Amendments to Florida Rules of Appellate Procedure

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS AMENDMENT TO THE RULES OF APPELLATE PROCEDURE. JUDGE SHARP, YOU ARE GOING TO PROCEED FIRST.

NOT EXACTLY BUT THANK YOU, YOUR HONOR. IT IS NICE TO BE HERE WITH YOU TODAY. I WOULD LIKE TO INTRODUCE MYSELF AS THE CURRENT CHAIR OF THE APPELLATE RULES COMMITTEE, AND HERE IS DEB BRUECKHEIMER, WHO IS PAST COMMITTEE CHAIR, AND THE WAY WE WOULD LIKE TO DO THIS, IF IT IS ALL RIGHT WITH THE COURT, IS TO HAVE DEB PRESENT TWO RULES WHICH WERE PASSED ON HER WATCH, WHICH SHE MIGHT BE MORE FAMILIAR WITH THAN I AM, AND I WILL HANDLE WILL THE OTHER ONE, IF THAT IS ALL RIGHT WITH THE COURT, AND I THINK WE HAVE DRAWN OPPOSITION ON THE PART OF ONE OF OUR PROPOSALS, SO WE ARE RESERVING FIVE MINUTES TO REBUTTAL ON THAT ISSUE.

CHIEF JUSTICE: MISS BRUECKHEIMER, I THINK IF YOU WOULD PLEASE OBSERVE THE TIME PERIODS.

I WANT TO MAKE SURE JUDGE SHARP HAS THE MAJORITY OF THE TIME. I AM HERE TO TALK ABOUT RULE 9.800 CHANGES AND 9.140. THE CHANGES TO 9.800 ARE PRETTY SIMPLE, ONE TO INTRODUCE ARTICLES IN RELATION TO SUBSECTION I, KIND OF A CATCH-UP THING.

IS THAT THE UNIFORM CITATION SYSTEM?

RIGHT. NO. UNDER I, IT WAS SOMETHING DIFFERENT. THE UNIFORM CITATION SYSTEM IS UNDER "N", WHICH IS THE ALWD VERSUS BLUE BOOK. WE DID DRAW OPPOSITION TO THAT. SOMEBODY WANTS US TO CHOOSE ONE OVER THE OTHER, AND OUR COMMITTEE REFUSED TO DO THAT. THEY ARE BOTH FOR-PROFIT ORGANIZATIONS.

WELL, THE PROBLEM IS THAT THE, IT DOESN'T RESTRICT THE VIEWS TO JUST FLEETING. IT COULD BE IN COURT OPINION. WAS IT THE INTENT TO ALLOW ANY OF THE APPELLATE COURTS JUST TO USE WHATEVER CITATION SYSTEM?

YES. I MEAN THE IDEA BEING THAT PROBABLY THE VAST MAJORITY OF CITES WILL COME UNDER 9.800. THE ONLY TIME WHEN YOU ARE GOING TO BE LOOKING BEYOND THAT IS WHEN YOU ARE LOOKING TO OTHER STATES. MOST OF THE, MOST OF THE CITATIONS WILL BE COVERED UNDER 9.800.

IT IS NOT -- MAYBE I AM NOT ENTIRELY SURE WHAT THIS MEANS. DOES IT MEAN THAT THE WAY THE CASE IS REPORTED WILL LOOK DIFFERENT?

THE ONLY THING THAT IT SHOULD HAVE TO DO IS, IF YOU DON'T KNOW HOW TO CITE A CASE FROM MINNESOTA, YOU CAN EITHER PICK UP THE ALWD OR THE BLUE BOOK. AND YOU KNOW, JUST, WE DON'T SAY YOU HAVE TO GO TO THE BLUE BOOK. BEFORE, IT WAS JUST BLUE BOOK, AS AN OPTION, AND WE HAVE THROWN IN THE ALWD.

BUT YOU HAVE NO, YOUR INTENT WAS TO MAKE IT SIMPLER FOR THE LITIGANTS. AS FAR AS WHETHER IT IS BETTER FOR ALL OF THE APPELLATE COURTS AND THE SUPREME COURT TO USE ONE SYSTEM, APPELLATE RULES COMMITTEE WASN'T INTENDING TO ATTACK THAT.

NO. NO. NO. NO. NO. IT WAS JUST AN ALTERNATIVE RESOURCE FOR PEOPLE TO PICK UP, IF THEY

ARE TRYING TO FIGURE OUT HOW TO CITE A PARTICULAR AUTHORITY. WE REFUSE TO CHOOSE BETWEEN OR ELEVATE ONE OVER ANOTHER, BECAUSE ONE IS A FOR-PROFIT. THEY ARE BOTH FOR-PROFIT, AND THE FLORIDA BAR APPELLATE RULES COMMITTEE DID NOT BELIEVE WE SHOULD ENDORSE ONE OVER THE OTHER, AND THE OTHER THING IS THAT WE AVOIDED A HUGE DEBATE ON WHICH WAS BETTER. THERE IS NO SAYING WE WOULD HAVE CHOSEN THE BLUE BOOK, IF WE WERE FORCED TO CHOOSE, SO IT WAS JUST AN OPTION THERE.

