCERN THAT, IF, AFTER THIS RULE IS ADOPTED, AND THERE IS A MOTION FOR REHEARING, FILED IN THE DISTRICT COURT, THAT A NOTICE OF APPEAL IS FILED HERE, THAT MOTION FOR REHEARING IS -- WOULD BE DEEMED ABANDONED, AS THERE IS A SIMILAR PRINCIPLE FOR WHAT HAPPENS, WHEN IT COMES UP, AND THERE ARE SOME CONCERNS THAT HAVE BEEN EXPRESSED, ALONG THOSE LINES, THAT THERE MAY BE SOME OTHER UNINTENDED CONSEQUENCES, YOU KNOW, FOR EXAMPLE, WHEN AN APPELLATE COURT, DCA, IS JUST GETTING READY TO ISSUE AN OPINION ON REHEARING, AND SOMEBODY, EITHER OUT OF IGNORANCE OR WHATEVER, FILES A NOTICE OF APPEAL HERE, DOES THAT, THEN, PROVEES TO THE APPELLATE COURT OF THAT JURISDICTION? WAS THAT CONSIDERED AT ALL?

ACTUALLY I LOOK HE HAVE THAT WAS -- I BELIEVE THAT WAS CONSIDERED, AND I THINK JULIE HAD SOME LANGUAGE THAT DEALT WITH IT, BUT I THINK THE COMMITTEE, AS A WHOLE, DIDN'T CONSIDER THAT TO BE -- DIDN'T CONSIDER THAT, LET'S SEE, THE FILING OF THE NOTICE WOULD DIVEST THE COURT OF JURISDICTION. TO ISSUE THAT ORDER ON REHEARING. IS THAT THE

SPECIFIC PROBLEM THAT WE ARE FOCUSING ON?

THAT IT WOULD BE DEEMED ABANDONED, AS IT IS WHEN THAT HAPPENS, WHEN IT IS FILED, WHEN THE NOTICE OF APPEAL IS FILED?

I BELIEVE THE CONSENSUS ON THAT SUBJECT WAS THAT IT WOULD NOT ABANDON THE APPEAL ON BEHALF OR THE POTENTIAL FOR REPEAL ON THAT --

THAT IS MY CONCERN. WHEN IT SAYS, AND DOESN'T ST. PAUL, REALLY, DEAL WITH -- ST. PAUL SAYS WHAT IS ALL YOU, REALLY, NEED TO HAVE DONE, WHICH IS TO SAY THAT THE TIMELINESS ISSUE IS THAT THERE IS A MOTION OF REHEARING PENDING. THAT THE TIME RUNS 30 DAYS FROM THAT TIME. IT, REALLY, DOESN'T GET TO THE THORNY ISSUE OF WHAT HAPPENS WHEN THINGS ARE FILED UP HERE. WE DON'T, SOMETIMES, KNOW MOTIONS FOR REHEARING ARE PENDING. THIS, REALLY, DEALS WITH THE SUPREME COURT VERSUS THE APPELLATE COURT, AND THAT IS WHY I WANTED, AND THERE IS SOME INTRA COURT ISSUES THAT COME UP, ALSO, ABOUT THIS, WHEN THESE THINGS GET FILED PREMATURELY.

WELL, THE ST. PAUL CASE MAY SAY EVERYTHING THAT NEEDS TO BE SAID, BUT IF THE RULES AREN'T CONSISTENT WITH THAT, THEN WE ALWAYS FEEL LIKE WE HAVE GOT A PROBLEM.

IF IT IS NOT SAID AT ALL, IT IS JUST NOT INCONSISTENT.

ACTUALLY I THINK THE -- SENSE -- SINCE THE OVERALL LANGUAGE OF THE RULES IS THAT THAT RENDITION RULE IS GOING TO APPLY AT EVERY LEVEL, THEN THE RULES WOULD BE INCONSISTENT WITH THAT, WITH THE ST. PAUL DECISION, UNLESS THERE WAS A SEPARATE RULE THAT EXPLAINED THE DIFFERENCE, WHEN YOU ARE TAKING AN APPEAL FROM A DISTRICT COURT OF APPEAL DECISION, AN APPEAL OR A PETITION FOR FURTHER REVIEW. AND THE PURPOSE OF THIS SIMPLY WAS TO ALLOW A PARTY TO SAFELY WAIT UNTIL THE DISTRICT COURT HAS ISSUED AND TO MAKE THE RULES CLEAR ON THAT SUBJECT, TO WAIT UNTIL THE DISTRICT COURT HAS ISSUED A FINAL OPINION, BEFORE THEY HAVE TO SEEK REVIEW. NOW, IF YOU ARE INTERESTED, I CAN PROVIDE YOU WITH SOME SUPPLEMENTAL PROPOSAL ON EXACTLY WHAT WAS OFFERED ON THE ABANDONMENT ISSUE, BECAUSE I KNOW THAT JOEL EAT ONE DID SUGGEST SOMETHING -- THAT JOEL EATON DID SUGGEST SOMETHING THAT THAT THAT WAS DEBATED AT SOME LENGTH BUT ULTIMATELY DECIDED NOT TO BE NECESSARY. THAT IS THE BEST I CAN DO ON THAT ONE. JUST GOING BACK, TO THE OTHER ITEMS THAT I THOUGHT I WOULD POINT OUT, IN PASSING, WE HAVE ADOPTED A -- WE ARE ASKING THE COURT TO ADOPT A PROVISION THAT REQUIRES THE STANDARD OF REVIEW TO BE ADDRESSED IN APPELLATE BRIEFS. THE DISTRICT COURT JUDGES ON OUR COMMITTEE WERE VERY STRONGLY IN FAVOR OF THIS, AND I THINK, IN PRACTICE, IN THE LOWER COURTS, IT IS NOT UNCOMMON FOR THE PARTIES TO NEVER, REALLY, GET AROUND TO ADDRESSING THAT ISSUE, AND THAT IT IS IMPORTANT TO THE RESOLUTION OF EVERY CASE. ANOTHER ONE, WHICH HAS -- I AM GOING TO GO, QUICKLY, NOW, TO ADDRESS SOME OF THE ISSUES, ON THE TYPE BASE FOR BRIEFS, THAT HAS BEEN A DIFFICULT ISSUE FOR A NUMBER OF YEARS, BECAUSE OUR RULES HAVE NOT KEPT UP WITH THE TECHNOLOGY, AND JUSTICE HARDINGISH ISSUED A RULE, A FEW YEARS AGO, AS CHIEF JUSTICE, GIVING THE PARTIES A CHOICE OF USING 14 POINT, TIMES NEW ROAM AND -- TIMES NEW ROMAN, AS AN ALTERNATIVE TO LEGAL COURIER. NOW, THE COMMITTEE IS REPRESENTING SOMETHING A LITTLE BIT DIFFERENT, AND I WANT TO EXPLAIN Y THE 14 POINT FONT, IN OUR OPINION, AND WE RAN TEST AFTER TEST ON THIS, ACTUALLY REDUCES THE AMOUNT OF TEXAS IN THE BRIEF BY ABOUT FIVE -- THE AMOUNT OF TEXT IN THE BRIEF BY ABOUT FIVE PAGES, AND WE WOULDN'T WANT THIS RULE TO BE A PRETEXT FOR REDUCING THE AMOUNT OF TEXT IN BRIEFS. THE ATTORNEYS DID NOT WANT TO SEE THAT HAPPEN, SO WHAT WE MADE AN EFFORT TO DO WAS TO FIND THE PROPORTIONAL FONT THAT WOULD GIVE YOU THE CLOSEST AMOUNT OF NEXT THE -- TEXT TO THE 10 CPI RULE THAT WE CURRENTLY HAVE, AND THAT IS 13 POINT, WITH 23 LINES PER PAGE, AND THAT IS WHAT WE ARE ASKING THE COURT TO ADDRESS.

