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Amendments to Florida Rules of Juvenile Procedure

CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR FOR THIS FRIDAY AT THE FLORIDA SUPREME COURT, AND THE FIRST MATTER THAT WE HAVE TO BE HEARD THIS MORNING ARE THE AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL, JUVENILE PROCEDURE, AND WHO IS GOING TO PROCEED? OKAY. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS JOEL SILVERSHEIN. I AM THE CHAIR OF THE JUVENILE COURT RULES COMMITTEE OF THE FLORIDA BAR. AND I AM HERE, TODAY, TO PRESENT OUR TWO-YEAR CYCLE REPORT OF THE JUVENILE COURT RULES. FOR PURPOSES OF OUR COMMITTEE, THE RULES THAT WE PRESENT HERE, ARE NOT CONTROVERSIAL. MANY ARE TECHNICAL INNATE. MANY ARE TO MAKE STATUTORY REVISIONS. THE RULES BEFORE YOU WERE PASSED EITHER BY UNANIMOUS VOTE OR WITH OVERWHELMING MAJORITIES WITH NO MORE THAN ONE NEGATIVE VOTE.

ARE YOU GOING TO TALK -- I GUESS THERE IS ONE, THOUGH, THAT GENERATED A LOT OF --

BUT IT IS MY DUTY TO PRESENT ALL OF THE RULES TO THE COURT, AND I WILL DEFER TO JUDGE GROSS HERE, REGARDING THE GENERAL MASTER ISSUE.

WILL YOU TELL US, THOUGH, HOW DID IT COME ABOUT THAT THE SUBCOMMITTEE WAS FORMED? WHAT WAS THE ALTERNATIVES THAT WERE REJECTED? BECAUSE I DON'T KNOW IF JUDGE GROSS, WAS HE ON THE COMMITTEE?

HE WAS THE CHAIR OF THE SPECIAL SUBCOMMITTEE, AND I WILL BE LETTING HIM GET INTO THE SPECIFICS OF IT, BUT I WILL TELL THE COURT THAT THE ONLY COMMENTS THAT CAME REGARDING THIS RULE CYCLES PACKAGE CONCERNED ONE, WAS ON A DETENTION ORDER, WHICH IS 8.929, WHICH THE COMMITTEE PASSED AND ADOPTED IN A FACTS FAX VOTE, 12-TO-0. THE SECOND IS A MORE CONTROVERSIAL ONE, WHICH IS MORE THE REASON WE ARE HERE TODAY, WHICH CONCERNS THE GENERAL MASTER RULE, 8.255-9. WHICH THERE WERE FOUR COMMENTS BY FOUR DIFFERENT PEOPLE. AND THOSE WERE OPPOSING THE SUBMISSION BY OUR COMMITTEE AND ASKING FOR DEFERRAL OF THE PASSAGE OF SUCH RULE. BEFORE DEFERRING TO JUDGE GROSS, I JUST GENERALLY WANT TO ADDRESS THE COMMENTS AND THE APPROACH TAKEN BY THE COMMITTEE, REGARDING THIS ISSUE. WE HAD A SPECIAL SUBCOMMITTEE WHICH CRAFTED THIS RULE, WHICH WENT BEFORE BOTH THE DEPENDENCY SUBCOMMITTEE AND THE FULL COMMITTEE, AND THE FULL COMMITTEE PASSED THIS BY 21-TO-0 VOTE. THE REPLY, WHICH I SUBMITTED TO THIS COURT TO THE COMMENTS OF GENERAL MASTER JONES AND JUDGE FARINA, WERE ALSO APPROVED UNANIMOUSLY. THE REASON THAT BEV A ROLE, AND -- THAT WE HAVE A RULE, AND JUDGE GROSS WILL GET MORE INTO THE SPECIFICS OF IT, IS THERE IS A GREAT VARIANCE IN THE USE OF MASTERS, AND FROM WHAT WE FOUND OUT, SOME GO OVER THE LINE. A RULE IS NEEDED TO PROVIDE UNIFORMITY AND TO CURB WHATEVER ABUSES THERE ARE --

WHEN YOU SAY THEY ARE GOING OVER THE LINE, YOU MEAN THAT THEY DO THINGS THAT MASTERS ARE SITTING ON DEPENDENCY-TYPES OF HEARINGS, THAT THE STATUTES REQUIRE THAT THEY NOT SIT ON?

THAT IS CORRECT.

WHY ISN'T THAT SOMETHING, RATHER THAN TRYING TO MAKE THE DETERMINATION IN A RULES SITUATION, THAT, IN A PARTICULAR CASE, IF A LITIGANT HAS AN OBJECTION TO A MASTER SITTING, THAT WE LOOK AT IT IN THAT CONTEXT. BECAUSE THE WHOLE IDEA OF THE, HAVING GENERAL MASTERS IS TO, AS A LOT OF THE OPPONENTS HAVE SAID TO HAVE FLEXIBILITY, BUT IF THERE ARE SPECIFIC HEARINGS THAT THE COURT IS MANDATED BY STATUTE TO HEAR, THEN WE SHOULD CONFORM THE RULES TO THE SPECIFIC STATUTORY REQUIREMENTS. AS I UNDERSTAND IT, THIS RULE GOES FARTHER THAN JUST WHAT THE STATUTES REQUIRE.

