Amendments to Rules Regulating The Florida Bar

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. AS YOU CAN SEE, OUR MARSHAL IS GIVING HIS ALL, AND WE APPRECIATE HIS BEING HERE, EVEN THOUGH HIS VOICE IS ELSEWHERE OBVIOUSLY, SO THE FIRST CASE THAT WE HAVE ON THE ORAL ARGUMENT CALENDAR THIS MORNING IS THE AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR. MR. RUSSELL.

IF IT PLEASE THE COURT. GOOD MORNING. TERRENCE RUSSELL, PRESIDENT OF THE FLORIDA BAR. WE ARE HERE THIS MORNING AND HAPPY NEW YEAR. WE ARE HERE THIS MORNING TO DEAL WITH THE BAR'S ANNUAL FILING OF CONSOLIDATED AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR ALL OF WHICH ARE PROPERLY READIED FOR FINAL COURT ACTION THIS MORNING. I HAVE BROUGHT, WITH ME, REPRESENTATIVES OF THE BAR. I WOULD LIKE TO INTRODUCE THEM TO THE COURT AND ADVISE THE COURT OF THEIR AVAILABILITY TO RESPOND TO ANY PARTICULAR ISSUES THE COURT MAY WISH TO DEAL WITH, WITH RESPECT TO THIS RULES PACKAGE. MANY OF THE PROPOSED RULES AMENDMENTS ARE MORE TECHNICAL THAN SUBSTANTIVE, BUT THERE ARE A FEW THAT WE ANTICIPATED THE COURT MIGHT HAVE SOME QUESTIONS ABOUT. THERE IS ONE IN PARTICULAR THAT, COINCIDENTALLY BACK IN 1987, I WAS THE CHAIR OF A COMMITTEE THAT PROPOSED THE RULES 4-5.3 AND 10.2, WHICH ARE HERE BEFORE YOU, AND I WILL RESPOND TO ANY QUESTIONS THE COURT MIGHT HAVE THIS MORNING REGARDING THOSE PROPOSED RULES, REGARDING THE PARALEGAL INDUSTRY IN FLORIDA, BUT WITH ME, AS WELL, I HAVE SEVERAL OTHER REPRESENTATIVES OF THE BAR, WHICH I WOULD LIKE TO POINT OUT TO THE COURT, IN CASE THE COURT MIGHT HAVE ANY QUESTIONS TO ADDRESS TO THEM. OF COURSE WITH ME AT COUNSEL TABLE IS PAUL HILL, THE FLORIDA BAR GENERAL COUNSEL. I, ALSO, HAVE TONY BOGS, DIRECTOR OF THE FLORIDA BAR LEGAL DIVISION AND MARY ELLEN BATEMAN, DIRECTOR OF THE FLORIDA BAR LEGAL DIVISION, AND EXECUTIVE DIRECTOR JACK HARKNESS. LIKEWISE A PUBLIC MEMBER, MR. MICHAEL SEMINARIO IS HERE. ADDITIONALLY, TO RESPOND TO THE COURT'S QUESTIONS, MR. ROBERT BRUSH, WHO IS THE CHAIR OF THE DISCIPLINARY PROCEDURES COMMITTEE OF THE FLORIDA BAR, WHO IS HERE TO DEAL WITH RULE 4-1.9, DAVID BIANCHI, WHO WAS THE CHAIR OF THE FLORIDA BAR'S INSURANCE PRACTICES SPECIAL STUDY COMMITTEE, IS HERE TO DEAL WITH 1.408 AND THE ANSWER LATER BUSINESS RULE -- AND THE ANCILLARY BUSINESS RULE, AND MR. SHANE MUNOZ, WHO IS THE VICE-CHAIR OF THE COMMITTEE STANDING ON ADVERTISING, AND I WILL RESPOND TO ANY QUESTIONS THAT THE COURT MIGHT HAVE WITH REGARD TO RULES 4-5.3 AND 10-2.1 AND IF IT IS ACCEPTABLE TO THE COURT, WE WILL, OF COURSE, BE PREPARED, I WOUD LIKE TO SAVE A LITTLE BIT OF TIME FOR ANY RESPONSES THAT WE MIGHT HAVE. THERE ARE SOME COMMENTORS HERE, BUT WE ARE PREPARED TO ANSWER ANY QUESTIONS THAT THE COURT --

DO WE HAVE ANY RESPONSE WITH RESPECT TO RULE 4-5.7.

YES. THAT WILL BE ELIZABETH TARBERT. I ASK HER TO COME FORWARD. , ELIZABETH.

YOU HAVE SEEN THE RESPONSE OF MR. CHINARIS, FOR INSTANCE, AND COULD YOU COMMENT BRIEFLY WITH REGARD TO HIS RESPONSE ABOUT THE SAFEGUARD HERE, WRITTEN.

YES, YOUR HONOR. THIS COURT HAS VERY RARELY IMPOSED A REQUIREMENT THAT DISCLOSURE CONSENT BE IN WRITING AND THE SPECIAL COMMITTEE THAT LOOKED AT THIS ISSUE SPENT

QUITE A BIT OF TIME DISCUSSING THE ISSUE OF WHETHER OR NOT THE DISCLOSURE THAT THE ATTORNEY/CLIENT RELATIONSHIP AND THE PROTECTIONS THAT IT AFFORDS WAS NOT GOING TO EXIST IN A BUSINESS RELATIONSHIP WITH A CLIENT OR WITH A NONCLIENT, AS THE DAY MAY BE, AND, OF COURSE, THE FLORIDA BAR PREFERS THAT ANY SUCH DISCLOSURE BE IN WRITING AND, IN FACT, THE RULE, ITSELF, SAYS THAT THAT DISCLOSURE SHOULD PREFERABLY BE IN WRITING. HOWEVER, THE COMMISSION FELT THAT IT WAS, IT WOULD BE A REAL BURDEN ON LAWYERS, AND IT WOULD BE INAPPROPRIATE TO DISCIPLINE A LAWYER WHO WOULD ACTUALLY PROVIDE A FULL DISCLOSURE TO A PERSON THAT THEY WERE NOT GOING TO GET THE PROTECTIONS OF AN ATTORNEY CLIENT RELATIONSHIP, MERELY BECAUSE THEY DID NOT MEMORIALIZE THAT IN WRITING.

AS WE DEAL WITH THE MULTIPRACTICE ISSUE WHICH HAS EMERGED HERE, WHY WOULDN'T IT BE A BETTER PRACTICE FROM THE OUTSET, WHEN WE ARE DEALING OBVIOUSLY WITH A BALLPARK ISSUE RELATED TO THAT, TO HAVE THE SAFEGUARD OF THE WRITTEN DISCLOSURE?

IT ABSOLUTELY WOULD BE A BETTER PRACTICE FOR THE LAWYER TO MAKE SUCH A DISCLOSURE IN WRITING. THE ISSUE IS WHETHER OR NOT THE COURT WOULD DISCIPLINE A LAWYER FOR FAILING TO MEMORIALIZE SOMETHING IN WRITING, IF THEY, IN FACT, MADE ALL THOSE DISCLOSURES TO THE PERSON AND COULD ESTABLISH THAT THEY HAD DONE SO.

ARE YOU PREPARED TO DISCUSS, AT ALL, THE PROPOSED AMENDMENT FOR EXTENDING THE TIME FOR FILING A PETITION OF REVIEW FROM 15 DAYS TO 60 DAYS?