IS THERE ANY PROBLEM WITH INCLUDING IN THE RULE THAT, WHAT WE HAVE, THE ADMINISTRATIVE ORDER, WHICH IS A CERTIFICATE THAT THIS HAS BEEN FOLLOWED, BECAUSE FOR THE CLERK'S SAKE, THEY DON'T WANT TO HAVE TO BE MONITORING THIS. DO YOU SEE ANY PROBLEM WITH THAT?

WELL, I PERSONALLY DON'T, BUT THIS IS SOMETHING THAT THE COMMITTEE, AS A WHOLE, REJECTED. THEY THOUGHT THAT THAT TENDED TO, LET'S SEE, CAST SOME DOUBT ON THE HONOR AND DIGNITY OF APPELLATE PRACTITIONERS.

WE WERE JUST FOLLOWING THE ELEVENTH CIRCUIT COURT OF APPEALS.

RIGHT. AND THEY REQUIRE A WORD COUNT. THAT IS THE DEGREE OF --

THEY, ALSO, HAVE A 14 POINT, AND I GUESS MY QUESTION WITH THAT, AND, ALSO, THE QUESTION THAT, SHOULDN'T WE, AND DON'T WE NEED TO, REALLY, SAY WE ARE ONLY GOING TO HAVE COURIER AND ONLY TIMES NEW ROMAN, BECAUSE PEOPLE HERE THAT ARE SAVVY IN THE INTERNET AND, OF COURSE, ALL OF OUR OPINIONS GO THERE, SAY THERE IS, REALLY, SOME VERY -- THERE ARE PROBLEMS ARISING IN CONVERSION, IF WE DON'T STAY WITH FONTS THAT ARE RECOGNIZED, AND SINCE THAT IS, OVERALL, GOING THROUGH ELECTRONIC, THOSE TYPES OF THINGS, SHOULDN'T WE TRY TO BE AS UNIFORM AS POSSIBLE?

WELL, THE LANGUAGE WE CHOSE WAS TIMES NEW ROMAN, CG TIMES OR SIMILAR.

THAT IS THE PROBLEM. "OR SIMILAR" BECAUSE APPARENTLY THERE ARE EXOTIC FONTS OUT THERE, AND I GUESS THE QUESTION IS NOT -- WHAT IS THE PROBLEM, WAS THERE A PROBLEM POINTED OUT, TO SAY THOSE ARE THE FONTS, COURIER NEW ROMAN AND TIMES NEW ROMAN?

WELL, THERE ARE QUITE A FEW PEOPLE, I THINK, WHO BELIEVE THAT CG TIMES PRESENTS A MORE LEGIBLE, READABLE FONLT, AND THAT IS ACTUALLY WHAT IT -- READABLE FONT, AND THAT IS ACTUALLY WHAT IT COMES DOWN TO. LEAVING IN THE 10 CPI RULE, FOR EXAMPLE, GIVES THE ATTORNEY THE ALTERNATIVE OF PRESENTING IT IN THAT AMOUNT OF TEXT, BUT THEN YOU LOSE THE, REALLY, THE READABILITY AND THE AESTHETIC QUALITIES OF THAT FONT. I THINK THAT, TO -- I THINK THAT, IF YOU LIMIT IT ONLY TO NEW TIMES ROMAN, THERE ARE -- THERE ARE SOME SIGNIFICANT FEELING OUT THERE THAT THAT IS NOT THE BEST FONT.

DO THEY UNDERSTAND, THOUGH, THE PROBLEMS WITH THE CONVERSION, INTO THE INTERNET, AND THAT THAT IS -- THAT -- MAYBE THAT WASN'T DISCUSSED, AND I HATE TO --

CONVERSION INTO THE --

I HATE TO SPEND A LOT OF TIME ON THIS, BUT I GUESS THERE IS A LOT OF PASSION OUT THERE ABOUT THE FONTS AND THE SIZE.

WE PUT OUT ALL KINDS OF MATERIAL ON THE WEB, AND SO THIS IS ONE OF THE CONCERNS THAT WE HAVE IS THE COMPATIBLE AND THE -- THE COMPATIBILITY AND THE ABILITY TO DO THAT, WITH THE DOCUMENTS THAT ARE FILED WITH THE COURT. WAS THAT DISCUSSED? I THINK -- I GUESS THE POINT THAT I AM HEARING IS, WITH THE NEW TIMES ROMAN BEING THE DEFAULT FONT THAT IS USED FOR WORD PROCESSING, THAT THAT WOULD BE MORE COMPATIBLE WITH UPLOADING TO THE INTERNET. THAT MAY VERY WELL BE, BUT I DON'T THINK THAT THERE IS A PROBLEM OUT THERE, WITH EXOTIC FONTS. YOU MAY SEE THAT. WE ARE NOT AWARE OF IT, AND SO WE FELT THAT SIMPLY HAVING THAT NEW TIMES ROMAN, CG TIMES, OR SIMILAR, WAS SUFFICIENT TO COVER IT. THANK, UNLESS ANYONE HAS QUESTIONS ON THE APPELLATE VENUE ISSUES, I AM GOING TO SDIP OVER -- SKIP OVER AND TALK ABOUT OUR PROPOSED APPEALS, DETERMINING LIABILITY OF NONFINAL APPEALS ON THAT ISSUE, BECAUSE THIS IS A RULE ON WHICH YOU NEED TO DO SOMETHING. YOU NEED TO EITHER ADOPT OUR PRIMARY PROPOSAL OR

OUR ALTERNATE PROPOSAL. AND JUST GOING BACK, WE HAVE TRIED TO PRESENT SOME HISTORICAL PERSPECTIVE ON THIS, THAT, PRIOR TO 1977, THE RULE PERMITTED APPEALS FROM PARTIAL SUMMARY JUDGMENTS ON LIABILITY. NOW, THE CURRENT WORDING WAS DESIGNED TO CARRY OVER THAT SAME CONCEPT. BUT IN ACTUAL PRACTICE, THE RULE HAS BEEN PROBLEMATICAL. IT IS, NOW, WHAT THE COMMITTEE IS MOST CONCERNED ABOUT, IS THE RULE BEING USED TO STOP A TRIAL IN A BIFURCATED PROCEEDING, TO ALLOW AN APPEAL OF A DIRECTED VERDICT OR A PARTIAL JURY VERDICT ON LIABILITY. WE FL-A CONSISTENT PHILOSOPHY OF AVOID -- WE FOLLOW A CONSISTENT PHILOSOPHY OF AVOIDING PIECEMEAL APPEALS. THIS RULE IS THE ONLY ANOMALY TO THAT WHICH YOU WILL FIND IN THE APPELLATE RULES, AND THE MEMBERSHIP OF OUR COMMITTEE FEELS THAT THAT ANOMALY DOES NOT NEED TO EXIST.