THAT IS INCORRECT, JUSTICE PARIENTE. THE RULE THAT WE FORMED HERE, TODAY, AND THAT IS BEFORE THE COURT TODAY, SPECIFICALLY CONCERNS MATTERS WHICH EITHER A COURT OR A JUDGE, BY STATUTE, MUST DO. NOTHING MORE NOTHING LESS.

THEY HAVE TO BE CONSISTENT TERMS, DON'T THEY? SOME SAY A JUDGE, SOME SAY COURT SOME SAY CIRCUIT COURT. EVERY ONE OF THEM HAS A DIFFERENT TERM.

BUT NONE OF THEM ALLOW, AS SPECIFICALLY, SOMEONE OTHER THAN AN ARTICLE V OFFICER TO HEAR THESE PARTICULAR PROCEEDINGS, AND THAT IS WHY WE FEEL THAT THIS RULE, WHICH IS, WILL BRING THINGS INTO UNIFORMITY. OUR RULES ARE MEANT TO MAKE THE JUDICIAL SYSTEM GO AS SMOOTHLY AS POSSIBLE. WE ARE NOT A POLICY-MAKING BODY. BUT WHAT WE ARE DOING, AT THIS POINT IN TIME, IS TRYING TO CONFORM THE RULE WITH A STATUTE OR ACTUALLY TO HAVE A RULE. THERE IS NO RULE, AT THIS POINT IN TIME, REALLY, CONCERNING HOW GENERAL MASTERS LIKE TO BE USED ON A CONSISTENT BASIS. AND AT THIS POINT --

THE FAMILY LAW RULE IS THE, YOU ARE GOING TO HAVE TO, AGAIN, I WILL ADDRESS MY COMMENT TO JUDGE GROSS.

OKAY.

SPECIFICALLY OUR RULES GO BACK TO THE CIVIL RULES NOT TO THE FAMILY RULES. AT THIS POINT, I WOULD LIKE TO DEFER TO JUDGE RAYMOND GROSS FROM THE SIXTH JUDICIAL CIRCUIT.

JUDGE GROSS.

MAY IT PLEASE THE COURT. MR. CHIEF JUSTICE AND MEMBERS OF THE COURT. I AM JUDGE RAYMOND GROSS, APPEARING AS VICE-CHAIR PERSON OF THE JUVENILE RULES COMMITTEE. MY COMMENTS ARE LIMITED, EX-CLUES I FEEL, JUSTICE PARIENTE, TO THE AMENDMENT TO THE RULE -- EXCLUSIVELY, JUSTICE PARIENTE, TO THE AMENDMENT TO RULE 8.255, AND WE WOULD LIKE TO RESERVE OUR TIME FOR REBUTTAL. RULE 8.255 ALLOWS FOR THE USE OF GENERAL MASTERS EXCEPT FOR THOSE MATTERS WHICH MUST BE HEARD BY JUDGES. FURTHER, AS RECOMMENDED BY UNANIMOUS VOTE OF THE FULL COMMITTEE OF JUVENILE RULES, IS A STATEMENT THAT REAFFIRMS THE USE OF GENERAL MASTERS AS HAVING A DEFINITE AND POSITIVE ROLE IN THE AREA OF DEPENDENCY, BY SUPPLEMENTING THE PRIMARY FUNCTION AND DUTY OF THE JUDGES. TO UNDERSTAND HOW AND WHY WE ARE HERE, IT IS NECESSARY TO UNDERSTAND THE HISTORY OF THIS PARTICULAR RULE. THE PREDECESSOR TO RULE 8.255 IS RULE 8.610. IT WAS ADOPTED BACK IN 1984 AND FOUND AT 462 SO.2D 399. THAT RULE WAS, IN FACT, ADOPTED, WHICH WAS SORT OF A GENERAL CATCH ALL RULE. THERE WAS NO MENTION. THERE WAS NO USE OF GENERAL MASTERS WHATSOEVER. GENERAL MASTERS WERE NOT ADDED TO THIS RULE, UNTIL MAY 9, 1991, AT 589 SO.2D 818, WHEN, WITHOUT ANY EXPLANATION OR COMMENT TO THE CURRENT RULE AS NOW IN PLACE WAS ADOPTED AS RULE 8.255 SUBH. THIS RULE HAS RE-- SUB-H. THIS RULE HAS REMAINED UNCHANGED EXCEPT FOR RELETTERING AND HAS BECOME SUBSECTION I SINCE THEN, WITHOUT COMMENT BY THIS COURT, IN OPINION OR IN AMENDMENT TO THE RULE. THE SUBSTANTIAL REWRITE OF FLORIDA STATUTE 39, WHICH BECAME EFFECTIVE IN OCTOBER 1998, CAUSED A SYSTEMIC REVIEW OF THE USE OF GENERAL MASTERS STATEWIDE. THE RESULT OF ONE OF THE STUDIES WHICH IS APPENDIX TO THE RECORD HERE, ENTITLED DEFINE THE USE OF GENERAL MASTERS IN DEPENDENCY PROCEEDINGS, IS PART OF, AGAIN, THE RECORD BEFORE THIS

COURT. THE RESULT OF THAT STUDY, AS WELL AS THE CHANGES SINCE THEN, MANDATE THAT THIS COURT ADDRESS THE USE OF GENERAL MASTERS IN DEPENDENCY COURT NOW. CONTRARY TO THIS COURT'S VERY STRONG LANGUAGE, WHEN ADOPTING THE FAMILY COURT RULES BACK ON FEBRUARY 26, 1998, WHEN YOU SAID MOREOVER, EVERY LITIGANT IN FAMILY LAW CASES, WHETHER REPRESENTED BY AN ATTORNEY OR NOT, IS ENTITLED TO HAVE CONTESTED MATTERS HEARD BY AN ARTICLE V JUDICIAL OFFICER, WHERE CUSTODY, PROPERTY, OR LIBERTY IS INVOLVED. CITIZENS IN THIS STATE ARE ENTITLED TO A JUDICIAL RESOLUTION OF A DISPUTE, ABSENT A MEDIATED SETTLEMENT. I SUGGEST TO YOU THAT IS NOT CURRENTLY HAPPENING.