DOES THIS MEAN THAT, DOWN THE ROAD, WE ARE LOOKING AT, BECAUSE WE HAVE USED THE WEST SYSTEM FOR LONG AND THAT IS FOR-PROFIT, THAT THIS IS PART OF THE SAME CONCEPT. IS THAT WHERE THIS IS HEADING?

WELL, THE WEST PUBLICATIONS ARE WHAT THE ALWD AND THE BLUE BOOK USE. MOST OF, YOU KNOW, THAT IS, IT IS JUST A MATTER OF ORDER OR SOMETIMES YOU HAVE CALIFORNIA WITH SEVERAL DIFFERENT PUBLICATIONS, AND YOU HAVE TO CITE SEVERAL. I DON'T SEE IT IMPACTING ON, YOU KNOW, HOW WEST, YOU KNOW, HOW WEST DOES THEIR THING OR DELETING WEST OR CHANGING IT.

THE FOR-PROFIT THING, THE ONLY THING I HAVE SEEN THIS MORNING IS WE HAVE THROWN IT IN BECAUSE THIS IS PROFIT-MAKING, AND WE DON'T WANT TO GET INTO THAT, BECAUSE WE HAVE HAD A SYSTEM AS LONG AS I HAVE BEEN A LAWYER, AND I AM UNDERSTAND THE REASON, IF THERE IS A REASON OTHER THAN JUST THROWING IT IN BECAUSE THEY ARE FOR PROFIT. IS THERE A LEGAL INTELLECTUAL REASON BEYOND THOSE TWO?

THE BLUE BOOK IS A DIFFICULT BOOK TO FIGURE OUT FOR MOST PEOPLE. THE ALWD CAME ALONG. THE LAW SCHOOLS ARE USING IT. IT IS AN EASIER BOOK TO USE, AND A LOT, THERE WERE MANY PEOPLE ON OUR COMMITTEE WHO GOT TO SEE IT, GOT TO USE IT, AND THEN YOU KNOW, THE PERSON RESPONSIBLE CAME TO US AND SPOKE TO US, SO THE ALWD SEEMED LIKE A GOOD REFERENCE OR RESOURCE MATERIAL FOR CITING THINGS OUTSIDE OF 9.800. THE BLUE BOOK HAS BECOME CONFUSING. IF THEY KEEP THANKING -- CHANGING THEIR MIND. THE 17th EDITION HAS GONE BACK TO THE 15th, SO THAT IS BASICALLY YOU KNOW, JUST AN OPTION FOR PEOPLE. NOW, AS FAR AS 9.140-D, WE DID DRAW A GREAT DEAL OF PROBLEM WITH THIS RULE, FROM THE BOARD OF GOVERNORS, AS IT WAS INITIALLY DRAFTED. WE HAVE ADDRESSED AT LEAST ONE OF THEIR CONCERNS. AS FAR AS THE LOOPHOLE, WE LEFT OUT A LOOPHOLE WHAT HAPPENS IF THE PERSON ISN'T INDIGENT, AND SO WE TRY TO --

IS THAT REPUBLISHED THEN?

YES. ACTUALLY WHAT HAS BEEN PUBLISHED IS THE FINAL DRAFT. WHAT I PICKED UP OFF THE COMPUTER, AS THE FINAL DRAFT, IS WHAT WE ARE PROPOSING.

BASICALLY THERE IS THAT YOU ARE NOT GOING TO HAVE, YOU ARE GOING TO KNOW WHEN A LAWYER WITHDRAWS THE APPELLATE COURT RULE, HAS SOME SUPERVISORY AUTHORITY?

CORRECT IN CRIMINAL DEFENSE CASES AND STATE APPEALS.

I GUESS I WASN'T QUITE SURE, AND IF YOU CAN JUST EXPLAIN IT QUICKLY, IS IT THE APPELLATE COURT, THEN THAT, IS GOING TO RULE ON MOTION TO SAY WITHDRAW, OR IS THAT STILL GOING TO BE WITH THE TRIAL COURT?

THE APPELLATE COURT WILL NOW HAVE AN ADDITIONAL RESPONSIBILITY OF RULING ON A MOTION TO WITHDRAW. WHEN IT COMES --

YOU HAVE TO SEND IT DOWN TO THE TRIAL COURT TO APPOINT SUBSTITUTE COUNSEL.

WELL, IN THE, IN PUBLICLY-FUNDED CRIMINAL APPEALS, THE LOCAL PD WILL BE APPOINTED, AND

ALL WE HAVE TO DO, IN PUBLIC DEFENDER CASES, IS HAVE THE LOCAL PD SEND A COPY OF THAT ORDER APPOINTING THE LOCAL PD TO THE COURTS, AND THAT IS IN BOTH CRIMINAL AND STATE APPEALS. AND SO THAT, YOU KNOW, THE ADDITIONAL REQUIREMENT FOR WHEN A PUBLIC DEFENDER IS INVOLVED IS JUST SENDING A COPY OF THE ORDER. NO MOTION. BUT WHEN YOU HAVE NONPUBLICLY-DEFENDED DEFENSE IN PUBLIC APPEALS, COUNSEL HAS TO FILE A MOTION TO WITHDRAW FROM PUBLIC COURT AND SHOW WHO IS GOING TO TAKE OVER THIS CASE.