WHAT WAS THE DIVISION ON THE COMMITTEE, BY THE WAY, IF ANY, ABOUT THIS?

WE TOOK IT UP TWICE.

ALONG PARTY LINES?

NO. IT DID NOT DIVIDE ON PARTY LINES. WE TOOK IT UP TWICE. THE FIRST TIME, IT PASSED BY A VOTE OF 27 TO 3, I BELIEVE, AND THE SECOND TIME, 36-4. WE TOOK IT UP, BEFORE THE MYERS DECISION, AND WE TOOK IT UP, AGAIN, AFTER THE MYERS DECISION. AND I WOULD LIKE FOR YOU TO JUST THINK, FOR A MOMENT, ABOUT THE COMPOSITION OF OUR COMMITTEE. WE HAVE ABOUT 30% DISTRICT COURT OF APPEAL JUDGES. WE HAVE TWO DISTRICT COURT OF APPEAL CLERKS. WE HAVE A NUMBER OF DISTRICT COURT STAFF. TOM HALL IS ON THE COMMITTEE. WE HAVE PRIVATE ATTORNEYS, GOVERNMENT ATTORNEYS, DIRECTORS OF GENERAL COUNSEL OFFICES OF STATE AGENCIES, LAW PROFESSORS, PRIVATE ATTORNEYS WHO WOULD TAKE THE POSITION, WELL, YOU KNOW, IT IS MORE WORK FOR ME, IF WE HAVE THESE RULES, SO WHY DO I CARE IF WE REPEAL IT OR NOT, BUT --

YOU ARE SAYING THIS IS ABOUT AS CLOSE TO CONSENSUS THAT YOU HAVE EVER GOTTEN ON THE APPELLATE POSITION.

WOULD YOU SHARE WITH US WHY IT WAS A TOTAL APPEAL, RATHER THAN BRINGING IT BACK INTO WHAT IT WAS INTENDEDED TO BE?

I THINK PROBABLY THE CONSISTENCY OF THE PHILOSOPHY AND JUST PURE FRUSTRATION WITH THE PROBLEMS THAT HAVE BEEN CREATED BY ALLOWING THE INTERLOCUTORY APPEAL OF A DETERMINATION OF LIABILITY.

EVEN UNDER THE OLD RULE, THAT WAS A BAD POLICY, TO HAVE IT. THAT IS WHAT THE CONSENSUS IS? AS ORIGINALLY DESIGNED? WHEN WE FIRST STARTED PRACTICING, THAT IS THE WAY IT WAS DONE.

WE REALIZE THAT, THROUGH COURT DECISIONS, THAT THE RULE IS, REALLY, THIS THING ABOUT LIABILITY, AND IN FAVOR OF ONE PARTY, HAS BEEN GREATLY EXPANDED. I THINK WE ALL ACKNOWLEDGE THAT, OVER WHAT THE MORE NARROW RULE WAS BEFORE. AND I ASSUME THAT THIS, GENERALLY, WAS -- THAT IT IS JUST -- STILL HADN'T FILLED OUT ITS PARAMETERS.

RIGHT. WE WENT TO THE TROUBLE OF ACTUALLY ADOPT AGO BRIEF, AS A COMMITTEE, TO PRESENT, TO EXPLAIN OUR REASONING ON THAT ISSUE, AND WHAT WE SAID IN THAT BRIEF, WHICH I QUOTED VERBATIM IN OUR REPORT, WAS THAT WE DIDN'T THINK THE RULE WAS TERRIBLY OBJECTIONAL, OBJECTIONABLE, WHEN IT REFERRED TO PARTIAL SUMMARY JUDGMENTS ON LIABILITY. HOWEVER, YOU, ALSO, HAVE TO REMEMBER THE CONTEXT IN WHICH THE ISSUE AROSE IN THIS SIRCK CYCLE OF THE APPELLATE RULES -- IN THIS CYCLE OF THE APPELLATE RULES COMMITTEE, AND THAT WAS IN CONJUNCTION WITH SOME WORKLOAD

CONSIDERATIONS OF THE DISTRICT COURTS, AND THE AN EFFORT TO, ACTUALLY, REPEAL ALL NONFINAL APPEALS. AND NOT HAVE RULE 9.130, AND AFTER A LOT OF DISCUSSION AND DEBATE AND, ACTUALLY, THE SUBCOMMITTEE, WHICH I CHAIRED AT THAT TIME, INTERVIEWING THE COURT OF APPEAL CLERKS, AS TO WHAT WERE THE REAL WORKLOAD PROBLEMS GENERATED BY THIS RULE, IT IS NOT INSURANCE COVERAGE CASES. IT IS NOT IMMUNITY. IT IS NOT VENUE. IT IS NOT JURISDICTION. IT IS NONFINAL APPEALS OF DETERMINATIONS OF LIABILITY. SO THAT IS A WORKLOAD ISSUE. AS TO THE OTHER PROBLEMS, I THINK --

YOU ARE INTO YOUR REBUTTAL.

I KNOW.

WE NEED TO HEAR.

I UNDERSTAND. AND IF THERE ARE NO OTHER QUESTIONS, I THANK YOU VERY MUCH.

WE WILL ALLOW YOU TO HAVE THREE MINUTES, HERE, TO -- [INAUDIBLE]

OKAY. THANK YOU.

THANK YOU. I AM HERE TO DISCUSS 9.140 AND OUR NEW 9.141, AND WE CREATED THE MAIN ISSUE IS THE CODDFIED ANDERS PROCEDURE THAT WE PUT IN, WHICH FOLLOWS THIS COURT'S CASE OF IN RE ORDER OF THE FIRST DCA, REGARDING REFILED IN FORRESTER VERSUS STATE, A 561114, IN 1990.

AS A PART OF YOUR DISCUSSION OF THAT, WOULD YOU EXPLAIN WHAT WE WOULD SAVE BY DOING THE MEMORANDUM PROCEDURE THAT YOU ARE TALKING ABOUT?