WOULD YOU SPEAK DIRECTLY TO THE CONCERNS THAT HAVE BEEN RAISED BY THE CHIEF JUDGES OF OUR, REALLY, A VERY POPULOUS CIRCUITS, AS TO THE ABSOLUTE REQUIREMENTS FOR WORKLOAD ISSUES IN ORDER TO, AND THAT THIS RULE, AS PROPOSED, WOULD HAMPER THAT EFFORT.

WELL, IN ALL DUE RESPECT TO MY COLLEAGUES, JUDGE ROSS IS THE CHIEF JUDGE OF THE SEVENTEENTH CIRCUIT, ACKNOWLEDGED IN HIS RESPONSE THAT, AS OF NOW, AS OF TODAY, HIS COURT WOULD BE IN COMPLIANCE WITH THIS RULE AS ADOPTED OR AS AMENDED. EXCUSE ME. THAT THE JUDGES, EXCUSE ME, THE JUDGES DOWN THERE ARE DOING THE WORK OF JUDGES. GENERAL MASTERS ARE ENGAGED PRIMARILY IN FULFILLING THE ROLE OF CONDUCTING JUDICIAL REVIEWS, AS I UNDERSTAND IT, AND, AGAIN, AS I BELIEVE THE REPORT MADE PART OF THIS RECORD, WOULD IDENTIFY. NOW, JUDGE FARINA, AGAIN, IN HIS REPLY, IF I UNDERSTAND IT CORRECTLY, BASICALLY HE, AGAIN, GOES ON WITH A LENGTHY DISCUSSION OF THE ROLE AND THE USE OF GENERAL MASTERS AS A PHILOSOPHICAL AND AS ADJUNCT TO THE COURT, WHICH WE HAVE NO QUALMS WITH. HE, THEN, GOES ON TO SAY THAT, WITH THE, YOU KNOW, BUDGETARY ISSUES, THE ARTICLE VII ISSUES COMING UP, THAT WE SHOULD SIMPLY TAKE A STEP BACK AND WAIT. I DID NOT SEE ANYTHING IN HIS REPORT, WHERE HE ACTUALLY ARTICULATED AND CITED SPECIFIC INSTANCES, WHERE HIS COURT WOULD BE HARMED. SOMETHING THAT THIS COURT HAS GOT TO RECOGNIZE, IF THE JUDICIARY OF THE STATE OF FLORIDA HAD THE SAME COMMITMENT TO CHILDREN IN DEPENDENCY COURT ISSUES AS THIS COURT HAS SHOWN OVER THE YEARS AND HAS PUT FORTH AS FAR AS THE ALLOCATION OF JUDICIAL MANPOWER, THEN WE WOULDN'T HAVE AN ISSUE HERE. UNFORTUNATELY, CHIEF JUDGES DON'T ALWAYS SHARE THE SAME PHILOSOPHY THIS COURT HAS, AND WE FIND SITUATIONS WHERE, FRANKLY, I BELIEVE THAT, CONTRARY TO STATUTE, CONTRARY TO THIS COURT'S OPINION IN ADOPTING THE FAMILY COURT RULES, WE HAVE GENERAL MASTERS CONDUCTING SUBSTANTIAL ISSUES OR MATTERS THAT THEY ARE NOT REQUIRED TO ORAL ALLOWED TO DO OR SHOULD DO.

THERE ARE TWO SEPARATE THINGS HAD THAT I AM HEARING.

OKAY.

ONE IS THE POLICY ISSUE.

YES, MA'AM.

ABOUT WHETHER THEY SHOULD, BECAUSE LITIGANTS HAVE THE RIGHT TO HAVE AN ARTICLE V JUDGE HEAR IT.

CORRECT.

THE OTHER IS WHETHER THEY ARE SPECIFICALLY PRECLUDED, BY STATUTE, AND I AM HEARING, THERE IS, FOR EXAMPLE, LET'S JUST TAKE THE SHELTER HEARING.

YES.

THE SHELTER HEARING, SPECIFICALLY THE STATUTE SPECIFICALLY IS, AS I AM INTERPRETING IT,

APPEARS TO REQUIRE THAT A CIRCUIT JUDGE PRESIDE AT A SHELTER HEARING.

ABSOLUTELY. FLORIDA STATUTE 39.402-6-A STATES, AND I QUOTE, A CIRCUIT JUDGE OR A DESIGNATED COUNTY COURT JUDGE TO HOLD A SHELTER HEARING.

SO IN THAT WAY, THERE IS NOT, THAT IS NOT A POLICY DETERMINATION OF THIS COURT. THAT WOULD BE A REQUIREMENT MANDATED BY THE LEGISLATURE, THAT THAT IS WHO SHOULD HEAR IT.

THAT IS CORRECT.