THAT WOULD BE MR. BRUSH.

OKAY.

ALTHOUGH THERE DOESN'T SEEM TO BE ANY COMMENT ABOUT IT, THERE DOESN'T SEEM TO BE ANY RATIONALE FOR EXTENDING THE TIME TO 60 DAYS. GENERALLY WITH NOTICES OF APPEAL AND ET CETERA, THERE IS A 30-DAYTIME PERIOD, AND I AM WONDERING WHY IN THIS SITUATION WE WANT TO EXTEND IT TO 60 DAYS.

YES, YOUR HONOR. MY TIME IS IN TRYING TO GIVE A REASONABLE TIME PERIOD IN WHICH THE BAR CAN HAVE THE MATTER REVIEWED AND THE APPEAL FROM THE BAR'S PERSPECTIVE, SO THE 60 DAYS IS FOR THE BAR'S POSITION. E MEET AROUND THE STATE OF FLORIDA SIX TIMES PER YEAR, AND THAT IS WHY THE 60 DAYS WAS PROPOSED.

MR. RUSSELL, I HAVE A QUESTION REGARDING 5.3, AND THE COMMENTS WERE MADE IN THAT REGARD. HOW WOULD THIS PROPOSAL AFFECT THOSE PARALEGALS AND LEGAL ASSISTANTS WHO ARE PERMITTED TO PROVIDE SOME SERVICES DIRECTLY TO THE PUBLIC NOW, WITHOUT LAWYER SUPERVISION?

YOUR HONOR, THE PROPOSAL IS INTENDED TO DEAL WITH A CONTINUING AND GROWING PROBLEM THAT THE BAR CALLED TO OUR ATTENTION IN 1997, WHEN WE WERE DEALING WITH THIS ISSUE OF MISLEADING PERCEPTIONS OR OF THE POTENTIAL AND THE ACTUALITY OF THE PUBLIC BEING MISLED BY THE USE OF THE TERM PARALEGAL OR LEGAL ASSISTANT BY AN INDIVIDUAL WHO IS NOT WORKING UNDER THE SUPERVISION OF AN ATTORNEY. AS THE COURT IS AWARE, FROM THE SUBMISSION THAT WE MADE, THERE IS A SIGNIFICANT MISPERCEPTION ON THE PART OF THE PUBLIC THAT A PARALEGAL OR LEGAL ASSISTANT OR LEGAL TECHNICIAN, AS MUCH AS 97 PERCENT IN SOME SEGMENTS, BELIEVE THAT THESE INDIVIDUALS ARE FORMALLY TRAINED, PERHAPS LICENSED AND OPERATING UNDER THE SUPERVISION OF A LAWYER. THERE IS THE POTENTIAL FOR INDIVIDUALS WHO ARE CERTIFIED AND WELL TRAINED AND WELL-INTENTIONED TO NOT BE ABLE TO USE THAT TITLE, IF THEY ARE NOT WORKING UNDER THE SUPERVISION OF AN ATTORNEY, BUT WE BELIEVE THERE IS A FAR GREATER POTENTIAL FOR PUBLIC HARM, BY PERMITTING THIS PRACTICE TO CONTINUE. IN 1999, THROUGH 2002, THROUGH 2001, BECAUSE

FISCAL YEAR 2000 2 IS NOT COMPLETED YET, THE BAR'S SUMMARIES OF INFORMATION INDICATE THAT ABOUT 25 PERCENT, SOMETIMES MORE THAN 25 PERCENT OF THE UPL COMPLAINTS WE GET ARISE FROM THIS AREA, PEOPLE BELIEVING THAT THE CONTACT THEY HAVE MADE WITH THESE PARALEGALS IS SOMEHOW REGULATED BY THE PROFESSION OR BY THE STATE, AND QUITE OFTEN WE HAVE TO TELL THEM THAT THERE IS LITTLE THAT WE CAN DO AND WHATEVER HARM THEY HAVE SUFFERED, THERE IS NO REMEDY THROUGH THE BAR, SO THE PURPOSE OF THE PROPOSED AMENDMENTS TO THE RULE WAS TO ELIMINATE THE USE OF THE TERM PARALEGAL OR LEGAL TECHNICIAN BY ONE WHO IS NOT SUPERVISED BY A LAWYER, SO THAT IN FACT PUBLIC PERCEPTIONS COME INTO LINE WITH REALITY. THEY CONTINUE TO PRACTICE THEIR PROFESSION OR THEIR PARAPROFESSION, BY SIMPLY CALLING THEMSELVES WHAT I THINK THE COURT INTENDED THEY CALL THEMSELVES, WHICH IS DOCUMENT PREPARATION SPECIALISTS, WHICH MANY OF THEM HAVE STARTED, BASED UPON MY OWN OBSERVATION AS I DRIVE UP AND DOWN THE STREET, MANY OF THEM NOW ARE SWITCHING THEIR STORE FRONT TO AN ACCURACY WHICH IS DOCUMENT PREPARATION SPECIALIST, WHICH IS, I THINK, WHAT THE COURT INTENDED THEM TO BE.

THANK YOU.

I WOULD LIKE TO ASK SOMEONE A QUESTION ABOUT 4-1.9 AND THIS GENERALLY-KNOWN DEFINITION AS TO WHETHER THAT, WHY DO WE NEED THE DEFINITION AND IS THAT DEFINITION GOING TO LEAD TO FURTHER LITIGATION AS TO WHAT AUTHORIED PROCESSES FOR DISCOVERY OF EVIDENCE MEANS.

THANK YOU, YOUR HONOR. MR. BRUSH WILL RESPOND TO THAT.

MAY IT PLEASE THE COURT. MY NAME IS ROBERT BRUSH. THE PURPOSE OF THE AMENDMENT, AND THIS IS A RULE REGARDING A LAWYER PREVIOUSLY REPRESENTING A CLIENT AND THEN TAKING AN ADVERSE POSITION TO THEM LATER. THE PURPOSE OF THE AMENDMENT TO THE RULE WAS FOR CLARITY PURPOSES, AND SO WHAT HAS BEEN DONE IS GENERALLY KNOWN HAS BEEN DEFINED AS TWO THINGS. ONE WOULD BE PUBLIC RECORDS. OR THROUGH AUTHORIZED PROCESSES FOR DISCOVERY OF EVIDENCE. AND THE WHOLE PURPOSE OF THAT IS IT IS DEFINEABLE. IT IS CODIFYABLE.

DO YOU MEAN, BY AUTHORIZED PROCESSES, THINGS THAT WOULD BE IN THE PUBLIC RECORD, SUCH AS INTERROGATORIES AND THAT TYPE OF DISCOVERY, OR DOES IT EXTEND TO INVESTIGATION, WHICH WOULD BE SOMETHING THAT MIGHT BE CONFIDENTIAL?

-- CONFIDENTIAL? BECAUSE AUTHORIZED PROCESSES DOESN'T REALLY CON NOTE THAT IT IS REALLY SOMETHING THAT ANYONE COULD -- IS THE INTENT TO THAT THIS INFORMATION THAT ANYONE WOULD HAVE ACCESS TO?