UM-HUM. THE MEMORANDUM PROCEDURE, I MEAN, WE DID THIS SO THAT THE PRIVATE BAR WOULD KNOW WHAT TO DO. THAT IS THE DISTRICT COURT JUDGES ON OUR COMMITTEE HAVE FOUND THAT PRIVATE BARS ARE NOT FOLLOWING ANDERSON. SO WE CREATED A RULE THAT EVERYBODY SEES OUT THERE, SO THE MEMORANDUM PROCEDURE, WHICH CUTS, SEPARATES THE GUILTY PLEA AND THE NOLO PLEAS, WITHOUT RESERVATIONS, FROM THE REGULAR TRIALS OR SUBSTANTIVE, YOU MOW, MOTION TO SAY SUPPRESS -- SUBSTANTIVE, YOU KNOW, MOTIONS TO SUPPRESS-TYPE PLEAS.

THE PROBLEM WITH THIS IS, IN 2-C, OF THAT PROPOSED RULE, IT SAYS, AN ARGUMENT LIMITED TO THE DISCUSSION OF THE ISSUES IDENTIFIED IN SUBSECTION-SUBDIVISION B-2-B. NOW, THAT REFERS BACK TO THE SUBDIVISION, JURISDICTION, INVOLUNTARY PLEAS AND ALL OF THIS, WHICH, IN MY MIND, ARE ALL GOOD, SOLID ARGUMENTS THAT YOU CAN MAKE, AND WHY NOT IN THE BRIEF, LIKE ALL OTHER GOOD ARGUMENTS, AS OPPOSED IN A MEMORANDUM?

RIGHT. WELL, I MEAN, WHAT YOU ARE ASKING IS, LIKE, BASICALLY WHAT IS SET FORTH IN COUNTS AND ROBINSON. THESE ITEMS. IF YOU LOOK TO THE SUBSTANCE, WE ARE BASICALLY SAYING THAT WE HAVE TO ADDRESS EVERYTHING THAT IS IN AN ANDERS. WE ARE JUST PUTTING IT INTO A DIFFERENT FORMAT, AND THE REASON THIS IS SEPARATED OUT IS THAT THE DISTRICT COURTS CAN SEPARATE THE WEEK FROM THE CHAF. WHEN THIS COURT ADDRESSED THE PROBLEM OF WHAT DO YOU DO WITH GUILTY PLEAS, THIS COURT DECIDEDED THAT MAYBE IT SHOULD USE THE SUMMARY, TELL THE DISTRICT COURTS TO USE THE SUMMARY RULE, WHICH WAS SET FORTH IN 9.315-A, THAT WON'T WORK. 9.315-A, WOULD ONLY WORK AS THE END RESULT. WHAT WE NEED TO DO IS SEPARATE THESE GUILTY PLEA APPEALS OUT FROM A REGULAR ANDERS APPEAL -- ANDERS APPEAL, SO THAT THE COURTS CAN I HAD THEM -- SO THAT THE COURTS CAN IDENTIFY THEM QUICKLY AND MOVE THEM QUICKLY AND GET THESE APPEALS OUT.

I AM TRYING TO UNDERSTAND HOW THE MEMORANDUM, WHICH HAS NO UNDERSTANDING IN THE

REST OF THE APPELLATE RULES, FONTS, IS GOING TO HELP EXPEDITE, IF THERE IS NO OTHER -- THERE SHOULD BE A PROCEDURE FOR EXPEDITING, THEN, IN THE RULES, AND SOME PROCEDURE AS TO HOW THE COURT IS GOING TO DEAL WITH IT, BUT I, ALSO, HAVE THE SAME PROBLEM, TO SEE THAT THERE COULD BE A CONCERN AS TO WHAT A MEMORANDUM IS, VERSUS A BRIEF, WHEN IT IS CONTAINING VIRTUALLY THE SAME INFORMATION.

IT IS, YOU KNOW, WE USED TO FILE MOTIONS IN THE SECOND DISTRICT, WHICH WE CALL COUNTS MOTIONS. WE CAN'T FILE THOSE ANYMORE. AFTER LEONARD, WE CAN'T FILE THOSE.

BUT EVEN THOSE WERE FILED WHEN THERE WAS, REALLY, NO ISSUE TO RAISE, NOT HE -- NOT EVEN THOSE ISSUES UNDER THAT SUBDIVISION THAT IS POINTED OUT, HERE, SO I COULD SEE A MEMORANDUM, BUT IF YOU ARE GOING TO, REALLY, TALK ABOUT THE SUBSTANTIVE ISSUE, I GUESS THAT IS WHY --

I THINK WE JUST -- WE WERE DISAGREEING ON THE IDEA THAT, IN THE COUNTS MOTION THAT WE USED TO RAISE, WE WOULD DISCUSS ALL FOUR OF THOSE AREAS IN ROBINSON AND POUNCE. THERE IS NO SUBSTANTIVE ISSUE. THERE IS NOTHING MAJOR. WE ARE TRYING TO LET THE DISTRICT COURTS KNOW THAT THIS IS SEPARATE. IF WE FILE THESE A REGULAR ANDERS BRIEF, THEY WILL FOLLOW THE REGULAR ANDERS PROCEDURE, AND THEY WILL TAKE TEN MONTHS IN A YEAR TO BE RESOLVED. THAT IS THE FACTS OF LIFE. LEONARD, IT DISCUSSES 9.315-A, SAYS LET'S TRY TO EXPEDITE THESE THINGS BY USING THE SUMMARY PROCEDURE. SUMMARY AND EXPEDITE DON'T MEAN THE SAME THING.

HOW WILL -- I DON'T SEE HOW THE COURT, HOW THIS IS GOING TO MAKE THE COURT MOVE ANY FASTER ON IT.

IT WON'T MAKE THEM, BUT IT WILL IDENTIFY THEM, SO IF THEY CHOOSE TO EXPEDITE THEM, THEY CAN. I MEAN, YOU KNOW, THE ONLY OTHER WAY TO FIND GUILTY GUILTY PLEASE, TO SEPARATE THEM OUT, IS TO GO THROUGH, MANUALLY, EVERY SINGLE ANDERS BRIEF THAT WALKS IN THE DOOR.

WHY COULDN'T YOU JUST ENTITLE IT ANDERS BRIEF, ON A CASE THAT WAS A GUILTY PLEA?

I COULD NOT ENFORCE THAT. I MEAN, YOU KNOW, YOU ARE ASKING --

DON'T SOME OF THE DISTRICT COURTS, THOUGH, ALREADY HAVE AN EXPEDITED PROCEDURE FOR ANDERS BRIEFS?

THEY DO. WELL, LET'S PUT IT THIS WAY. IF IT IS A TRIAL, I HAVE NOT SEEN IT AS AN EXPEDITED PROCESS. OUR COURTS, ON THE DISTRICT COURT LEVEL, WOULD EXPEDITE THE COUNTS MOTIONS. IT WOULD TAKE TWO OR THREE MONTHS TO GET RID OF A CASE BY MOTION, WHEN IT WAS A PLEA. LEONARD HAS DONE AWAY WITH THAT ABILITY, SO THE ONLY OTHER WAY OF OUR COURT HAVING TO FIND THESE GUILTY PLEAS IS TO READ EACH BRIEF. NOW, I MEAN, MAYBE SOME OF THE DISTRICT COURTS HAVE AN EXPEDITED CASE. I KNOW -- FOR DEALING WITH ANDERS. I KNOW THAT WILL OUR COURT DOES NOT.