CHIEF JUSTICE: YOU ARE ENCROACHING ON JUDGE SHARP'S TIME.

WERE THERE ANY QUESTIONS ON THAT? STATE VERSUS WHITE IS WHAT IT IS BASED ON, AND IT WAS TO COVER THE PROBLEM WITH, YOU KNOW, APPOINTMENT OF COUNSEL ON THE STATE APPEAL LEVEL, OTHERWISE THE STATE APPEAL, SO THAT WAS THE REASON. THANK YOU.
MR.^CHIEF JUSTICE

THANK YOU.

YOUR HONORS, TO SAVE TIME, I WILL NOT TALK ABOUT THE GRAMMATICAL AND TYPOS AND OTHER STUFF, BECAUSE IT IS NOT WORTH YOUR TIME. IT IS ALL EXPLAINED, AND MOST OF THESE WERE CAUGHT AFTER THESE RULES HAD BEEN PASSED, WHICH IS TYPICAL, YOU KNOW. AT ANY RATE, ONE WHICH IS NOT REALLY A GLITCH. IT WAS JUST A COMPLETE WRONG REFERENCE, IS RULE 9.020-H, AND EVERYONE AGREED THIS HAS CAUSED APPEALING ORDERS FROM THAT COURT, SUPPORT ORDERS. IT HAS PUT THOSE INTO JEOPARDY, SO THAT WAS A QUICK CHANGE AND IT IS SUBSTANTIVE, BUT IT IS TO CORRECT WHAT SHOULD HAVE BEEN DONE IN THE FIRST PLACE.

THAT IS ONE THAT IS ALREADY IN HERE.

IT IS IN HERE. I AM NOT GOING TO ADDRESS IT.

EXCUSE ME. ARE YOU GOING TO ADDRESS THE REHEARING REQUIREMENT? IF THERE IS A PCA?

YES.

THE QUESTION, SPECIFIC QUESTION THAT WAS RAISED WHEN WE LOOKED AT THIS, IS THAT, THIS IS INTENDED TO BE FOR ALL LITIGANTS, BUT THE CERTIFICATE THAT IS REQUIRED, THE REQUEST SPEAKS IN TERMS OF THERE HAVING TO BE AN ATTORNEY WHO CERTIFIES THIS.

THAT MIGHT NEED A LITTLE BIT MORE WORK, YOUR HONOR. WOULD YOU LIKE ME TO ADDRESS THAT RULE?

JUST THAT PART. IF IT WAS A PRO SE LITIGANT, FOR THEM TO SIGN A CERTIFICATE SAYING IN THEIR PROFESSIONAL JUDGMENT AND AS ATTORNEY, IT WOULD NOT FIT IN THERE.

THIS WAS REALLY PATTERNED AFTER THE ON-BANC RULE, WHICH HAS A SIMILAR CERTIFICATION, BUT IT SAYS IN THAT RULE, IF THIS MOTION IS BEING MADE BY AN ATTORNEY.

SO WOULD YOU THINK THAT WOULD BE --

YES. THAT WOULD BE A VERY GOOD THING TO PUT IN AT THIS POINT TO CLARIFY THAT, BECAUSE I DON'T THINK WE INTENDED TO HAVE NOT HAVE THE PRO SE PERSON BE ABLE TO FILE THIS TYPE OF MOTION. I WILL COME BACK TO THAT RULE IN A MINUTE. THE NEXT RULE WAS 9.120-F, AND THAT WAS ONE THAT WE LEFT OUT OF THE CYCLE LAST TIME BY MISTAKE, AND SO IT IS BACK HERE THIS TIME, AND THAT ONE IS, I THINK, ONE THAT WAS DRAFTED AT THE REQUEST OF THE COURTS, BECAUSE YOU WANTED TO BE SURE THAT MERIT BRIEFS, THAT A COPY OF THE DCA OPINION WAS ATTACHED, AS WELL AS THE JURISDICTIONAL BRIEF, SO THAT IS ALL THAT RULE DOES. THAT RULE CHANGE DOES. I THINK IF THAT DOESN'T ADDRESS WHAT THIS COURT WANTED,