AS FAR AS PUBLIC RECORDS YES. AUTHORIZED PROCESSES DO REFER TO RULES OF COURT, RULES OF EVIDENCE AND STATUTES, SO IT COULD CONCEIVABLY BE DISCOVERY THAT TOOK PLACE IN A PRIOR ACTION, WHEN THE CLIENT WAS BEING REPRESENTED BY THE ATTORNEY, OR IT COULD CONCEIVABLY BE SUBSEQUENT DISCOVERY ABOUT A FACT THAT IS GENERALLY KNOWN.

SO THAT IT WOULDN'T INCLUDE SOMETHING THAT WOULD HAVE BEEN AN INVESTIGATION THAT THE ATTORNEY WOULD HAVE CONDUCTED FOR THE CLIENT THAT WASN'T MADE AVAILABLE IN THE COURSE OF THE PRIOR LITIGATION.

CORRECT. THE ONLY WAY TO GET TO THAT INFORMATION WOULD BE IF IT WAS EITHER PUBLIC RECORD OR IF IT WAS GENERALLY KNOWN, AND THEN THE ATTORNEY WOULD HAVE TO ESTABLISH THAT IN SUBSEQUENT DISCOVERY, AND THE WHOLE PURPOSE OF IT IS SO THAT THERE IS NO DISADVANTAGE TO THE CLIENT, THE FORMER CLIENT, AND THE ATTORNEY NOW OPPOSING THEIR INTEREST, AND BASICALLY THAT PUTS THE ATTORNEY ON THE SAME FOOTING AS

SOMEBODY WHO NEVER REPRESENTED A FORMER CLIENT, BECAUSE HE IS ONLY ACTING OR SHE IS ONLY ACTING AS A REASONABLY-PRUDENT ATTORNEY WOULD, IN SDOFERING THE INFORMATION. -- IN DISCOVERING THE INFORMATION.

WHO COULD RESPOND TO A QUESTION ABOUT RULE 5-1.2? THIS IS THE RULE CONCERNING DELETING THAT PART OF THE RULE THAT REQUIRES TRUST ACCOUNTS TO BE MAINTAINED IN FLORIDA FINANCIAL INSTITUTIONS.

MR. BOGGS, YOUR HONOR.

OKAY. I AM JUST WONDERED ERING -- I AM JUST WONDERING WHAT IS THE POINT OF DELETING THAT, AND HOW WOULD THAT AFFECT TRUST ACCOUNT INVESTIGATIONS THAT I KNOW THE BAR DOES ON A REGULAR BASIS?

GOOD MORNING AGAIN. WHAT IS HAPPENING NOW IS MANY TRUST ACCOUNTS AND MANY BANKS ARE WRITTEN ON CHECKS THAT ARE ACTUALLY WRITTEN THROUGH ANOTHER PROXY BANK AT A DIFFERENT LOCATION, SO YOU WILL HAVE THE FIRST BANK OF TALLAHASSEE, FOR EXAMPLE, THAT MIGHT ACTUALLY HAVE THE CHECKS ISSUED THROUGH A COLORADO OR MICHIGAN BANK, AND THAT OCCURRING NOW AND WE DON'T HAVE ANY DIFFICULTY OF THE FACT OF BEING ABLE TO FIND THE RECORDS THAT ARE APPROPRIATE IN DETERMINING THE TRUE STATUS OF A TRUST ACCOUNT, SO WHAT WE ARE TRYING TO DO IS TAKE OUR RULES AND PUT THEM IN COMPLIANCE WITH WHAT THE INDUSRY IS DOING NOW AND BRING OUR RULES MORE CURRENT AND CODIFY WHAT IS A INDUSTRY WIDE PRACTICE. WE HAVE STUDIED THIS WITH OUR STAFF AUDITORS AND HAVE CONDUCTED SEVERAL AUDITS UNDER THESE CIRCUMSTANCES AND DO NOT HAVE ANY DIFFICULTY OF APPLYING THE RULES, AS THEY CURRENTLY ARE TO THAT PRACTICE. MR. CHIEF JUSTICE

THANK YOU. THOSE WHO HAVE COMMENTS PETAINIG TO THE RULES, MS. McCLOUD, ARE YOU GOING TO PROCEED FIRST, OR MR. CHINARIS. PLEASE BE MINDFUL OF THE DIVISION OF YOUR TIME, IF YOU ARE GOING TO DIVIDEYOUR TIME.

MAY IT PLEASE THE COURT. MY NAME IS TIM CHINARIS, AND I AM A FLORIDA BAR MEMBER WHO RESIDES IN VIRGINIA. I FILED COMMENTS REGARDING THREE OF THE RULES TODAY. I WAS GOING TO FOCUS MY REMARKS, UNLESS THE COURT HAS QUESTIONS, ON 4-7.2 AND 4-1.9. FIRST ADVERTISING RULE, 4-7.2, HERE THE BAR PROPOSES TO EXTEND THE SAFE HARBOR OF INFORMATION THAT MAY HAVE INCLUDEDED IN A LAWYER'S -- THAT MAYBE INCLUDEDED IN A LAWYER'S AD, WITHOUT REQUIRING THAT THAT FEE BE PAID TO THE BAR AND FILED. THAT IS CONCERNING RELEVANT INFORMATION NOT RELEVANT TO PROSPECTIVE CLIENTS. BROADENING IS A GOOD IDEA BUT AS IT IS WRITTEN IT IS TOO NARROW. IT IS UNFAIR TO CLIENTS AND UNFAIRLY BURDENS OUT-OF-STATE BAR MEMBERS AND LEAVES THE BAR OPEN TO A CONSTITUTIONAL ATTACK. THE BAR'S CURRENT SAFE HARBOR PROPOSAL INCLUDES DATES OF ADMISSION TO THE FLORIDA BAR AND TO ANY OTHER BARS, BUT LIKE ADMISSION TO OTHER BARS, I BELIEVE THAT FACTUAL INFORMATION ABOUT A LAWYER'S LEADERSHIP POSITIONS IN THOSE OTHER BARS SHOULD BE WITHIN THE SAE HARBOR AS WELL. SO SHOULD A LAWYER'S LEADERSHIP POSITIONS IN LEGITIMATE LEGAL ORGANIZATIONS LIKE THE ABA. AS AN EXAMPLE, THE BAR WOULD BELIEVE THAT A LAWYER WHO IS A CRIMINAL DEFENSE LAWYER COULD INCLUDE, AS RELEVANT INFORMATION THE FACT THAT THE LAWYER WAS A MEMBER OF THE BAR'S CRIMINAL LAW SECTION. BUT ISN'T THE FACT THAT THAT SAME LAWYER MIGHT HAVE BEEN PAST PRESIDENT OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, ALSO, RELEVANT INFORMATION TO A CLIENT? I WOULD SUBMIT, IN FACT, THAT THIS TYPE OF INFORMATION IS PROBABLY MORE RELEVANT THAN A PAST LEGAL JOB THAT A LAWYER HELD YEARS AGO IN ANOTHER STATE, WHICH WOULD BE SAFE HARBOR INFORMATION, UNDER THE BAR'S PROPOSED RULE.

WELL, DOES THE BAR RESPOND BY SAYING THAT IT IS BECAUSE THEY COULD, THIS INFORMATION MAY NOT BE READILY AVAILABLE TO THEM TO VERIFY?