THE OTHER THING WAS YOU SAID THAT PART OF THE REASON THAT YOU WERE DOING THIS OR MAJOR WAS FOR PRIVATE ATTORNEYS. THAT CAN BE TAKEN -- WHAT DO YOU MEAN BY THAT?

PRIVATE ATTORNEYS ARE GETTING INVOLVED IN ANDERS CASES, BECAUSE THEY ARE GETTING MORE AND MORE INVOLVED AS CONFLICT LAURINGS, BECAUSE OF CASE OVER -- CONFLICT LAWYERS, BECAUSE OF CASE OVERLOAD.

WHEN YOU SAY PRIVATE ATTORNEYS, YOU MEAN SPECIAL PUBLIC DEFENDERS.

THEY MAY NOT BE LISTED AS SPECIAL PUBLIC DEFENDERS, BUT THEY ARE GETTING INVOLVED IN THE PROCESS OF REPRESENTING INDIGENT CRIMINAL DEFENDANTS, AND THEY HAVE JUST AS MUCH RIGHT TO USE THE ANDERS PROCESS AS WE DO, BUT THEY DON'T KNOW HOW, SO WE PUT IT INTO A RULE FOR THEM TO FOLLOW. THAT WAS ONE OF THE BIGGEST COMPLAINTS BY THE DISTRICT COURT JUDGES, IS THAT THERE --

THE PROBLEM IN SUBSECTION 3, IS THAT YOU ARE REALLY GETTING OUTSIDE OF THE PROCEDURE, YOU ARE TELLING COUNSEL HOW THEY HAVE TO ACT. THEY SHALL NOT ACT AS -- THAT IS REALLY A SPRANG THING TO PUT IN THE APPELLATE -- A STRANGE THING TO PUT IN THE APPELLATE RULES OF PROCEDURE.

IF YOU FEEL THAT WE HAVE OVERSTEPPED OUR BOUNDARIES BY THE ANDERS CASE. THE TROUBLE WITH ANDERS IS NOBODY HAS READ THE CASE AND NOBODY HAS READ THE HISTORY, AND THE PRIVATE ATTORNEYS THAT ARE DOING THIS DON'T KNOW THAT THEY ARE SUPPOSED TO WALK THIS TIGHT ROPE, SO WE PUT IN THE CASE LAW HAVE I AT RULE, TO EXPLAIN IT TO THEM. IT A VERY -- IT IS A VERY HARD SITUATION. ANDERS IS A NIGHTMARE. I, PERSONALLY, HATE DOING AN ANDERS BRIEF. THERE IS ONE COMMENT FILED ABOUT CLARIFYING MINORS. I DON'T SEE THE PROBLEM. THIS RULE IS TO WORK AFTER. IF I FILE A MOTION POINTING OUT A SENTENCING, HERE, THAT NOBODY HAS PRESERVED, NOBODY KNOWS THAT I AM FILING AN ANDERS BRIEF IN THIS CASE. IT IS FILED BEFORE IT IS FILED. WE DIDN'T CHANGE THE RULES ON PLEAS, EITHER, IN THE EARLIER PORTION, TO WHERE A PERSON PLEADS GUILTY, SAYING THAT YOU HAVE TO BE ABLE TO FILE A 3.800-B-2 MOTION. IT IS EQUALLY APPLICABLE. THERE IS NO PROBLEM WITH THIS RULE. YOU KNOW, IT DOESN'T CONFLICT WITH ANYTHING. I FILE AN ANDERS BRIEF. WHAT HAPPENS ON THE 3.800-B-2 MOTION, THE TRIAL COURT MAY DECIDE WHETHER IT IS AN ANDERS BRIEF OR A MERIT BRIEF. I DON'T HAVE TO ASK PERMISSION OF ANYBODY ON THE DISTRICT COURT LEVEL TO FILE THIS MOTION. I JUST FILE IT, AND WHETHER IT IS GOING TO BE AN ANDERS IS NOT A DECISION IN THE PROCESS. IT APPLIES. 3.800-B-2 APPLIES, SO I DON'T, REALLY, SEE THIS AS A PROBLEM.

THANK YOU. GO RIGHT AHEAD.

I HAVE ALWAYS BEEN SOMEWHAT CONCERNED THAT ANDERS SAYS THERE ARE NO MERITORIOUS ISSUES, AND, YET, WE STICK IN A MERITORIOUS ISSUE, AND THAT IS ALWAYS OF SOME CONCERN TO ME. SO, AND, THIS RULE SAYS THE SAME THING.

IF THIS COURT WISHES TO RECEDE FROM FORRESTER AND NOT REQUIRE US TO LIST ISSUES ANYMORE, CERTAINLY THE MOST RECENT CASE OF ROBINSON, FROM THE U.S. SUPREME COURT, GIVES THEM THAT OPTION. WENDY, A CALIFORNIA CASE, ONLY REQUIRES, IN CALIFORNIA, THAT YOU FILE A STATEMENT OF THE CASE AND FACTS. NO ISSUES, NO CASE LAW. AND THAT IS ALL THEY REQUIRE, AND THE U.S. SUPREME COURT UPHELD THAT AS CONSTITUTIONAL. IT IS IN THE BASEMENT, AS FAR AS I AM KERBLED, AS TO WHAT THE MIN -- AS FAR AS I AM CONCERNED, AS TO, WHAT YOU KNOW, THE MINIMUM IS REQUIRED, BUT THIS COURT REQUIRED MORE. THEY REQUIRED ISSUES, THEY REQUIRE CASE LAW. THEY REQUIRE A COMPLETE -- LET ME SEE, IF I READ MY QUOTE, WAS REVIEW OF THE RECORD, COMBINED WITH A COMPLETE DISCUSSION OF ANY POSSIBLE POINTS OF MERIT TO THE APPEAL. ANY POSSIBLE POINTS. NOW, IF I HAVE A GUILTY PLEA AND THE CLIENT HAS NO PRESERVED ISSUES, AND HE HAS GOT HIS GUIDELINE SENTENCE, CHANCES ARE HE, REALLY, IS UPSET WITH HIS LAWYER, FOR BEING INEFFECTIVE, OR HE WANTS TO WITHDRAW HIS PLEA. HE DOESN'T, REALLY, WANT TO BE ON THE APPEAL, BUT HE DOESN'T KNOW HE HAS GOT TO GET OUT OF THE APPEAL PROCESS, IN ORDER TO DO HIS 3.850 MOTION. NOW, I AM GOING TO RUN DOWN THESE THINGS, IN MY MEMORANDUM, AND SHOW THAT, CHECK OFF EACH ONE, UNDER COUNTS, AND SAY THAT THESE THINGS DIDN'T APPLY. HE DIDN'T FILE A MOTION TO REFILE, THERE IS NOTHING WRONG WITH THE JURISDICTION, AND THERE IS NOTHING WRONG WITH THE SENTENCE, AND I AM GOING TO TRY TO DO IT AS ARTFULLY AS I CAN, TO TRY NOT TO ARGUE AGAINST THE CLIENT. BUT THAT IS, REALLY, WHAT THE MEMORANDUM IS FOR.