WE ARE SORRY. WE WILL START OVER. 9.180-C-3 IS A WORKERS COMP CHANGE, BECAUSE THE LEGISLATURE HAS AMENDED THAT STATUTE TO SAY THAT SETTLEMENTS NO LONGER HAVE TO BE APPROVED BY THE JUDGE, IN A COMPENSATION CLAIMS COURT, INSERT SITUATIONS, SO THAT WAS FOR THAT REASON. THAT BRINGS YOU BACK TO THE PCA PROBLEM. 9.330. AS THIS COURT KNOWS, EVERY TIME I GO TO A BAR CONVENTION, I GET ATTACHED TO WRITING TOO MANY PC As, AND THERE WAS A COMMITTEE APPOINTED BY THIS COURT TO ADDRESS THAT ISSUE, AND THEY THOUGHT THERE WEREN'T ANY PROBLEMS WITH IT, BUT ON MY COMMITTEE, THEY LIKED THE DISSENTING OPINIONS. MOST OF OUR PEOPLE DID, AND SO THEY DRAFTED THIS RULE, WHICH WOULD GIVE A PARTY A CHANCE TO SAY, LOOK, IF YOU WRITE AN OPINION, THERE IS GOING TO BE A CONFLICT. THERE IS GOING TO BE, IT IS A VERY IMPORTANT ISSUE, BLAH BLAH BLAH, AND WILL GIVE US A CHANCE TO GO TO THE SUPREME COURT, AND SO THE APPELLATE RULES COMMITTEE APPROVED THAT, AND OUR FIRST DRAFT SAID PC A OR PROCURING AN AFFIRMED OPINION, AND THAT WAS CHANGED TO SAY A DECISION WITHOUT OPINION, BECAUSE WE WANTED TO BROADEN IT TO INCLUDE DENIALS OF PETITIONS OF ALL KINDS, AND EVEN DENIALS OF MOTIONS, AND SO THAT WAS, THAT IS HOW THIS EVOLVED. THAT IS HOW THIS LANGUAGE HAS EVOLVED. AND I THINK THAT IS ABOUT AS BROAD AS WE COULD GO. NOW, THERE WERE A LOT OF OPPOSITION ON THE COMMITTEE. THEY DIDN'T WANT TO MAKE THIS TOO EASY, SO THAT IS WHY THEY WANTED THE LAWYER, AS A MOVANT, TO MAKE THESE SPECIFIC ALLEGATIONS AS TO WHY THERE MIGHT BE CONFLICT JURISDICTION OR SOME OTHER KIND OF JURISDICTION, AND WHY --

THE INTENT THAT IT WOULD BE FILED AT THE SAME TIME AS A MOTION TO REHEARING?

YES N CONNECTION WITH A MOTION FOR REHEARING. THAT IS THE THOUGHT. I DID HAVE SOME COMMENTS FROM MR. JERRY PHILOH. HE WANTED TO BROADEN THE LANGUAGE OR ACTUALLY I THINK HE WANTED TO LIMIT IT. HE WANTED TO ADD AN UNELABORATED PCA. I DON'T KNOW WHAT AN UNELABORATED PCA IS, BECAUSE A PCA IS USUALLY JUST A PCA. I DON'T THINK HOW IT MIGHT HELP. IT MIGHT HAVE THE EFFECT OF TOO STRICTLY LIMITING IT. IF YOU PUT TOO MANY THINGS IN AND SOMETHING COMES ALONG AND PEOPLE SAY THAT IS NOT ON THE LIST SO THAT IS NOT COVERED. I THINK THE RULE WOULD BE A BENEFIT TO THE BAR, AND I THINK TO THE COURTS, BECAUSE SOMETIMES WE MIGHT NOT REALIZE THIS IS A CASE THAT SHOULD BE RESOLVED. IF THERE ARE ANYMORE QUESTIONS ABOUT THAT? THE NEXT RULE WAS ONE WHICH WE DRAFTED AT THIS COURT'S REQUEST. THAT IS 9.330.

THAT IS NOT PRESENTLY RESTRICTED IN THE MOTION FOR REHEARING. IS IT?

RESTRICTED? I AM SORRY, YOUR HONOR.

THE LAWYER, PRESENTLY, CAN RAISE THAT ISSUE IN A MOTION FOR REHEARING.

I SUPPOSE HE CAN.

YOU DON'T SEE THAT?

BUT THERE IS A, I DON'T KNOW, THERE IS A TRADITION, ESPECIALLY, MAYBE, IN THE FOURTH DCA, THAT IF YOU GET AN OPINION WITH, YOU KNOW, NO OPINION, THAT THERE IS NO BASIS TO FILE, BECAUSE YOU DON'T KNOW WHY THE COURT MIGHT HAVE OVERLOOKED SOMETHING, WHEN YOU DON'T KNOW WHAT THE COURTS WERE THINKING ABOUT, AND THIS WAS A WAY OF HELPING THE BAR --

-- IDENTIFY.

I CAN THINK OF SOME OPINIONS THAT HAVE BEEN WRITTEN IN RESPONSE TO MOTIONS FOR REHEARING OF PCA, ESPECIALLY AS IN REGARD TO THE SECOND, WHERE THEY, LISTEN, YOU WANT TO KNOW WHY PCA? WE ARE GOING TO TELL YOU AND WENT ON TO SAY WHY IT WAS WAIVED AND SO FORTH, SO SOMETIMES THEY MIGHT GET WHAT --

SOMETIMES THEY MIGHT BUT SOMETIMES THEY MIGHT NOT, AND THIS IS WHAT THE BAR REALLY WANTS. THE BAR REALLY DOESN'T LIKE PCA.