YES, YOUR HONOR. THE BAR DID, IN ITS REPLY TO MY COMMENT, RAISE THE ISSUE OF ADMINISTRATIVE BURDEN ON THE BAR. THE BAR SUGGESTED THAT IT COULD MORE EASILY VERIFY FLORIDA BAR INFORMATION THAN OTHER INFORMATION, BUT I DON'T BELIEVE THAT THIS JUSTIFICATION IS CONVINCING, BECAUSE THE BAR, FOR ONE, DOES NOT ROUTINELY CHECK THE ACCURACY OF FACTUAL INFORMATION CONTAINED IN LAWYER LAWYER'S ADS, AND, ALSO, THIS JUSTIFICATION IS REALLY AT ODDS WITH THE BAR'S OWN PROPOSAL, BECAUSE THE PROPOSED RULE WOULD EXTEND SAFE HARBOR PROTECTION TO FORMER POSITIONS OF EMPLOYMENT HELD IN THE LEGAL PROFESSION IN ANY STATE, AND I WOULD BELIEVE THAT THAT WOULD BE MORE DIFFICULT TO CHECK THAN A LAWYER'S BAR MEMBERSHIP IN ANOTHER BAR ORGANIZATION. I THINK, ALSO, THAT THE RULE UNFAIRLY BURDENS OUT-OF-STATE BAR MEMBERS WHO MAY BE ACTIVE IN MORE THAN ONE BAR. THIS IS THE TYPE OF INFORMATION THEY WOULD TYPICALLY WANT TO INCLUDE IN ANY ADVERTISEMENTS OR MARKETING STRATEGIES AND A LAWYER WHO IS ACTIVE IN MORE THAN ONE STATE WOULD BE UNFAIRLY BURDENED BY HAVING TO FILE AN AD FOR REVIEW, SIMPLY BY INCLUDING THOSE OUT-OF-STATE LEADERSHIP ACTIVITIES. I AM, ALSO, PARTICULARLY CONCERNED THAT THE PROPOSAL LEAVES THE BAR OPEN TO A CONSTITUTIONAL ATTACK. THE RECENT ELEVENTH CIRCUIT CASE OF THE FLORIDA BAR VERSUS MASON HIGHLIGHTS THE FACT THAT THE BAR BEARS THE BURDEN OF JUSTIFYING RESTRICTIONS ON TRUTHFUL NONMISLEADING LAWYER ADVERTISING AND IN THAT CASE, THE BAR'S ATTEMPT TO REQUIRE A DISCLAIMER IN AN AD WAS STRUCK DOWN AS UNCONSTITUTIONAL. THE U.S. SUPREME COURT'S YBANIA SPECIFICALLY HOLDS THAT THE BAR DOES NOT JUSTIFIABLY RELIEF ITS RESTRICTIONS JUST BECAUSE IT COMPLETED AN APPLICATION. HERE THE BAR RELIES ON TRUTHFUL INFORMATION BY REQUIRING PAYMENT OF A $100 FEE AND FILING TO THE BAR. IMPORTANTLY THE BAR HAS PRODUCED NO RECORDS JUSTIFYING THIS RESTRICTION, AND I WOULD SUBMIT THAT THE BAR HAS NOT MET THE BURDEN THAT IS IMPLIED BY THE U.S. SUPREME COURT'S CASE LAW. I WOULD, ALSO, LIKE TO ADDRESS RULE 4-1.9-B, HERE WHERE THE LAWYER ATTEMPTS TO USE INFORMATION ABOUT A FORMER CLIENT TO THE FORMER CLIENT'S DISADVANTAGE. UNDER THE EXISTING RULE, A LAWYER IS PERMITTED TO USE GENERALLY KNOWN INFORMATION AGAINST A FORMER CLIENT. THAT IS THAT IF THE INFORMATION IS GENERALLY KNOWN, ANY LAWYER WOULD HAVE ACCESS TO IT, BUT THE EXISTING RULE DOES NOT DEFINE GENERALLY KNOWN, AND THE BAR HAS PROPOSED A DEFINITION HERE. THE BAR'S DEFINITION MIGHT BE HELPFUL, BUT I WOULD SUBMIT THAT IT DOES NOT ACHIEVE THE NEEDED CLARITY FOR TWO REASONS. ONE, UNDER THE BAR'S DEFINITION, ANY PUBLIC RECORD INFORMATION THAT A REASONABLY PRUDENT LAWYER WOULD OBTAIN WOULD BE CONSIDERED GENERALLY KNOWN AND COULD BE USED AGAINST THE FORMER CLIENT, BUT CASE LAW TELLS US THAT NOT ALL PUBLIC RECORD INFORMATION HAS BEEN CONSIDERED GENERALLY KNOWN, JUST BECAUSE SOMETHING IS TECHNICALLY A PUBLIC RECORD, DOES NOT MEAN THAT ANY LAWYER WHO IS A STRANGER TO THE CASE WOULD BE LIKELY TO FIND IT. THE REAL QUESTION IS WHETHER A LAWYER WHO HAS NEVER REPRESENTED THAT CLIENT WOULD FIND THAT PARTICULAR PUBLIC RECORD. IT MIGHT BE VIEWED AS A BUT-FOR TEST. BUT FOR HAVING REPRESENTED THAT FORMER CLIENT, WOULD THE LAWYER TYPICALLY FIND THAT INFORMATION. IF SO, THAT INFORMATION SHOULD BE CONSIDERED GENERALLY KNOWN. OTHERWISE IT SHOULD NOT. SECOND, UNDER THE BAR'S DEFINITION, ANY INFORMATION THAT A PRUDENT LAWYER WOULD OBTAIN THROUGH AUTHORIZED PROCESSES FOR DISCOVERY OF EVIDENCE WOULD, ALSO, BE CONSIDERED GENERALLY KNOWN, BUT I THINK HIS ART OF THE DEFINITION IS TOO RESTRICTIVE, BECAUSE IT SEEMS TO REQUIRE THAT A LAWYER GO THROUGH FORMAL DISCOVERY-RISK DISCIPLINE DISCIPLINE. PERHAPS THE INFORMATION IN QUESTION WOULD BE DISCOVERED BY ANY COMPETENT LAWYER WHO HAD NEVER REPRESENTED THE CLIENT, SIMPLY BY CONDUCTING SOME INFORMAL INTERVIEWS.

IT WOULD SEEM THE PROBLEM WOULD ARISE IN GENERALLY KNOWN. COULD YOU GIVE ME AN EXAMPLE OF THAT.