IT IS NOT AS TO THE OTHER CLASSIFICATION. IT IS NOT AS CLEAR, BECAUSE THERE IS DIFFERENT. SOMETIMES THE WORD "COURT" IS USES AND -- IS USED, AND SOMETIMES THERE IS OTHER TERMS, SO WE GET BACK INTO A POLICY DECISION, DO WE NOT?

NOT REALLY, BECAUSE IF YOU GO TO 39.01 FLORIDA STATUTES, THE DEFINITIONAL SECTION UNDER 18, COURT, UNLESS OTHERWISE EXPRESSLY STATED, MEANS THE CIRCUIT COURT ASSIGNED TO KPEFER JURISDICTION, UNDER THIS -- TO EXERCISE JURISDICTION, UNDER THIS CHAPTER, AND 39.01 SUB-32, THE DEFINITIONAL SECTION, JUDGE MEANS THE CIRCUIT JUDGE EXERCISING JURISDICTION, PURSUANT TO THIS CHAPTER, SO I THINK THAT, TRYING TO PUT REAL MEANING TO THE LANGUAGE, YOU ARE CORRECT. THE LANGUAGE, UNDER 39.402, DEALING WITH SHELTER HEARINGS, IS ABSOLUTELY CLEAR. THEY SAY THE CIRCUIT COURT OR BLAH BLAH BLAH.

BUT THIS DOES REQUIRE, AND IT APPEARS THAT THE PRIOR RULE REQUIRED, BECAUSE IT REFERRED TO 1.490, THE CONSENT OF THE PARTY. NOW, THAT IS, DOESN'T THAT TAKE AWAY FROM THE ONE CONCERN, THAT IS THAT SAYING WHAT THE PARTIES ARE ENTITLED TO HAVE, IF, IN THE INTEREST, SAY, IN DADE COUNTY, THAT MOVING THESE CASES ALONG AND YOU HAVE GOT QUALIFIED GENERAL MASTERS WHO ARE CONCERNED ABOUT THE INTERESTS OF CHILDREN AND THE, AND THEY HAVE THE EXPERTISE, WHAT IS IT, AND THAT IS WHERE I AM FEELING LIKE WE ARE GETTING INTO A POLICY DECISION, TO SAY, NO, THEY ARE GOING TO BE ABSOLUTELY PRECLUDED EVEN IF THE LITIGANTS AGREED TO IT, AND EVEN IF THE, IF THIS WILL EXPEDITE THE DISPOSITION OF THE CASE.

WELL, I THINK THE LEGISLATURE HAS ANSWERED THAT QUESTION FOR US, BECAUSE THEY ARE NOT SAYING IT IS A POLICY ISSUE. CERTAINLY, YOU KNOW, WE CAN TALK ABOUT, YOU KNOW, AND MASTER JONES AND JUDGE FARINA AND SOME OF THE PEOPLE IN THEIR RESPONSES HAVE TALKED ABOUT YOU CAN WAIVE CERTAIN RIGHTS, AND CERTAINLY LITIGANTS CAN WAIVE CERTAIN CONSTITUTIONAL RIGHTS. YOU HAVE A RIGHT TO REMAIN SILENT. IF YOU WISH TO SPEAK, YOU CAN. WHAT WE ARE TALKING ABOUT HERE IS THE APPLICATION OF A SPECIFIC STATUTORY FRAMEWORK WITH A POLICY OF THIS STATE HAS BEEN ESTABLISHED BY LAW AND SAID AT THIS POINT IN TIME AT SHELTER HEARINGS, SHELTER HEARINGS WHERE A CHILD HAS BEEN REMOVED FROM A HOME, AND WITHIN 24 HOURS, THE PARENTS ARE BROUGHT BEFORE A TRIBUNAL, TO DETERMINE THE PLACEMENT OF THAT CHILD, IS THE FUNCTIONAL EQUIVALENT, IN MY MIND, OF A CRIMINAL FIRST APPEARANCE OR ADVISORY HEARING. YOU KNOW, YOU TALK ABOUT A LIBERTY INTEREST. YOU TALK ABOUT A STATUTORY RIGHT. WE HAVE DECISIONS IN THIS STATE, TODAY, IN THE FOURTH CIRCUIT, THAT ARE BEING MADE BY GENERAL MASTERS EVERYDAY AT SHELTER HEARINGS.

WELL, THEN, THAT, BUT BUT AGAIN, IF THEY ARE ACTING OUTSIDE THEIR JURISDICTION, THAT WITHOUT CONSENT, THAT THE GENERAL MATSTER IS HEARING A -- MASTER IS HEARING A SHELTER PETITION?

TO THE BEST OF MY KNOWLEDGE, THERE IS NO FORMLIZED PROCEDURE IN PLACE TO OBTAIN THE CONSENT. THEY ARE SIMPLY DIRECTED TO APPEAR AT A SPECIFIC TIME AND LOCATION, AND SOMEONE ASSUMES A BENCH, TO MAKE A DETERMINATION. THERE IS NOTHING FORMALIZED, AS I

UNDERSTAND IT, WHERE THE LITIGANTS ARE INFORMED, THAT YOUR MATTER IS ABOUT TO BE CONSIDERED BY GENERAL MASTER "X".