BUT YOU ARE TALKING ABOUT THE OPINIONS THAT CRITICIZE THE MOTIONS FOR REHEARING, AFTER THERE HAS BEEN AN AFFIRMANCE WITHOUT OPINION.

YES. ALL RIGHT. THE OTHER RULE, WHICH I JUST MENTIONED, IS 9.330-D. WE WROTE THIS AT, I THINK, THE SUPREME COURT'S REQUEST, AND IT WAS TO COVER THE SITUATION WHEN THE SUPREME COURT DISMISSED THERE IS NO PETITION FOR REHEARING, WHEN THE SUPREME COURT DISMISSES A PETITION FOR EXTRAORDINARY WRIT RELIEF, DESCRIBED IN 9.100-A. THERE WAS A COMMENT RECEIVED BY THAT, BECAUSE WE STRUCK "FOR CLARIFICATION", AND I AM NOT SURE THAT YOU GET CLARIFICATION, WHEN THE COURT DISMISSES WITHOUT OPINION. WHAT DO YOU CLARIFY? BECAUSE THE COURT IS REFILING A PETITION FOR HEARING. I DON'T THINK THAT IS A PROBLEM WITH THIS, AND IF THIS DOESN'T SATISFY WHAT THE COURTS WANT OR WANTED, PLEASE SEND IT BACK US. WE DID THE BEST WE COULD. THE FINAL SUBSTANTIVE ONE WHICH I AM GOING TO ADDRESS, WELL, ACTUALLY IT IS NOT THE FINAL ONE. IS THE AMICUS CURRIAE, WHICH IS IS COMPLETELY WRITTEN AND PUT INTO PARAGRAPH. THE FIRST PARAGRAPH, SECTION A, HAS BEEN THE RULE FOR YEARS THAT YOU NEED THE PERMISSION OF THE COURT OR ALL OF THE PARTIES TO FILE.

COULD YOU ADDRESS THAT PART, BECAUSE THAT SEEMS TO HAVE ACTUALLY BROUGHT THE CONTROVERSY. IT SAID, FOR YEARS, THAT "OR BY CONSENT OF PARTIES", BUT I KNOW THIS COURT HAS A POLICY THAT, EVEN IF THEY CONSENT, THAT THERE STILL HAS TO BE REVIEW, AND APPARENTLY THE FIFTH DISTRICT MUST, ALSO, NOT ALLOW THE FILING JUST BY CONSENT OF ALL PARTIES, SO WAS THERE DISCUSSION AS TO YOU ARE SAYING IT IS NOT A CHANGE, BUT IT LOOKS LIKE THE ACTUAL POLICY, AT LEAST OF SOME COURTS, IS NOT TO ALLOW AN AMICUS, EVEN BY CONSENT OF ALL PARTIES, BUT IT DOES REQUIRE A JUDICIAL DECISION. WAS THAT DISCUSSED?

THAT WAS NOT DISCUSSED AT OUR LEVEL AT ALL. THE THINGS WE WERE ADDRESSING WAS TIMING OF THE FILING OF THE BRIEF, THE SUBSTANCE OF THE BRIEF. WHAT SHOULD BE IN THE MOTION, BLAH BLAH BLAH. IT GOES ON TWO MORE PARAGRAPHS. MAINLY BECAUSE WE HAVE BEEN INUNDATED BY TOO MANY AMICUS BRIEFS WITH, YOU KNOW, HUGE PAGE LIMITS, AND THEY COME IN REALLY LATE, AND SO THIS RULE WAS TO ADDRESS THOSE PROBLEMS. THE COMMITTEE WAS NOT CONSIDERING, AT ALL, WHETHER OR NOT A BRIEF COULD BE FILED WITH THE PERMISSION OF ALL THE PARTIES. THAT WAS NOT EVER CONSIDERED.

BUT WHAT YOU ARE REALLY SAYING IS THAT, IF THEY HAVE CONSENT OF THE PARTIES BUT IT COMES, IT IS TOO LONG OR IT IS TOO LATE, THAT IS GOING TO BE AN INDEPENDENT GROUND, NOW, UNDER THIS RULE.

YES, IT ALWAYS WAS. THEY HAD TIME BEFORE, BUT THE TIMING HAS BEEN MOVED UP. IT IS SHORTER, AND IT WOULD GIVE EVERYBODY A CHANCE TO RESPOND. I THINK THE TIMING IN THIS NEW RULE IS MUCH BETTER. I THINK IT IS GREAT TO LIMIT THE PAGE NUMBER TO 20 PAGES AND TO REQUIRE THE MOVANT TO SAY, IDENTIFY THEIR BIAS. WHY ARE THEY WRITING THIS? WHAT IS THEIR INTEREST IN THIS AND WHAT ISSUES ARE THEY SUPPORTING? THOSE ARE VERY HELPFUL, WOULD BE VERY, VERY HELPFUL TO THE COURT. MR.^CHIEF JUSTICE

JUDGE SHARP, YOU ARE INTO YOUR REBUTTAL TIME.