AN EXAMPLE MIGHT BE INFORMATION THAT IS COMMON KNOWLEDGE TO A FORMER CLIENT'S BUSINESS ASSOCIATES, FOR EXAMPLE. ANY PRUDENT LAWYER WHO WAS IN A POSITION OF NOW OPPOSING THAT PARTICULAR 6 -- THAT PARTICULAR FORMER CLIENT WOULD INTERVIEW PEOPLE IN CONNECTION WITH THE FORMER CLIENT AND WOULD DISCOVER INFORMATION, SO THERE IS NO ADVANTAGE JUST BECAUSE THE LAWYER REPRESENTED THE FORMER CLIENT. THE IDEA IS THE INFORMATION WOULD BE OUT THERE FOR ANY LAWYER, NOT JUST ONE WHO REPRESENTED THE FORMER CLIENT. SECONDLY, WITH REGARD TO PUBLIC RECORD, IF THE LAWYER KNEW THAT PARTICULAR INFORMATION WAS OUT THERE, SOLELY AS A RESULT OF HAVING REPRESENTED THE CLIENT, IT WOULD SEEM INAPPROPRIATE TO ALLOW THE LAWYER TO TAKE ADVANTAGE OF THAT PARTICULAR INSIDE INFORMATION AND RETRIEVE THAT PUBLIC RECORD, UNLESS ANY LAWYER IN THAT POSITION WOULD BE ABLE TO DO SO AND NORMALLY WOULD SO, AGAIN, I WOULD SUBMIT THAT THE TEST IS WHETHER ANY COMPETENT LAWYER WHO HAS NEVER REPRESENTED THE FORMER CLIENT WOULD GET THE INFORMATION, REGARDLESS OF WHETHER IT IS OBTAINED THROUGH PUBLIC RECORD, THROUGH FORMAL DISCOVERY PROCESSES OR THROUGH INFORMAL METHODS OF INVESTIGATION. JUSTICE ANSTED ASKED ABOUT RULE 4-5.7, AND THIS RULE DOES REQUIRE, RIGHT NOW, THAT A LAWYER WHO WISHES TO DISCLAIM THE EXISTENCE OF AN ATTORNEY CLIENT RELATIONSHIP TO SOMEONE WHO PROVIDES NONLEGAL SERVICES, MUST EXPLAIN THIS TO THE PERSON, PREFERABLY IN WRITTEN. I WOULD SUBMIT THAT A WRITTEN REQUIREMENT IS PROBABLY MORE PREFERABLE HERE. FOR ONE THING THIS IS A NEW CONCEPT IN THE RULES, AND I THINK IT GIVES US THE OPPORTUNITY TO START OFF ON THE RIGHT FOOT, AND I THINK THE PUBLIC'S EXPECTATIONS, ALSO, WOULD CALL FOR A WRITTEN DISCLOSURE, BECAUSE IN A SITUATION LIKE THIS, THE CLIENT OR THE RECIPIENT OF THOSE NONLEGAL SERVICES DES NOT NECESSARILY DISTINGUISH BETWEEN LEGAL AND NONLEGAL SERVICES. THEY ARE GOING TO A PROFESSIONAL FOR HELP IN A TIME OF NEED, AND I THINK IF THE LAWYER WISHES TO AVOID BEING HELD TO AN ATTORNEY CLIENT RELATIONSHIP, WHICH THE LAWYER HAS THE RIGHT TO DO UNDER THIS RULE, IT WOULD BENEFIT THE PUBLIC TO PUT THAT IN WRITING AND MAKE IT CLEAR, AND, ALSO, IT WOULD BE CLEAR, BECAUSE CASE LAW IN FLORIDA MAKES IT VERY EASY FOR SOMEONE TO ALLEGE AN ATTORNEY CLIENT RELATIONSHIP, AND I BELIEVE THAT REQUIRING WRITTEN NOTICE WOULD PROTECT A LAWYER IN THAT SITUATION.

I HAVE A QUESTION ABOUT THE FACTS THAT ARE GENERALLY KNOWN.

YES, MA'AM.

THIS RULE DEALS WITH SUBJECTS AND SITUATIONS WHERE THE CLIENT HAS NOT CONCEPTED TO IT.

CORRECT.

SO OUR GOAL SHOULD BE TO MAKE GENERALLY KNOWN, REALLY, A RESTRICTIVE STANDARD, SHOULDN'T IT, SO THAT, AGAIN, SOMETHING THAT WOULD HAVE, A PERSON, A LAWYER WHO HAS REPRESENTED A CLIENT HAS GAINED THAT ADVANTAGE OF KNOWING THIS INFORMATION, AND SO I GUESS WHAT I AM CONCERNED ABOUT WHETHER THIS DEFINITION IS WHETHER EVEN YOUR DEFINITION IS BROADER THAN, REALLY, WE WOULD EXPECT IT TO BE FOR THE CIRCUMSTANCES THAT THE LAWYER HAS DISCOVERED SOMETHING. NOW THEY KNOW WHERE TO GO IN THE PUBLIC RECORD, BECAUSE OF THAT REPRESENTATION, AND SHOULD THAT BE A CONCERN?

I THINK THAT SHOULD BE A CONCERN. I WOULD SUBMIT THAT THE REAL QUESTION, AGAIN, IS A BUT-FOR TEST. BUT FOR HAVING REPRESENTED THIS FORMER CLIENT, WOULD YOU KNOW THAT INFORMATION OR KNOW WHERE TO FIND IT, AND IF THE ONLY REASON YOU CAN FIND THAT INFORMATION IS BECAUSE OF THE PRIOR REPRESENTATION, I THINK IT IS INAPPROPRIATE TO USE IT, AND I THINK THAT IS WHAT THE RULE WOULD SPECIFY. IT WOULD NOT BE GENERALLY KNOWN. MR. CHIEF JUSTICE

THANK YOU, MR. CHINARIS. MS. MacCLOUD.

GOOD MORNING AND THANK YOU FOR THE OPPORTUNITY TO PRESENT OUR POSITION TO THE PROPOSED CHANGES TO RULE 4-5.3 AND 10-2.1. MY NAME IS KAREN McCLOUD. I AM A CERTIFIED REPRESENTATIVE OF THE ASSOCIATION OF PARALEGALS WHOSE REPRESENTATIVES REPRESENT MORE THAN 2000 PARALEGALS OR LEGAL ASSISTANTS THROUGHOUT THE STATE OF FLORIDA. AS PRESENTED IN OUR MATERIALS THAT WE PRESENTED TO THE COURT, OUR ALLIANCE STRONGLY SUPPORTS THE ENFORCEMENT AGAINST ANY INDIVIDUAL WHO COMMITS THE UNLICENSED PRACTICE OF LAW. HOWEVER, WE DO BELIEVE THAT THE CHANGE TO RULE 4-5.3 WILL DO ANYTHING TO CURB THE UNLICENSED PRACTICE OF LAW. FURTHER, THE RULE IS INTENDED TO INSTRUCT ATTORNEYS OF THEIR LIABILITY AND RESPONSIBILITY TO PROPERLY SUPERVISE ALL OF THEIR NONLAWYER PERSONNEL, NOT JUST THEIR ASSISTANT OR PARALEGAL PERSONNEL. THE VERY LANGUAGE IN THE PROPOSED RULE OR OTHER SIMILAR TERM, WHEN DESCRIBING THESE TITLES, WE BELIEVE, LEAVES A GAPING HOLE IN THE INTERPRETATION AND ENFORCEMENT OF THE ULE OF THIS SORT. FURTHER, AS A PREAMBLE TO THE RULE OF THE FLORIDA BAR STATES THAT THE RULES SIMPLY PROVIDE A FRAMEWORK FOR THE UNETHICAL PRACTICE OF LAW. THESE RULES ARE NOT DESIGNED TO BE A BASIS FOR CIVIL LIABILITY AND ARE NOT RULES OF LAW. WE FEEL THAT THERE ARE ADEQUATE CASE LAW AND STATUTES AND CASES OVER WHICH TO GOVERN UPL, OVER WHICH THIS COURT HAS JURISDICTION. WHILE THERE IS NO LICENSING SCHEME FOR THE PARALEGAL PROFESSION, THERE IS MUCH DISCUSSION ACROSS THE NATION, IN OTHER STATES, OF REGULATORY AND LICENSEING SCHEMES. WE FEEL STRONGLY THAT LICENSURE BY A STATE AGENCY SUCH AS THE DPR WOULD BE INAPPROPRIATE FOR THIS PROFESSION. HOWEVER, AN ANALOGY CAN BE DRAWN TO MANY OTHER PROFESSIONS THAT ARE REQUIRED TO BELIESENSED, WHICH IS DONE, WE BELIEVE, PRIMARILY FOR THE PROTECTION OF THE PUBLIC. AS, AND SOME OF THIS IS SET FORTH IN FLORIDA STATUTE 1162, AS THE LEGISLATURE HAS DEFINED BEFORE, ABOUT PROFESSIONS AND HOW THEY SHOULD BE REGULATED.