WELL, THEN, WHY ISN'T IT THE FAMILY LAW RULE SEEMS TO HAVE TAKEN THE CONSENT AND, REALLY, PUT THEM IN A MEANINGFUL WAY, SO THAT THE LITIGANTS WOULD HAVE THAT KNOWLEDGE, AND, OF COURSE, IN DEPENDENCY, YOU HAVE GOT THE PARENTS THAT ARE REPRESENTED, SO MAYBE IT IS, THEY ARE NOT NEEDED TO THE SAME EXTENT, THAT YOU ARE SAYING OR IMPLYING THAT THERE IS SOME, MAYBE, ABUSES GOING ON AND IN OBTAINING THE CONSENT. DOES THE COMMITTEE CONSIDER FAMILY LAW RULE?

WE DID CONSIDER THE FAMILY LAW, AND, AGAIN, PLEASE UNDERSTAND THAT SOME OF THE SUGGESTIONS MADE IN THE RESPONSES, WE BELIEVE, HAVE SOME VALIDITY, AND A GLOBAL REVIEW OF THE USE OF GENERAL MASTERS, TAKING INTO CONSIDERATION THE CIVIL RULE, THE FAMILY LAW RULE AND THE DEPENDENCY RULE, MAY WELL BE SOMETHING THAT THIS COURT, IN COMMENTARY, WOULD REQUEST IN THE FUTURE. WHAT WE HEARD, GEN-- WHAT WE ARE GENERALLY CONCERNED ABOUT WAS THAT TODAY, IN THE STATE OF FLORIDA, THE RULES GIVE US NO GUIDANCE.

SO WOULD YOU, IF WE WOULD CLARIFY THAT IT REQUIRES THE CONSENT OF THE PARTIES, AND THAT GENERAL MASTERS ARE NOT ALLOWED TO SIT ON MATTERS THAT ARE EXPRESSLY PRECLUDED BY STATUTE, WOULDN'T THAT AT LEAST, IN THE INTERIM, BE SORT OF A --

IT MAY BE A FIX. THAT MAY ADDRESS THE ISSUE. AGAIN, THIS MATTER, AGAIN, THE GENESIS OF THIS, AND THIS EVOLVED AND DEVELOPED, AGAIN, BECAUSE OF THE MASSIVE REWRITE OF 39 IN 1998, AND THE EXTRAORDINARY WORKLOAD THAT IT PRODUCED FOR THE DEPENDENCY COURT, REQUIRING, I THINK, AT A MINIMUM OF SEVEN COURT APPEARANCES, IF THERE IS A MATTER, A MATTER IS UNCONTESTED FROM DAY ONE. MR. CHIEF JUSTICE

JUDGE GROSS YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU.

BEFORE YOU SIT DOWN, I JUST WANT TO BE SURE THAT I AM UNDERSTANDING THAT, IN ADDITION, TO THE EFFORTS HERE, TO HAVE A RULE TO TRY TO, NOW, CONTROL THIS ISSUE, I AM, REALLY, READING THE REPORT OF YOUR COMMITTEE AND THE WORDS HERE THAT MAY BE THE WORD DANGEROUS IS TOO RHETORICAL, BUT TO A TREND THAT YOU ARE CONCERNED ABOUT, WITH REFERENCE TO THE UNREGULATED USE OF MASTERS IN DEPENDENCY COURT.

IN 1998, WHEN I ASSUMED A DEPENDENCY ASSIGNMENT AND I TRIED TO ASCERTAIN, GET SOME GUIDANCE AS TO WHAT I COULD USE THE SERVICES OF A GENERAL MASTER AS AN ADJUNCT. WHEN THERE WAS NO GUIDANCE, I TRIED TO DISCOVER WHAT WAS ACTUALLY HAPPENING AND WHAT THE AUTHORITY WAS, AND I WAS SHOCKED TO LEARN THAT, IN THE SECOND CIRCUIT WHERE WE STAND TODAY, THE TERMINATION OF PARENTAL RIGHTS TRIALS WERE CONDUCTED BY GENERAL MASTERS. I THINK THAT IS CLEARLY CONTRARY TO THE STATUTE. I THINK IT IS CLEARLY CONTRARY TO THIS COURT'S PRONOUNCEMENT ADOPTING THE FAMILY LAW RULES. YOU CAN HAVE NO GREATER LIBERTY INTEREST THAN THAT IN THE TERMINATION OF PARENTAL RIGHTS, AND I THINK IT IS WRONG.

THANK YOU. I HAVE BEEN SERVING AS A HEARING MASTER AND OFFICER FOR THE LAST TWELVE YEARS. I FILED A COMMENT DIRECTED TO RULE 8.255 I, THE FLORIDA RULES OF CIVIL PROCEDURE, BECAUSE OF MY CONCERN OF THE POLICY ISSUES THAT THIS COURT MAY HAVE TO ADDRESS. I AM INTIMATELY CONCERNED ABOUT THE REVISION 7 OF ARTICLE V IMPACT THAT IS FACING THIS COURT AND WE ALL KNOW JULY 1, 12,0004, IS RAPIDLY APPROACHING, AND I DO KNOW THAT MANY COMMITTEES ARE CURRENTLY, ON BEHALF THE COURT, REVIEWING THE USE OF MASTERS AND HEARING OFFICERS THROUGHOUT THE STATE, INCLUDING GENERAL MASTERS CHILD