OKAY. I WILL HAVE TO RELY ON MY PETITION FOR THE REMAINDER.

LET ME ASK AS TO THE FACTS OF THIS. IS YOUR VIEW AS THE PAST-CHAIR OF THE COMMITTEE AND ALSO AS APPELLATE COURT JUDGE FOR ALL THIS TIME, THAT WE SHOULD BE ALLOWING AMICUS BRIEFS BY CONSENT TO THE PARTIES.

YOU KNOW, THAT IS WHAT THE RULE SAYS.

I SEE THAT.

AND WE WEREN'T CHANGING THAT. THAT IS WHAT IT SAID BEFORE AND THAT IS WHAT IT SAYS NOW. IF THIS IS A PROBLEM, I WOULD ASK THAT THIS COURT REFER THAT BACK TO THE RULES COMMITTEE FOR CONSIDERATION. THANK YOU. MR.^CHIEF JUSTICE

THANK YOU. MR. ROSEN.

MAY IT PLEASE THE COURT. I AM MIKE ROSEN HERE, REPRESENTING THE FLORIDA HOME BUILDERS ASSOCIATION. THE REASON I AM HERE TODAY TODAY IS NOT TO OPPOSE ANY OF THE PROPOSED AMENDMENTS TO THE APPELLATE RULES BUT TO ASK THE COURT TO CONSIDER A PROBLEM THAT ONLY CAME TO LIGHT, SO FAR AS WE WERE AWARE, AFTER THE PROPOSED AMENDMENTS HAD BEEN SUBMITTED TO THIS COURT BY THE APPELLATE RULES COMMITTEE. IT MAY SEEM, IN THE GRAND SCHEME OF THINGS, TO BE RELATIVELY MINOR PROBLEM, BUT IT IS ONE THAT IS A SERIOUS CONCERN TO ALL OF US WHO BELIEVE THAT THE APPELLATE RULE SHOULD ACCURATELY REFLECT THE PRACTICE OF THE COURT, SO THAT THEY DON'T CREATE TRAPS FOR THE UNWARY. OBVIOUSLY THE COURT IS ALREADY AWARE OF THIS PROBLEM, AND IT STEMS FROM THE LANGUAGE OF RULE 9.370, THAT PROVIDES FOR THE AUTHORIZATION TO FILE AMICUS CURIAE BRIEFS. SPECIFICALLY RULE 9.370, AS IT CURRENTLY EXISTS, PROVIDES THAT AN AMICUS CURIAE, IN ANY PROCEEDING WITH CONSENT OF ALL PARTIES OR WITH RULE OF THE COURT, BASED ON THE CONJUNCTION "OR", WHICH GENERALLY MEANS THAT CONNECTIVE PHRASES SHOULD BE TREATED AS ALTERNATIVES, THE PLAIN LANGUAGE OF THE RULE SEEMS TO INDICATE THAT AUTHORIZATION TO FILE AN AMICUS BRIEF CAN BE OBTAINED IN EITHER OF TWO ALTERNATIVE WAYS. EITHER BY GETTING THE WRITTEN CONSENT OF ALL PARTIES OR BY GETTING LEAVE OF COURT.

JUDGE SHARP HAS ACKNOWLEDGED THAT THAT IS LITERALLY WHAT THE RULE SAYS, AND THAT APPARENTLY IT SHOULD BE CONSTRUED THAT WAY. LET ME ASK YOU TO HELP US WITH WHETHER OR NOT THERE IS A WIDESPREAD PROBLEM OUT THERE, AND THAT IS THAT IT IS EITHER BY YOU CHECKING WITH YOUR MEMBERS AND ATTORNEYS THAT HAVE REPORTED THAT THE DISTRICT COURTS ARE REGULARLY IGNORING THAT ALTERNATIVE PROVISION, IN A WIDESPREAD WAY, AS OPPOSED TO IT IS DIFFICULT TO SWALLOW SOMETIMES, BUT THAT THERE MIGHT BE SINGLE INSTANCE WHERE A DISTRICT COURT, PERHAPS, STRUCK AN AMICUS BRIEF, WHERE EVERYBODY HAD CONSENTED THAT IT COULD BE FILED, AND THEN THIS COURT HAD DECLINED TO REVIEW THAT DECISION, THAT NOT MEANING WHAT, MANY TIMES THIS COURT IS ASKED TO REVIEW DECISIONS IN WHICH THE COURT HAS TO MAKE A DISCRETIONARY CALL OF WHETHER IT IS GOING TO GET INVOLVED, YOU KNOW, WITH A PARTICULAR MATTER, AND SO IT DOESN'T ALWAYS MEAN THAT THE COURT DOESN'T AGREE, YOU KNOW, WITH THE PROPOSITION THAT MAY BE ADVANCED, MY CONCERN IS WHETHER THERE IS A WIDESPREAD PROBLEM OUT THERE OR DISTRICT COURTS OF APPEAL, JUST LIKE THIS COURT, MAKE MISTAKES FROM TIME TO TIME, AND SOMETIMES THOSE MISTAKES ARE NOT CORRECTED, AND I HATE TO SAY THAT IS THE REALITY, YOU KNOW, BUT TO SOME DEGREE IT IS. SO COULD YOU HELP ME WITH WHETHER IT IS A WIDESPREAD PROBLEM OR WHETHER IT HAPPENED IN THIS ONE CASE, AND THERE WAS, IT WASN'T CORRECTED.