DO YOU HAVE ANY KIND OF PROPOSED LANGUAGE TO CHANGE THE BAR'S PROPOSED AMENDMENTS?

NO, MA'AM. WE DON'T.

OR DO YOU WANT SOMETHING DELETED OR ADDED?

NO. WE DON'T LIKE THE RULE AT ALL, AND WE DON'T LIKE IT FOR THE REASON THAT WE DO NOT BELIEVE THAT PARALEGALS OR ANYBODY IN THIS PROFESSION WOULD LOOK TO THE RULES REGULATING THE FLORIDA BAR, FOR GUIDANCE IN HOW TO REGULATE THIS PROFESSION. I MEAN, WE BELIEVE THAT THOSE RULES ARE FOR THE MEMBERS OF THE BAR, WHICH WE ARE NOT MEMBERS OF THE BAR, AND CERTAINLY WE WORK VERY CLOSELY WITH MEMBERS OF THE BAR, BUT WE ARE, REALLY, GOVERNED BY OUR OWN ETHICAL STANDARDS AND GUIDELINESS AND, CERTAINLY, THE RULES OF PROFESSIONAL CONDUCT. DID THAT ANSWER YOUR QUESTION, MADAM? OKAY. BUT AS WE WERE SAYING, WE BELIEVE THAT THERE ARE MANY PROFESSIONS OUT THERE THAT THEIR GUIDELINES AND THEIR RULES ARE SET FORTH, UNDER THE QUALIFICATIONS TO BELIESENSED TO WORK IN THAT PROFESSION, BUT THE USE OF THE TITLE DOESN'T AUTHORIZE THEM TO DO SOMETHING OUTSIDE OF THE SCOPE OF THAT PROFESSION, AND THE VERY USE OF THE TITLE OR THE TERM PARALEGAL OR LEGAL ASSISTANT DOES NOT ALLOW US TO DO WORK OUTSIDE THE SCOPE OF WHAT WE HAVE BEEN TRAINED AND EDUCATED TO DO.

BUT YOU, ALSO, SAID THAT YOU BELIEVE THERE SHOULDN'T BE ANY LICENSING REQUIREMENT BY DPR OR -- AND SO WHAT DO -- WHAT SHOULD HAPPEN WITH PARALEGALS AND WHAT IS THE OTHER TERM, LEGAL ASSISTANTS? UNLICENSED, NO RULES TO TELL YOU WHAT TO DO?

ACTUALLY WE WOULD VERY MUCH LIKE THIS COURT TO COME UP WITH A TASK FORCE OR STUDY THE ISSUE OF REGULATION. THIS PROFESSION HAS, REALLY, DESIRED TO BE REGULATED, FOR A

VERY LONG TIME. WE DON'T WANT TO BE REGULATED THROUGH THE LEGISLATURE, THROUGH THE DPR, BECAUSE WE DO SEE THAT AS NOTHING MORE THAN FILLING OUT A FORM AND BEING A LICENSING, NOT SCHEME BUT A LICENSING MECHANISM THAT DOESN'T HELP THIS PROFESSION, SINCE WE ARE SO CLOSELY ALIGNED WITH WORKING WITH LAWYERS. WE DO BELIEVE, HOWEVER, THERE ARE THOSE PERSONS THAT ARE EDUCATED, ARE TRAINED, THAT CHOOSE TO WORK OUTSIDE THE SUPERVISION OF A LAWYER BUT STILL FOLLOW THE ETHICAL GUIDELINES AND RULES THAT ARE IN PLACE FOR PARALEGALS, SUCH AS THE COMPLETION OF FORMS. I MEAN, YOU MAY BE FAMILIAR WITH THE STATE OF CALIFORNIA. THEY DID EXACTLY WHAT MR. RUSSELL SUGGESTED. THEY DO MAKE PERSONS THAT WORK AND OFFER THEIR SERVICES DIRECTLY FOR THE PUBLIC CALL THEMSELVES DOCUMENT PREP REMEMBERS, BUT THEY, ALSO -- PREPAREERS, BUT THEY, ALSO, LEGISLATIVELY DEFINED A SET OF GUIDELINES FOR THE PARALEGAL PROFESSION, BY DEFINING IT, BY WHO COULD CALL THEMSELVES THAT, WHAT THEIR EDUCATIONAL REQUIREMENTS HAD TO BE, WHAT THEIR CONTINUING EDUCATION REQUIREMENTS HAD TO BE, AND THEREFORE IT SEPARATED THOSE PERSONS.

WHAT AGENCY ENFORCES THOSE LAWS?

IN CALIFORNIA?

RIGHT.

I BELIEVE IN CALIFORNIA IT IS LEGISLATIVE, SO I DO NOT KNOW EXACTLY WHAT AGENCY, YOUR HONOR, REGULATES THAT, BUT I DO KNOW THAT THE CHANGES WERE DONE LEGISLATIVELY AND THAT THE DOCUMENT PREPARERS WERE REQUIRED TO FILE AN APPLICATION IN THE COUNTY I WHERE THEY PROVIDE THEIR SERVICES AND POST A BOND, AND I ASSUME THAT CERTAINLY THAT WAS DONE FOR THE PROTECTION OF THE PUBLIC.

ARE OU FAMILIAR WITH ANY STATE, THOUGH, WHERE THE STATE HIGH COURT ACTUALLY HAS ENACTED RULES AND REGULATIONS TO REGULATE THE PRACTICE OF PARALEGALS AND LEGAL ASSISTANTS?

NO. I DO NOT BELIEVE THERE IS ONE AT THIS TIME. I KNOW IT HAS BEEN STUDIED IN WISCONSIN AND IN NEW JERSEY, AND SEVERAL REGULATORY PLANS HAVE BEEN PUT BEFORE THEM. AT THIS TIME I KNOW HAWAII IS CURRENTLY LOOKING AT ONE, BUT I DO NOT BELIEVE THAT ANY OF THEM HAVE YET BE ADOPTED.

THANK YOU.