ENFORCEMENT HEARING OFFICERS, AND SPECIAL MASTERS AND HEARING OFFICERS. I HAD THE PRIVILEGE OF SERVING, PUTTING ON THE WORKSHOP PUT ON BY THE COMMITTEE OF CHILD ENFORCEMENT ACCOUNTABILITY. A LOT OF LIVELY DEBATE OCCURRED AND A REPORT IS BEING FILED, IF IT IS NOT FILED ALREADY BY THAT COMMITTEE. I ALSO KNOW A MINORITY REPORT IS ALSO, BEING FILED, WITH RESPECT TO WHAT CAME OUT OF THAT PARTICULAR WORKSHOP. I ALSO KNOW THAT THE TRIAL COURT BUDGET COMMISSION IS, ALSO, REVIEWING THE USE OF MASTERS AND HEARING OFFICERS, INCLUDING OTHER RESOURCES IN THE COURT, ACKNOWLEDGING THAT THERE ARE SEVERE FUNDING ISSUES FACING OUR COURT AND A SHORTAGE OF JUDGES. I AM PROUD TO SERVE AS A MASTER. I AM PROUD TO SERVE THIS COURT. I AM PROUD TO SERVE MY CIRCUIT COURT.

WE APPRECIATE YOU. WHAT IS, IN THE ELEVENTH CIRCUIT WHAT TYPES OF HEARINGS DO YOU HEAR?

I SERVE, I DON'T PERSONALLY HEAR THE JUVENILE MATTERS. I AM THE ADMINISTRATIVE MASTER FOR OUR CIRCUIT, THE GENERAL MASTER, GENERAL MASTER KAREN COLEMAN WHO PRESIDES OVER THESE MATTERS HERE, IS PRIMARILY FOR JUDICIAL REVIEWS, BUT FROM TIME TO TIME BECAUSE OF BACKLOGS AND BECAUSE OF THE STRICT TIME REQUIREMENTS, GENERAL MASTER COLEMAN AS WELL AS GENERAL MASTER FULLER, HAS HAD TO COME IN AND ASSIST -- GENERAL MASTER FULLER, HAS HAD TO COME IN AND ACE THE COURT.

BUT ARE THERE OTHER STATUTES THAT GO ALONG, FOR EXAMPLE, IT DOES APPEAR THAT, CERTAINLY UNDER 809.3, IN THE ADJUDICATORY HEARING AND TERMINATION OF PARENTAL RIGHTS, MUST BE CONDUCTED BY THE JUDGE WITHOUT A JURY, SO ARE THERE CONTESTED TERMINATION OF PARENTAL RIGHTS CASES THAT ARE BEING HEARD IN THE ELEVENTH CIRCUIT?

I BELIEVE IN THE PAST THEY HAVE BEEN. THAT IS NOT THE GENERAL RULE. I THINK IT WAS WITH CONSENT OF THE PARTIES.

DO YOU AGREE THAT THIS, THE RULE OF BOTH THE FAMILY LAW RULE AND THE GENERAL CIVIL DOES REQUIRE THE CONSENT OF THE PARTIES FOR A GENERAL MASTER?

ABSOLUTELY. AND IN FACT, TO ENSURE DUE PROCESS RIGHTS AND CONSTITUTIONAL RIGHTS OF LITIGANTS IN THIS STATE THAT, CONSENT IS ABSOLUTELY NECESSARY.

IS THERE A FORMLIZED PROCESS TO OBTAIN THAT CONSENT AS WAS DISCUSSED THAT SOME AREAS DO NOT HAVE THAT? WHAT IS HAPPENING?

IT IS MY UNDERSTANDING THAT, WITH RESPECT TO RULE 1.490, YOU HAVE TO HAVE THE PRIOR CONSENT OF THE PARTIES BEFORE REFERRING A MATTER, SO I AM AS UPING THAT THE JUDGES THAT REFER THESE CASES DO GET THAT PRIOR CONSENT, BUT I AM NOT SURE IF THEY HAVE A FORMALLIZED PROCEDURE. ONE OF THE REASONS THAT I RECOMMEND THE COURT CONSIDER THE USE OF THE FAMILY LAW RULE, GENERAL MASTER RULE, IS BECAUSE OF THE SPECIFIC REQUIREMENTS SET FORTH IN THAT RULE, INCLUDING NOTICE REQUIREMENTS, A AND I PRESIDE OVER A LOT OF CASES THAT ARE REFERRED TO ME WITH PRO SE LITIGANTS, AND I CAN TELL YOU THEY OBJECT.

WHAT TYPE OF FAMILY CASES ARE HEARD IN THE ELEVENTH CIRCUIT, BY GENERAL MASTERS?

WE HEAR THE ESTABLISHMENT OF TEMPORARY SUPPORT, TEMPORARY VISITATION. WE HEAR MODIFICATION ACTIONS. DISCOVERY MATTERS, AND FROM TIME TO TIME FINAL HEARINGS, AND FRANKLY, FINAL HEARINGS ARE HEARD BY US, IF THE ATTORNEYS ASK THE COURT TO REFER THE MATTER TO US. IN THAT EVENT, AN ORDER OF REFERRAL IS ENTERED PURSUANT TO 12.490, AND THE PARTIES STILL HAVE THE RIGHT TO OBJECT, WITHIN A TEN-DAY PERIOD TO THE REFERENCE, SO IT IS IMMEDIATELY RETURNED TO THE TRIAL COURT.

SO YOUR IDEA IS THAT THE FAMILY LAW RULE, REALLY, OUGHT TO BE THE RULE THAT CONTROLS THE DEPENDENCY CIRCUMSTANCE. IS THAT WHAT --

YES, PRIMARILY BECAUSE OF ALL OF THE PROTECTIONS SET FORTH AND THE CLARIFICATION OF CERTAIN PROVISIONS.