JUSTICE ANSTEAD, SO FAR AS I WAS AWARE BEFORE I ARRIVED AT THE COURT TODAY, THIS IS THE ONLY INSTANCE IN WHICH IT HAS HAPPENED. A SITUATION WHERE A PARTY HAS FILED WRITTEN CONSENT OF ALL THE PARTIES AND THEN THE DISTRICT COURT, IN THIS CASE, SOME SIX WEEKS LATER, AFTER THE PARTIES HAD EXTENDED A CONSIDERABLE AMOUNT OF TIME AND MONEY TO PREPARE THEIR BRIEF, SUA SPONTE RULED THAT THE CONSENT OF THE PARTIES WAS DENIED. I LEARNED, FROM ONE OF MY COLLEAGUES JUST PRIOR TO THIS HEARING, TODAY, THAT THAT APPARENTLY HAS HAPPENED BEFORE IN THE FIRST DISTRICT COURT OF APPEAL AS WELL,

AND IF I UNDERSTOOD CORRECTLY, JUSTICE PARIENTE WAS SAYING THAT IT IS THE POLICY OF THIS COURT, AND I CAN UNDERSTAND THE COURT HAS TO HAVE INHERENT AUTHORITY TO CONTROL ITS PROCEDURES. THERE MAY BE CASES WHERE THE NUMBER OF AMICUS BRIEFS FILED IS OVERLY BURDENSOME. MY POSITION, AS TO WHETHER IT HAPPENS IN RARE OR CURRENT CIRCUMSTANCES, IS REALLY THE PROBLEM. BY THE WAY, INTERESTINGLY I FOUND A 1958 DECISION OF THIS COURT, WHICH, ACTUALLY, IS THE ONLY MENTION OF THIS RULE, OF COURSE IT IS THE PREDECESSOR RULE 9.37-K, WHICH INTERPRETS THE RULE AS IT IS WRITTEN, AND SAYS YOU CAN DO IT IN ONE OF TWO-WAYS, EITHER WITH CONSENT OF THE PARTIES OR BY LEAVE OF COURT. MY PROBLEM, AND I THINK THE PROBLEM FOR PRACTITIONERS OUT THERE WHO MAY NOT BE AWARE OF WHAT HAPPENED IN THE MANN CASE, IN THE CASE THAT WE ARE REFERRING TO THAT JUST RECENTLY OCCURRED, IS THAT THEY CAN FALL TRAP, YOU KNOW, FALL INTO THIS TRAP, SIMPLY BY RELYING ON THE LITERAL LANGUAGE OF THE RULE. I MEAN, EVERYONE, I THINK, RECOGNIZES THAT THE PLAIN LANGUAGE OF THE RULE INDICATES THAT YOU CAN OBTAIN PERMISSION OR YOU CAN OBTAIN AUTHORITY TO FILE AN AMICUS BRIEF, SIMPLY BY FILING THE WRITTEN CONSENT OF THE PARTIES. WHAT I AM ASKING THE COURT TO DO, AND I THINK IT IS A PROBLEM THAT ON THE NOT BE DEFERRED TO THE NEXT CYCLE, AND THAT IS THE ONLY REASON I POSED IT AT THIS POINT, IT WAS TOO LATE TO GET IT BEFORE THE APPELLATE RULES COMMITTEE, IS THAT AS I SAY, FOR ALL OF US WHO BELIEVE THAT THE APPELLATE RULE SHOULD ACCURATELY REFLECT THE WAY THE RULES ARE BEING APPLIED. THERE IS NO REASON NOT TO CORRECT THAT, AND I BELIEVE THE COURT CAN DO IT IN ONE OF TWO WAYS. EITHER THE COURT CAN DELETE THE LANGUAGE THAT INDICATES THAT WRITTEN CONSENT OF THE PARTIES IS SUFFICIENT IN ITSELF TO AUTHORIZE THE FILING OF AN AMICUS BRIEF, OR, AND I THINK IF WE ARE GOING TO MAINTAIN THE PRACTICE THAT HAS BEEN IN EFFECT IN THIS STATE GOING BACK AT LEAST 50 YEARS, WE KNOW, TO ALLOW THE FILING OF AMICUS BRIEF, SOLELY BASED ON CONSENT OF THE PARTY AND WITHOUT HAVING TO BURDEN THE COURT WITH MULTIPLE SEPARATE MOTIONS IN CERTAIN CASES, THEN THE COURT CAN EITHER PUT SOMETHING IN THE COMMENTARY OR AMEND THE RULE TO MAKE IT CLEAR WITHOUT ANY DOUBT, THAT IF YOU GET CONSENT OF THE PARTIES, YOU HAVE THE RILE TO FILE AN AMICUS BRIEF AND THE COURT CANNOT DENY IT, AND WE ARE TALKING ABOUT CASES WITH NO IDENTIFIABLE DEFICIENCY IN THE FILING OF THE CASE. THERE HAS BEEN NO BREACH OF THE RULE.