YES, COMMITTEE WE DON'T HAVE A PROCEDURE IN THERE TO GIVE THE -- YES, WE DON'T HAVE A PROCEDURE IN THERE TO GIVE THE COURTS ON AN EXPEDITED BASIS, BUT IF WE FILE IT AHEAD OF TIME, THEN THEY SHOULD BE ABLE TO PUT IN THEIR OWN EXPEDITED BASIS AND RULE THEIR OWN DOCKETS THAT WAY. THANK YOU.

MAY IT PLEASE THE COURT. I AM PAULA SANDERS, AND MS. DANIELS AND I ARE HERE, TODAY, REPRESENTING THE PUBLIC DEFENDERS' OFFICE OF THE SECOND JUDICIAL CIRCUIT. WE SUBMITTED COMMENTS TO THE COURT, RAISING ONE CONCERN THAT WE HAD ABOUT AN APPARENT DICHOTOMY BETWEEN THE PROPOSED RULE AND THE COURT'S RECENT OPINION IN MADDOX. AFTER FURTHER REFLECTION, HOWEVER, I HAVE SOME OTHER CONCERNS ABOUT THE PROPOSED RULE, THAT I WOULD LIKE TO RAISE WITH THE COURT.

YOU ARE NOT JUST DEALING WITH THE ANDERS?

I AM DEALING SPECIFICLY WITH THE ANDERS PROCEDURE. FIRST AND FOREMOST --.

CAN I ASK YOU A QUESTION? SINCE YOU FILED BRIEFS HERE, WE HAVE HAD ADMINISTRATIVE ORDERS ON THE FONTS. DOES YOUR OFFICE USE A 14 POINT. HAS THAT BEEN A PROBLEM?

WE USE THE 12 POINT COURIER AND THE 14 POINT TIMES NEW ROMAN INTERCHANGEABLY, AND I AM NOT AWARE OF ANYONE USING ANY OTHER FONTS. I DON'T KNOW, BUT THAT HAS BEEN MY PRACTICE AND, I THINK, THE PRACTICE OF MOST OF THE LAWYERS IN OUR OFFICE. CERTAINLY WE DON'T USE CREATIVE FONTS. I WOULDN'T KNOW HOW TO USE CREATIVE FONTS. WITH REGARD TO THE ANDERS PROCEDURE, IT BAFFLES ME, A LITTLE, WHY WE WOULD WANT TO HAVE TWO DIFFERENT PROCEDURES FOR ANDERS CASES. IF THE GOAL, HERE, IS TO HAVE STATEWIDE UNIFORMITY, WE SHOULD HAVE THE SAME PROCEDURE FOR PRESENTING AN ANDERS CASE TO THE COURT FOR REVIEW, FOR THE SCOPE OF THE COURT'S REVIEW, AS WELL AS FOR THE DISPOSITION AFTER THE REVIEW. BY HAVING A SEPARATE PROCEDURE AND SUGGESTION GRATING THESE PLEA CASES -- AND SEGREGATING THESE PLEA CASES, IT, SOMEHOW, PRESUPPOSES THAT ALL OF THESE ANDERS GUILTY PLEA CASES ARE MERELY APPEALS THAT SHOULD BE DISPOSED OF AS EXPEDITIOUSLY AS POSSIBLE. THAT IS NOT NECESSARILY THE CASE. THERE MAY BE A GUILTY PLEA CASE THAT RAISES SOME ISSUES REGARDING THE TRIAL JUDGE'S FAILURE TO DO AN ADEQUATE PLEA COLLOQUY. OR CONCERNS ABOUT THE VOLUNTARYNESS OF THE PLEA, AND, YET, IT MAY NOT BE PRESERVED. SO YOU HAVE AN APPEAL WITHOUT MERIT, BECAUSE YOU DON'T HAVE A PRESERVED ISSUE ON APPEAL, BUT IT DOESN'T MEAN THAT THE APPEAL IS WHOLELY FRIVOLOUS, AND WHAT MANY ATTORNEYS DO IS THEY WRITE A BRIEF WITH A RAISE OF THAT POTENTIAL ISSUE ON APPEAL, ACKNOWLEDGE THAT IT IS NOT PRESERVED, AND SET THE STAGE FOR THE CLIENT TO, THEN, DO HIS MOTION FOR POSTCONVICTION RELIEF. I DON'T THINK THAT THAT CASE SHOULD BE GIVEN ANY LESS REVIEW, IN A MORE EXPEDITIOUS REVIEW, THAN A TRIAL ANDERS CASE, WHERE YOU HAVE NO PRESERVED ISSUES FOR APPEAL, BUT YET YOU HAVE A VIABLE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. IN BOTH INSTANCES, YOU HAVE UNPRESERVED ISSUES, BUT YOU MAY BE SETTING THE STAGE IN YOUR ANDERS CASE, FOR POSTCONVICTION PROCEEDINGS. THEY SHOULD BE ACCORDED THE SAME TREATMENT. THEY SHOULD BE PRESENTED IN THE SAME WAY. THE OTHER CONCERN THAT WE HAVE ABOUT THIS MEMORANDUM PROCEDURE FOR THE PLEA CASES IS THAT, AS JUSTICE QUINCE NOTED, UNDER SUBSECTION 2-C, IT PROVIDES THAT THE ARGUMENT SHOULD BE LIMITED TO A DISCUSSION OF THE ISSUES IDENTIFIED IN SUBDIVISION B-2-B. WELL, THIS ONLY ASSUMES THE ROBINSON ISSUES, BUT YOU CAN, ALSO, TAKE A GUILTY PLEA WITH THE EXPRESS RESERVATION OF A RIGHT TO APPEAL A LEGALLY DISPOSITIVE ISSUE. THIS DOESN'T ADDRESS WHAT YOU DO IN THAT SITUATION. IF YOU HAVE A DENIAL OF A MOTION TO SUPPRESS, AND YOU ENTER A PLEA RESERVING THE RIGHT TO APPEAL THE DENIAL OF THAT MOTION, DO YOU TREAT IT AS AN ANDERS BRIEF, OR DO YOU TREAT IT AS AN ANDERS MEMORANDUM?

BUT DOESN'T 2, WHICH TALKS ABOUT THE MEMORANDUM, SAY THIS IS APPLICABLE ONLY TO

PLACES WHICH YOU HAVE NOT RESERVED?