EXCEPT THE PROBLEM IS THE LANGUAGE OF THE CHAPTER 39 SEEMS TO SPEAK IN MANDATORY TERMS, AS TO THE USE OF THE JUDGE SPECIFICALLY. WHAT IS YOUR RESPONSE?

I THINK, WHEN THE LEGISLATURE HAS SPOKEN ON THAT PARTICULAR ISSUE. I THINK THE LEGISLATURE HAS STATED THE POLICY FOR THE STATE IN THAT REGARD, IN WHICH CASE I THINK THERE PROBABLY SHOULD NOT BE A REFERRAL TO A MASTER, WHERE THE STATUTE SPECIFICALLY SAYS "JUDGE".

WHICH ONE WOULD YOU AGREE, SPECIFICALLY REQUIRES --

WHICHEVER STATUTE SPECIFICALLY SAYS CIRCUIT COURT JUDGE OR COUNTY COURT JUDGE. IF IT SAYS "COURT", WELL, MOST OF OF THE STATUTES THAT THE MASTERS DEAL WITH SAY "COURT".

ONE OF THE OBJECTIONS, I GUESS, FROM A JUDGE IN THE SECOND CIRCUIT.

JUDGE DECKER.

YES. SHE WAS CONCERNED THAT WHAT HAPPENED IS THAT WHAT YOU HAVE GOT IS INCONSISTENCY. YOU HAVE INCONSISTENCY, AS FAR AS WHO IS GOING TO BE MONITORING THE CASE FROM THE BEGINNING TO THE END, AND THAT THAT WAS A PROBLEM THAT, PERHAPS, WAS GREATER THAN WHETHER THIS IS AN ARTICLE V JUDGE OR A QUALIFIED GENERAL MASTER, THAT IT WAS IMPORTANT TO HAVE ONE PERSON IN CHARGE OF WHAT IS GOING ON WITH THIS CASE, MOVING IT ALONG. IF, IN THE ELEVENTH CIRCUIT, IF, BUT IT SEEMS LIKE THE STATUTE IS SET UP ALMOST TO ALLOW THIS FRAGMENT LOOK AT THE CASES, BY SOMETIMES HAVING A GENERAL MASTER AND SOMETIMES HAVING A CIRCUIT JUDGE. CAN YOU COMMENT ON THAT, AS TO WHETHER THAT POLICY IS JUST NOT A GOOD POLICY, TO BEGIN WITH, THAT WHOEVER IS ON THAT CASE SHOULD BE MONITORING HA THAT CHILD FROM THE GET-GO TO THE -- MONITORING THAT CHILD FROM THE GET-GO TO PERMANENCY?

I THINK THE POLICY WOULD BE FOR A COURT TO BE PROPERLY FUNDED, SO THAT WE HAVE A SUFFICIENT NUMBER OF JUDGES, SO THAT WE HAVE ONE JUDGE PRESIDING OVER THE CASE. UNFORTUNATELY, BECAUSE OF THE LACK OF APPROPRIATE FUNDING, I HATE TO ADDRESS THIS ISSUE, BECAUSE OF THAT. WE DON'T HAVE A SUFFICIENT NUMBER OF JUDGES. THAT IS WHAT HAS GIVEN RISE TO THE USE OF MASTERS AND HEARING OFFICERS AS AN ADJUNCT TO THE COURT, TO BEGIN WITH. I WOULD PREFER, I WAS A PRACTICING LAWYER. I WOULD LIKE TO HAVE ONE JUDGE HEARING MY CASE, BUT THAT IS NOT THE REALITY, BECAUSE WE DON'T HAVE THE APPROPRIATE RESOURCES TO BE ABLE TO DO THAT, SO IN A PERFECT WORLD, I WOULD CLEARLY SUGGEST THAT IT WOULD BE GOOD TO HAVE ONE JUDGE. BUT, AGAIN, THAT GOES TO THE POLICY DECISION THAT THIS COURT HAS TO MAKE, AS IT RECEIPTS TO THE RULE BEFORE THE COURT. THE COURT IS LOOKING AT THE WHOLE USE OF ALL OF THE COURT'S RESOURCES, AT THIS TIME, GLOBALLY. IT IS LOOKING AT WHAT CONSTITUTES AN ESSENTIAL ELEMENT ELEMENT.

HOW MANY MASTERS ARE THERE IN DADE COUNTY?

RIGHT NOW, WE HAVE TWELVE FULL TIME AND AND TWO PART-TIME.

AND HOW MANY OF THOSE SIT PRIMARILY IN MATTERS RELATING TO JUVENILES?

ONE FULL-TIME AND ONE PART-TIME THAT FROM TIME TO TIME GOES OVER TO ASSIST WITH THE BACKLOGS. FRANKLY THEY WERE THRILLED TO COME OVER AND ASSIST THEM WITH THAT BACKLOG, BECAUSE THE STATE WAS LOOKING VERY CAREFULLY, WITH REGARD TO THAT PARTICULAR FACT. OF COURSE THE DEFINITION OF PRO SE LITIGANTS TODAY, AND ESPECIALLY IN POST-JUDGMENT MATTERS, I THINK 80 PERCENT, HAVE ONE OR MORE JUDGES IN PRO SE MATTERS. ONE OF THE THINGS THAT I THINK THE COURT IS TRYING TO COME UP WITH IS TRYING TO DETERMINE HOW MANY PRO SE MATTERS ARE DETERMINED BY THE CIRCUIT COURTS AND THAT IS HAVING A REAL IMPACT ON THE ABILITY OF OUR FAMILY DIVISION JUDGES.