WE, ALSO, ARE AWARE OF THE RESULTS OF THE SURVEY THAT MR. RUSSELL SPOKE OF, AND IN OUR OPINION, THE PUBLIC IS VERY CONFUSED, AND I THINK THAT THEY ARE CONFUSED BECAUSE THEY DO NOT KNOW THE DIFFERENCE BETWEEN THE TERMS, AND IN ALL DUE RESPECT TO EVERY MEMBER OF THE FLORIDA BAR, THERE ARE LAWYERS THAT DON'T KNOW THE DIFFERENCE BETWEEN THE TERMS USED IN THIS PROFESSION. WE CERTAINLY FEEL THAT THE TERMS PARALEGAL AND LEGAL ASSISTANT ARE ANALOGOUS, BUT W DO NOT GROUP IN WITH THAT THE TERM LEGAL TECHNICIAN. THAT HAS ALWAYS BEEN KNOWN AS A PERSONTHAT DOES OFFER THEIR SERVICES DIRECTLY TO THE PUBLIC, WITH OR WITHOUT ANY EDUCATION. WE REALLY DON'T KNOW WHAT THEIR REQUIREMENT IS, AND UNTIL THOSE TERMS ARE ADEQUATELY DEFINED AND CRITERIA IS SET FORTH THAT, THIS PROFESSION WILL NEVER BE ABLE TO BE ABLE TO OFFER TO THE PUBLIC THE SERVICES THAT SHOULD BE ABLE TO BE OFFERED, WHILE STILL, CERTAINLY, THE MAJORITY OF US WORK FOR LAWYERS AND WORK UNDER THEIR GUIDANCE AND SUPERVISION. ALSO, YOUR HONOR, WE WOULD LIKE TO BRING TO YOUR ATTENTION THAT THERE IS A PROPOSED RULE BY THE ABA, 5.3. I DO NOT KNOW IF IT HAS PASSED AT ONE OF THEIR RECENT MEETINGS, BUT I DO KNOW A FEW MONTHS AGO THAT THAT RULE WAS PROPOSED BEFORE THE ABA, WHICH WAS VERY ANALOGOUS TO THIS RULE, BUT WITHOUT SAYING WHO COULD USE THE TERM PARALEGAL OR LEGAL ASSISTANT, THEY PUT MORE RESPONSIBILITY ON THE ATTORNEY TO

SET INTO PLACE PROCEDURES AND GUIDELINES IN THEIR OFFICE, SO THAT PERSONS WOULD BETTER UNDERSTAND HOW TO PERFORM THE SERVICES OF A PARALEGAL OR ANY OTHER LEGAL ASSISTANT NONLAWYER STAFF MEMBER OF AN OFFICE. THEY FELT THAT THAT WAS THE WAY TO BETTER DO WHAT NEEDED TO BE DONE, AND WE WOULD LIKE FOR THIS COURT TO CONSIDER REVIEWING THE PROPOSED CHANGES TO THAT RULE AND A LINE RULE 4-5.3 WITH THAT RULE THAT THE ABA PROPOSED. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. REBUTTAL, MR. RUSSELL?

THANK YOU, YOUR HONOR. IF WE COULD JUST TAKE A COUPLE OF MINUTES, IF THERE MUNOZ WOULD LIKE TO COME UP AND RESPOND. THERE YOU ARE.

MAY IT PLEASE THE COURT. MY NAME IS SHANE MUNOZ. I AM CURRENTLY THE VICE-CHAIR OF THE STANDING COMMITTEE OF ADVERTISING OF THE FLORIDA BAR, AND I HAVE TWO COMMENTS WITH REGARD TO MR. CHINARIS'S COMMENTS TO THE PROPOSED CHANGES TO RULE 4-7.2. THE VERY RULES THAT HE PROPOSED TO ELIMINATE WERE DEBATED AMONGST COMMITTEE AND THE FLORIDA BAR BOARD OF GOVERNORS AND WE BELIEVE THERE IS A STANDING DISTINCTION BETWEEN THE FLORIDA BAR AND MEMBERS OF OTHER GROUPS. THAT DISTINCTION IS THAT THE STANDARDS OF THE FLORIDA BAR ARE DEVELOPED, STRICT AND WELL-KNOWN. IN CONTRAST, STANDARDS OF OTHER BAR GROUPS ARE NOT UNIFORM, AND IN SOME CASES THERE ARE VIRTUALLY NO STANDARDS. SOME OF THOSE ORGANIZATIONS YOU CAN JOIN, SIMPLY BY PAYING A FEE. WE THINK THAT IS AN IMPORTANT DISTINCTIN AND JUSTIFIES A DISTINCTION IN THE PROPOSED RULE. MY SECOND RESPONSE IS THAT MR. CHINARIS SUGGESTED THAT THIS BE ANALYZED AS AN ISSUE CONCERNING THE BAR OR THE STATE'S ATTEMPT TO REGULATE NONMISLEADING ADVERTISING, AND WE DON'T THINK THAT THAT IS THE ISSUE HERE. WE THINK THAT THE ADVERTISING THAT WE ARE TRYING TO CONTINUE TO REGULATE HERE IS POTENTIALLY MISLEADING, AND WE ARE NOT ALONE IN THAT CONCLUSION. THE UNITED STATES SUPREME COURT HAS SUGGESTED THAT STATEMENTS ABOUT MEMBERSHIP IN ORGANIZATIONS OR ABOUT CERTIFICATIONS GRANTED BY ORGANIZATIONS ARE POTENTIALLY MISLEADING. THE COURT STATED THAT, IN BOTH YBANIS VERSUS FLORIDA DEPARTMENT OF PROFESSIONAL REGULATION AND PEEL REGULATION, AND IN BOTH OF THOSE CASES WHERE THE STANDARDS ARE NOT STRICT AND WELL-KNOWN AND THOSE WHERE STANDARDS ARE CLEAR, AND WE THINK THAT IS AN IMPORTANT DISTINCTION HERE. IT IS NOT TO SUGGEST AT ALL THAT THERE AREN'T MANY UP STANDING BAR ORGANIZATIONS ACROSS THE COUNTRY, RATHER THAN WITHOUT HAVING THE OPPORTUNITY TO REVIEW ADS THAT MAY HAVE MEMBERSHIPS IN THOSE ORGANIZATIONS, WE ARE NOT ABLE TO DETERMINE WHICH ADS ARE AND WHICH ARE NOT MISLEADING AND THEREFORE WON'T BE ABLE TO FULFILL OUR OBLIGATION, IN BAITS VERSUS STATE OF ARIZONA, TO DETERMINE IF THEY ARE MISLEADING MISLEADING. IF YOU HAVE QUSTION ABUT THE PROPOSED RULES, I WOULD BE HAPPY TO ADDRESS THIS.

IS THERE ANY TAKING OF WELL-KNOWN ORGANIZATIONS, LIKE THE AMERICAN BAR ASSOCIATION, AND ACTUALLY SEEING IF THOSE WOULD BE ACCEPTABLE?

FIRST OF ALL, IT WOULD BE A BURDEN TO GO THROUGH ALL THE ORGANIZATIONS THAT PERHAPS WOULD BE INCLUDED IN A SAFE HARBOR AND SECONDLY TAT THOSE ORGANIZATIONS MAY CHANGE THEIR STANDARDS FROM TIME TO TIME, AND WE WOULD NOT WANT TO HAVE A RULE IN PLACE THAT PERMITS THOSE ADS WITHOUT REVIEW AND HAVE THOSE RULES IN PLACE, AFTER STANDARDS CHANGED IN ANOTHER JURISDICTION AND UNTIL THE TIME THAT WE COULD PROPOSE ADDICTIONAL RULE CHANGES. MR. CHIEF JUSTICE

THANK YOU, MR. MUNOZ. MR. RUSSELL.