IT SAYS WITHOUT RESERVING A RIGHT TO APPEAL. SO, THEN, WHAT YOU HAVE GOT IS TWO PROCEDURES FOR THE GUILTY PLEA ANDERS CASES, ONE WHERE THERE IS A RESERVATION, ONE WHERE THERE IS NOT A RESERVATION. ONE GETS DONE BY BRIEF, ONE GETS DONE BY MEMORANDUM. ANOTHER PROBLEM THAT ARISES FROM THIS IS WHAT DO WE DO WITH THE V.O.P. SITUATION? YOU HAVE GOT VOP THAT IS MAY BE -- YOU HAVE GOT VOP'S WHERE THE VIOLATION IS ADMITTED. IS THAT, THEN, THE EQUIVALENT OF A PLEA AND DO YOU PRESENT THAT IN CONTEXT OF AN ANDERS MEMORANDUM? BUT IF YOU HAVE A VOP THAT IS CONTESTED AND YOU HAVE A HEARING, IS THAT GOING TO BE PRESENTED VIA BRIEF, AS OPPOSED TO A MEMORANDUM? IT IS UNCLEAR FROM THIS RULE, BUT IT SIMPLIVE MAKES NO SENSE TO ME, TO HAVE TWO SEPARATE PROCEDURES. I WOULD LEAVE THAT TO THE CHIEF JUSTICE IN AN EXPEDITED MANNER, YOU WOULD SUBMIT SOMETHING TO US IN WRITING, HOPEFULLY BY THE END OF THE WEEK, SO THAT WE CAN HAVE SOMETHING BEFORE US OTHER THAN YOUR ORAL STATEMENTS TODAY.

I WOULD BE HAPPY TO DO THAT.

DO YOU THINK THE IDEA OF HAVING -- I KNOW THE INTENT, I GUESS, IS TO HELP A GROUP OF PEOPLE --

MY CONCERN IS, WHEN WE CODIFY SOMETHING, IT HASN'T BEEN LOOKED AT AS TO WHETHER, REALLY, THE WHOLE ANDERS PROCEDURE NEEDS TO BE LOOKED AT, AGAIN, AS TO WHETHER PROCEDURES THAT THIS COURT APPROVED ON YEARS AGO, SOME OF THEM MAY NEED REWORKING, AND THIS IS ON THE SAME OF WE ARE JUST GOING TO TAKE SOME CASE LAW THAT EXISTED AND NOW WE ARE GOING TO PUT IT IN A RULE, AND NOW COURT IS PUTTING A STAMP ON THAT RULE, AND SO HAVE YOU GIVEN -- HAS YOUR OFFICE GIVEN THAT ANY THOUGHT?

WELL, ANDERS, AND I AGREE WITH MISS BROOKEHEIMER ON THIS, THAT ANDERS IS A VERY COMPLICATED THING FOR ALL DEFENSE LAWYERS TO DO. IT IS UNIQUE TO THE PUBLIC DEFENDER SYSTEM, AND WE HAVE, ALL, GRAPPLED WITH HOW, BEST, TO PRESENT THESE CASES. NONE OF US LIKE FILING ANDERS BRIEFS BU. I THINK --

-- BUT I THINK THAT --

I AM SURPRISED THAT YOU USED IT TO SET THE STAGE FOR INEFFECTIVE ASSISTANCE. I MEAN, IF A PRIVATE ATTORNEY HAS PRESERVED SOMETHING ON APPEAL, IF YOU RAISED, MAYBE, FUNDAMENTAL ERROR, YOU RAISE T YOU DON'T HAVE THIS VEHICLE. THAT IS SORT OF -- I HAVE NEVER, EVEN, REALLY HEARD THAT.

JUDGE WARNER, IN HER ARTICLE ON ANDERS BRIEFS, HAS POINTED OUT THAT SOME LAWYERS WILL FILE A MERIT BRIEF AND RAISE UNPRESERVED ISSUES, IN THE CONTEXT OF A MERIT BRIEF, TO AVOID ANDERS, WHEREAS OTHER PEOPLE USE THE ANDERS AND ARGUE THOSE UNPRESERVED ERRORS AND ACKNOWLEDGE THAT THEY ARE UNPRESERVED BUT, THEN, ALSO SAY THAT COUNSEL MAY HAVE BEEN INEFFECTIVE FOR FAILING TO PRESERVE THEM. TO ME THAT IS THE BEST WAY OF REPRESENTING MY CLIENT, IS TO LET HIM KNOW THAT HE MAY HAVE A VIABLE ISSUE HERE, BUT IT IS NOT VIABLE ON A DIRECT APPEAL. IT IS VIABLE IN A POSTCONVICTION CONTEXT. AND THERE ARE SOME CASES THAT YOU JUST DON'T HAVE ANY ISSUES. WHETHER WE SHOULD RELOOK THE ENTIRE ANDERS PROCEDURE, WE HAVE A WORKABLE PROCEDURE, I THINK, IN THE FIRST DISTRICT. THE COURTS HAVE BEEN SATISFIED WITH THE FORMAT THAT WE USE FOR OUR ANDERS BRIEFS. ONE OF THE THINGS THAT WE DO DIFFERENT FROM WHAT IS PROPOSED IN THE RULES IS, CERTAINLY, WE DON'T INCLUDE ALL OF THIS INFORMATION IN OUR SUMMARY OF THE ARGUMENT. I CERTAINLY DON'T INVITE THE COURT TO RETURN A BRIEF TO ME. IF THE COURT FINDS ARGUABLE ISSUES, THAT IS A DISPOSITION THAT THE COURT CAN DO, BUT I FEEL UNCOMFORTABLE, PUTTING THAT INTO MY SUMMARY OF THE ARGUMENT AND INVITING THE COURT TO DO THAT. WE DO NOT STATE THE ISSUES RAISED IN THE BRIEF. WE STATE THE ISSUES

IDENTIFIED IN THE RECORD, AND THEN WE DON'T HAVE AN ARGUMENT SECTION. WE HAVE A SECTION THAT IS CAPTIONED "DISCUSSION", RATHER THAN AN ARGUMENT, AND THAT IS WHAT INCLUDES THE -- CLUES THE COURT INTO THE FACT THAT THIS HAS BEEN AN ANDERS BRIEF. THAT IS AN ACCEPTABLE PRACTIS IN THE FIRST DISTRICT. I HAVE BEEN TOLD THAT THAT IS, ALSO, AN ACCEPTABLE PRACTICE IN THE THIRD AND FOURTH DISTRICTS. THIS SUND THE ANDERS BRIEF, AND IT WAS SUBSECTION E, WHERE IT SECTION AN ARGUMENT CONSISTING OF A DISCUSSION OF ANYTHING IN THE RECORD. WE CAPTION IT "DISCUSSION", AND WE DISCUSS ANY ISSUES THAT HAVE BEEN IDENTIFIED, RATHER THAN --

YOU DON'T DESIGNATE THE BRIEF, AT THE OUTSET, AS BEING FILED PURSUANT TO THE ANDERS CASE?