THAT IS OVERWHELMING TO THE MASTERS.

RIGHT. AND, ALSO, IN PROBATE, HANDLING, AND ALSO ONE IN THE GENERAL CIVIL DIVISION BUT PRIMARILY IN THE FAMILY DECISION. AGAIN, MY COMMENT IS BASICALLY ECHOED BY CHIEF JUDGE FARINA OF THE 11th JUDICIAL CIRCUIT AND CHIEF JUDGE ROSS OF THE 17th JUDICIAL CIRCUIT AND JUDGE DECKER OF THE SEVENTH JUDICIAL CIRCUIT, AND THAT IS SIMPLY WE ARE ASKING THIS COURT TO DEFER ITS RULING, UNTIL IT HAS HAD A CHANCE TO DETERMINE EVERYTHING GLOBE REALLY AND USING MASTERS THROUGHOUT THE STATE AS A SUPPLEMENT, AND THAT IS WHAT WE ARE ASKING THE COURT TO DO TO SIMPLY DEFER ITS RULING. WE HAVE A DEADLINE. JULY 1, 2004, AT THAT TIME WE ALL KNOW WHAT THE COURT IS GOING TO BE DEALING WITH. WITH RESPECT TO THE ARTICLE, REVISION SEVEN ARTICLE V FUNDING ISSUES, AND, OF COURSE, AGAIN WE ARE ALL CONCERNED ABOUT THAT AND THAT IS ALL WE ARE DOING IS ASKING THE COURT TO LOOK AT, GLOBALLY, AFTER GETTING INFORMATION FROM ALL OF THE VARIOUS COMMITTEES AND CHIEF JUDGES. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. JUST A COUPLE OF VERY BRIEF COMMENTS. FIRST OF ALL, I WOULD LIKE TO, AGAIN, POINT OUT THE SPECIFIC LANGUAGE IN 39.507-SUB-B, A JUDD CAMEATORY HEARING SHALL BE CONDUCTED BY THE JUDGE WITHOUT JURY.

IS THAT REFERRING TO, BECAUSE JUDGE DECKER HAD READ SOME CONCERNS ABOUT THE TERMINOLOGY. AS I AM SEEING IT, YOU ARE ATTEMPTING TO TRACK THE VARIOUS STAGES OF THE DEPENDENCY PROCEEDING, SO THE ADJUDICATORY HEARING OF 507.1-B, IS AFTER THE SHELTER HEARING.

YES, MA'AM.

THAT IS AFTER THE TERMINATION -- DETERMINATION OF WHETHER THERE IS DEPENDENCY OR NOT?

YES. THE HEARING IS AS TO THE ACTUAL DETERMINATION AS TO WHETHER THAT CHILD WILL BE A DEPENDENT CHILD, AND, AGAIN, THE LANGUAGE IS CLEAR ON ITS FACE. IT SHALL BE CONDUCTED BY THE JUDGE. 39.8090-SUB-3, DEALING WITH TERMINATION -- 39.809 SUB-3, DEALING WITH THE TERMINATION BY THE JUDGE WITHOUT A JURY. THIS IS WHAT WE ARE ASKING TODAY AND WHAT THE STATUTE WILL BE GIVING FULL FORCE AND EFFECT. PLEASE UNDERSTAND THAT THIS RULE WAS JUST NOT THE MACHINATIONS OF THE JUVENILE RULES COMMITTEE. THE DEVELOPMENT OF THIS RULE CAME ABOUT BY BRINGING IN ALL OF THE STAKEHOLDERS WHO ARE INVOLVED IN THIS PROCESS. THE CIRCUIT CONFERENCE DEPENDENCY COMMITTEE WAS INTIMATELY INVOLVED IN THE EVOLUTION OF THIS RULE FROM ITS BEGINNING. IN FACT, THERE IS A MEETING AT AMELIA ISLAND OF THE COMMITTEE. ALLSTATE WIDE GENERAL MASTERS WHO SIT IN DEPENDENCY WERE INVITED TO ATTEND AND GIVE THEIR INPUT. THE CHILDREN'S, THE DEPENDENCY COURT IMPROVEMENT COMMITTEE WAS INVOLVED IN THE EVOLUTION AND DEVELOPMENT OF THIS RULE. ONCE THIS WAS DEVELOPED, IT WAS TAKEN TO THE JUVENILE RULES COMMITTEE. THE SUBCOMMITTEE WAS FORMED, WHICH I CHAIRED, WHICH EVOLVED AND DEVELOPED THIS RULE, WHICH, AGAIN, IS SIMPLY DESIGNED TO ENSURE THAT THE LIBERTY

RIGHTS OF INDIVIDUALS ARE PROTECTED WITH ARTICLE V JUDGES, AND THE STATUTE IS GIVEN FULL FORCE AND EFFECT. MR. CHIEF JUSTICE

THANK YOU, JUDGE GROSS, AND WE DO APPRECIATE ALL OF THE HARD WORK THAT HAS GONE INTO THE WORK OF THE COMMITTEE AND THE SUBCOMMITTEE AND APPRECIATE THE COMMENTS OF GENERAL MASTER, AS WE CONSIDER THIS VERY IMPORTANT MATTER. THANK YOU FOR YOUR ASSISTANCE.