IF I COULD RESPOND TO THE COMMENTS. I KNOW KAREN WELLS. SHE SERVED ON THE COMMITTEE WITH US THAT PROPOSED THIS RULE AND VOTED FOR IT, SO I KNOW AT THAT POINT

IN TIME SHE WAS CONCURRENT WITH US AS TO WHAT THE APPROPRIATE RESPONSE WOULD BE. WE ARE ATTEMPTING TO DEAL WITH A VERY NARROW ISSUE OF CONCERN, AND THAT IS THE ONE THAT ARISES OUT OF THE UPL CONTEXT, AND OUT OF THE UPL CONTEXT IN 1999, 144 OUT OF 166 UPL COMPLAINTS AROSE FROM THE INDEPENDENT PARALEGAL INDUSTRY. IN 2000, 170 OUT OF 711, AND IN 2001, 153 OUT OF 639. SO IT IS ENORMOUSLY BURDEN 134 SOME AND IN MANY -- BURDENSOME AND IN MANY RESPECTS QUITE FRUSTRATING, BECAUSE WHAT WE ARE DEALING WITH IS FRAUD AND MISREPRESENTATION BUT NOT ANYTHING THAT THE BAR CAN NECESSARILY DO ANYTHING ABOUT.

IS THIS AN EMERGING ISSUE, THOUGH, THAT PERHAPS THE BAR SHOULD BE TAKING THE LEAD IN, AND THAT IS THE EMERGING ISSUE OF THE REGULATION OF PARALEGALS AND LEGAL ASSISTANTS IN SOME WAY YOU KNOW, THROUGHOUT THE STATE, THROUGHOUT THE COUNTRY?

I BELIEVE IT IS, YOUR HONOR. I BELIEVE THAT, ONCE WE GET BEYOND THIS NARROW ISSUE, AND THAT IS TRYING TO DEAL WITH THE PUBLIC INTEREST AND THE EXISTING CONCERN OF THE FRAUD THAT IS BEING PERPETRATED UPON THEM BY PEOPLE WHO SIMPLY PUT THE WORD PARALEGAL ON A STORE FRONT, ONCE WE GET BEYOND THAT, I BELIEVE THAT THE PARALEGAL PARAPROFESSION IS ONE THAT CERTAINLY, FIRST OF ALL FLORIDA LEGAL ASSISTANTS, AND I THINK IT IS NOW FLORIDA PARALEGAL ASSOCIATION, DOES A WONDERFUL JOB IN THIS STATE OF REGULATING ITSELF, AND THEY PUT OUT SOME VERY QUALIFIED PEOPLE, MANY OF WHOM I AM PROUD TO SAY WORK FOR MY FIRM, BUT THAT IS NOT WHO WE ARE HERE TALKING ABOUT. THOSE ARE NOT THE PEOPLE THAT WE ARE GETTING THE COMPLAINTS ABOUT. THE ONES WHO DO NOT BELONG TO THAT ORGANIZATION, DO NOT COMPLY WITH ANY OF THEIR REQUIREMENTS, DON'T TAKE ANY OF THEIR TRAINING AND SIMPLY ARE OUT THERE TO MAKE A QUICK DOLLAR AND ARE THERE TO HARM THE PUBLIC, THOSE ARE THE ONES THAT THIS RULE IS DIRECTED AT. TO ANSWER YOUR QUESTION DIRECTLY THERE HAVE BEEN A COUPLE OF STUDIES THAT THE BAR HAS CONDUCTED IN THE PAST, DEALING WITH THE REGULATION OF PARALEGALS. WE HAVE NOT GOTTEN VERY FAR WITH IT, AND I AM NOT CERTAIN, AND WE DON'T KNOW PRECISELY HOW THE COURT WOULD WANT US TO UNDERTAKE THAT IF YOU DID, BUT IT WOULD BE A MAJOR PROJECT, IN TERMS OF WHAT AGENCY WOULD REGULATE AND UNDER WHAT GUIDELINES, BUT IT WOULD BE A MAJOR UNDERTAKING. IT CERTAINLY IS AN EMERGING ISSUE, AND FOR NO OTHER REASON, YOUR HONOR, THAN PARALEGALS CAN DELIVER LEGAL SERVICES IN A SPECIFIED CONTEXT, EFFICIENTLY AND CHEAPLY, AND THAT PROVIDES BETTER PUBLIC ACCESS, AND THAT IS GOOD, AND I CERTAINLY WOULD CONCUR WITH THAT, AND SO TO THE EXTENT THAT WE CAN ENCOURAGE, ONE ASPECT OF THE RULE WE ARE PROPOSING DOES FREE UP LAWYERS TO USE PARALEGALS MORE EFFECTIVELY, AND THERE ARE SOME ATTORNEYS IN FLORIDA NOW WHO ARE USING PARALEGALS IN THE FAMILY LAW CONTEXT VERY EFFICIENTLY AND ARE DELIVERING LEGAL SERVICES, REALLY, UNDER THE SUPERVISION OF AN ATTORNEY MORE CHEAPLY, FRANKLY, THAN THE INDEPENDENT PARALEGALS ARE, AND THAT IS GOOD AND SO ALL OF THAT IS CORRECT, YOUR HONOR. WE CERTAINLY AGREE THAT IT IS AN ISSUE THAT NEEDS TO BE --

MY OBSERVATION THAT THE UNLICENSED PRACTICE OF LAW, OF COURSE, HAS BEEN A MAJOR PROBLEM AND CONTINUES TO BE A MAJOR PROBLEM, ANDA MAJOR PART OF THAT PROBLEM IS DEFINITIONAL. THAT IS THAT, SO, AT LEAST IN SORT OF AN OVER SIMPLISTIC WAY OF SUPERFICIAL RESPONSE, IS THAT IT DOES SEEM LIKE A SCHEME OF REGULATION IN SOME WAY WOULD BE A FAR BETTER WAY TO DEAL WITH THE DEFINITIONAL SIDE OF THAT. THAT IS THAT IF YOU ACTUALLY HAD A GROUP THAT, AS HERE IN FLORIDA THAT WE ARE PROUD OF THAT THERE IS AN ASSOCIATION THAT MAKES THIS ATTEMPT TO DO THIS VERY THING BUT THAT, BY THE REGULATION OF PARALEGALS AND LEGAL ASSISTANTS, IT WOULD SEEM LIKE WOULD GO A LONG WAY TOWARDS SOLVING THIS CONTINUING, VERY DIFFICULT PROBLEM OF THE UNLICENSED PRACTICE OF LAW.

I KNOW Y TIME IS UP. CANDIDLY, YOUR HONOR, THAT CREATES A QUANDRY FOR THE BAR. THE QUANDRY IS THAT WE REALLY ARE NOT ANXIOUS TO INVITE THE STATE OR THE LEGISATURE TO

REGULATE ANY ASPECT OF THE PRACTICE. SO THAT LEAVES THE COURT, AND TO SOME EXTENT THAT CREATES ISSUES THAT ARE COMPLEX AS WELL. MR. CHIEF JUSTICE

THANK YOU, MR. RUSSELL. THANK YOU TO ALL WHO HAVE PRESENTED COMMENTS THIS MORNING AND FOR ALL WHO ARE IN ATTENDANCE AND HAVE WORKED HARD OVER MANY MONTHS AND SOMETIMES YEARS, ON THESE PROPOSALS, AND THE COURT IS VERY APPRECIATIVE OF YOUR INPUT AND YOUR INTEREST. THE COURT WILL NOW TAKE A FIVE-MINUTE RECESS AND THEN PROCEED WITH THE NEXT TWO CASES, TAKE ITS MORNING RECESS BEFORE THE BELL CASE, WHICH IS OUR FINAL CASE THIS MORNING. SO THE COURT WILL BE IN RECESS FOR FIVE MINUTES.