THAT IS NOTED IN THE SUMMARY OF THE ARGUMENT, AND IT IS NOTED IN WHAT WOULD NORMALLY BE AN ARGUMENT PORTION, BUT, YET, IT SAYS DISCUSSION, AS OPPOSED TO ARGUE UNIT.

BUT NOT IN THE INTRODUCTION.

I THINK THAT IS A MATTER OF INDIVIDUAL PRACTICE.

HOW ABOUT THE TITLE PAGE?

I DO NOT DO IT IN A TITLE PAGE. THE COURTS HAVE NEVER ASKED US TO DO IT IN THE TITLE PAGE. IT JUST SAYS "INITIAL BRIEF OF APPELLANT", LIKE ANY OTHER BRIEF WOULD. I DON'T SEE A PROBLEM WITH SAYING AN INITIAL BRIEF PURSUANT TO ANDERS. I DON'T HAVE TROUBLE WITH DOING THAT. IF WE ARE TRYING TO ALERT THE COURT OF THE NATURE OF THE BRIEF, WE CAN CERTAINLY DO THAT.

SOME PUBLIC DEFENDERS OIFSZ DO THAT.

-- SOME PUBLIC DEFENSERS' OFFICES DO THAT.

BUT WE HAVE A WORKABLE AGREEMENT IN THE FIRST DISTRICT, AND THERE DOESN'T SEEM TO BE A PROBLEM WITH THAT. IN TERMS OF THE ANDERS PROCEDURE, I THINK THAT BOTH FORRESTER AND CAUSEY HAVE PROVIDED GOOD GUIDANCE FOR COUNSEL AND THE COURTS AND WE SHOULD ADHERE TO THEM.

I AM JUST CURIOUS. WHY DON'T YOU LAY IT OUT, READING THAT THIS IS MANDATORY. DO YOU FEEL THAT THAT WORKS AGAINST YOU?

NO. THE COURT KNOWS IT IS AN ANDERS BRIEF, SO I DON'T HAVE ANY PROBLEM DOING THAT. I DO HAVE A PROBLEM WITH SOME HOW DENIGRATING THE PLEA CASES BY FILE AGO MEMORANDUM VERSUS A BRIEF. I HAVE A LOT OF PROBLEMS WITH THAT. ARE THERE ANY OTHER QUESTIONS?

I HAVE GOT ONE.

YES. ABOUT ANYTHING.

ONE OF THE QUESTIONS IS THAT THERE IS A WHOLE DEAL, NOW, ON BOTH POSTCONVICTION AND 3.8 ON 0 AND 3.850 -- ON 3.800 AND THEN 3.850, INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. THIS RULE DOES NOT APPLY TO CASES IN WHICH THE DEATH PENALTY WAS IMPOSED, YET THERE IS SOME PROVISIONS IN THE RULE ABOUT WHAT SHOULD BE CONTAINED IN THAT INEFFECTIVE ASSISTANCE PETITION THAT MAY NOT BE ANYWHERE ELSE IN THE RULE. WAS THAT -- AGAIN, THIS WAS NOT YOUR COMMITTEE, BUT DO YOU SEE -- ARE YOU FAMILIAR WITH THAT PORTION?

NO. I AM NOT PREPARED TO ADDRESS. THAT PERHAPS MISS DANIELS CAN. ALL RIGHT. BY THE WAY, I AM NOT ON THE APPELLATE RULES COMMITTEE.

I REMEMBER THAT, AFTER I STARTED ASKING YOU.

THANK YOU VERY MUCH.

THANK YOU.

MISS DANIELS, DO YOU HAVE ANYTHING FOR THE COURT?

YOUR HONOR, I WOULD JUST SAY, BRIEFLY, THAT THREE OF THE FIVE APPELLATE PUBLIC DEFENDERS CONCUR WITH THE POSITION THAT MISS SAUNDERS HAS JUST OUTLINED, CONCERNING THE PROPOSED CHANGE IN ANDERS PROCEDURES.

THAT IS CONCURRED THAT THERE SHOULDN'T BE TWO SEPARATE PROCEDURES?

CORRECT. YES. THANK YOU.

THANK YOU VERY MUCH. I BELIEVE YOU HAVE USED UP ALL OF YOUR TIME, BUT I WILL GIVE YOU ONE MINUTE, IF YOU HAVE GOT SOMETHING THAT YOU CAN DO IN THAT PERIOD OF TIME.

I WILL WORK AS FAST AS I CAN. AGAIN, THE IDEA, YOU KNOW, IF WE DON'T SPREAD THESE PROCEDURES OUT, SEPARATE THEM OUT, IT WILL TAKE TEN MONTHS TO A YEARLONGER TO GET RID OF GUILTY PLEAS. LEONARD IS NOT GOING TO HELP US ON THAT. I PERSONALLY BELIEVE THAT MY CLIENTS WOULD BE BETTER SERVED, THE FASTER I CAN GET THEM OUT OF THE APPEAL PROCESS AND BACK INTO THE 3.850 PROCESS. EVERYTHING MISS SAUNDERS SAYS, I AGREE WITH, EXCEPT FOR THE FACT THAT SHE JUST DOESN'T WANT TO SEE A MEMORANDUM PROCESS USED, AND I WANT TO SEPARATE IT OUT AND MY COMMITTEE WANTED TO SEPARATE IT OUT FORM.

THAT, REALLY, SHOULD BE AN OVERALL POLICY FOR ANDERS CASES, GENERALLY, SHOULD IT NOT?

I BELIEVE SO. HOW ELSE DO YOU IDENTIFY THE PLEAS FROM THE NONPLEAS? HOW ELMS DO YOU -- HOW ELSE DO YOU DO THIS? YES, I MIGHT WANT TO PUT IN THERE THAT MY CLIENT HAD A PROBLEM WITH THE PLEA AND IT WASN'T A VERY WELL TAKEN PLEA, BUT IF HE HASN'T MOVED FOR RECALL -- WITHDRAWAL, THERE IS NOTHING I CAN DO FOR THIS GUY. HE HAS GOT TO FILE 3.8.

, AND THE SOONER THAT IS BACK IN THERE, WHY SHOULD THIS TAKE THREE YEARS OR A YEAR AND-A-HALF? I GUARANTEE YOU THAT A GUILTY PLEA WILL WIND UP IN THE POOL WITH EVERYTHING ELSE AND WILL BE PUT ON THE COURT'S DOCUMENT. FOUR OR SIX MONTHS LATER IT WILL TAKE TO GET THESE THINGS OUT.

THANK YOU, EACH AND EVERYONE, VERY MUCH, AND THANK THE COMMITTEE FOR US FOR ITS DILIGENT WORK. WE WILL ADJOURNED UNTIL TOMORROW MORNING AT NINE O'CLOCK. THE MARSHAL: PLEASE RISE.