JUST ONE SENTENCE, A STATEMENT IN A COMMENTARY THAT SAID THAT THIS RULE CONTEMPLATES THAT THESE ARE ALTERNATIVE WAYS TO BE AUTHORIZED TO FILE AMICUS BRIEF, WOULD TAKE CARE OF THAT?

WELL, I THINK IT WOULD HELP. YOU KNOW, I THINK --

MY PROBLEM IS, AGAIN IT GOES BACK TO THIS THING ABOUT THIS COURT SIMPLY CANNOT SUPERVISE THE DISTRICT COURTS OF APPEAL IN EVERY DECISION THAT THEY MAKE, AND WHEN THEY MAKE, AND THERE MAY BE THESE KINDS OF MISTAKES MADE, AND WE JUST DO NOT HAVE THE CAPACITY TO TAKE CARE OF THAT, AND SO I THINK THE BEST WE CAN DO IS, ASSUMING WE MAKE THAT DECISION, IS TO SAY THIS IS WHAT IT MEANS. QUITE CLEARLY, AND I AM CERTAIN THAT THE DISTRICT COURTS OF APPEAL, YOU KNOW, WITH THAT ADDED EMPHASIS --

JUSTICE WELLS.

I HAVE ONE QUESTION. YOU DO CONTEMPLATE THAT THE CONSENT WOULD ONLY BE ABSOLUTELY APPLICABLE, IF IT WAS TIMELY FILED OTHERWISE, AND THE COURT WOULD RULE --

CERTAINLY IT WOULD HAVE TO MEET ALL THE OTHER REQUIREMENTS, AND IN ANSWERING YOUR QUESTION, JUSTICE ANSTEAD, AS FAR AS HOW WE CAN REMEDY THIS PROBLEM, WITHOUT CHANGING THE LANGUAGE OF THE RULE AS IT IS PROPOSED, AND, OF COURSE, AS I POINTED OUT, THE NEW AMENDED RULE WOULD ACTUALLY HAVE TWO PROVISIONS, THAT SEEM TO AFFIRM THE RIGHT TO FILE WITH CONSENT OF THE PARTIES. I THINK IT WOULD BE HELPFUL TO PUT

SOMETHING IN THE COMMENTARY TO, PERHAPS, EMPHASIZE THAT THE CONSENT OF THE PARTIES IS AN ALTERNATIVE, BUT MAYBE BETTER TO HELP PROTECT AGAINST RETURNS OF THESE KINDS OF UNFORTUNATE INCIDENTS THAT THERE BE SOME CAUTIONARY LANGUAGE IN THERE, IF IT IS THE COURT'S OPINION THAT A DISTRICT COURT OR THIS COURT SHOULD STILL HAVE INHERENT AUTHORITY, NOTWITHSTANDING THE CONSENT OF THE PARTIES TO STRIKE OR REFUSE TO ACCEPT THE AMICUS BRIEF THAT OTHERWISE COMPLIES WITH ALL THE OTHER RULES, AND IT IS TIMELY, THEN THERE MIGHT ON THE TO BE SOME CAUTIONARY LANGUAGE IN THE COMMENTARY THAT SAYS COUNSEL SHOULD BE AWARE THAT THE COURT RETAINS INHERENT AUTHORITY, NOTWITHSTANDING THE WRITTEN CONSENT OF THE PARTIES, TO DENY OR REFUSE TO ACCEPT BRIEFS. I KNOW THAT THAT ONLY HIGHLIGHTS THE SORT OF IN CONGRUITY BETWEEN THIS KIND OF PRACTICE IN THE LANGUAGE RULE, BUT AT LEAST IT WOULD PROTECT AGAINST OTHER PRACTITIONERS WHO AREN'T AWARE OF THIS SITUATION, FALLING INTO THAT TRAP.

THANK YOU VERY MUCH.

THANK YOU.

IN MY VIEW, I THINK YOU CAN CHANGE THE RULING WITHOUT WORDING IN THAT ISSUE. IF YOU HAVE, YOU CAN ADOPT THAT. ALL THE PARTIES AS AN ALTERNATIVE. YOU COULD SAY "OR IN THE ALTERNATIVE", BUT I MEAN, I REALLY DON'T THINK YOU NEED TO. I DON'T KNOW WHY MY COURT DID THIS. I DON'T THINK I WAS ON THE PANEL, AND I REALLY, LET ME SUGGEST SOMETHING. IN THIS CASE, THERE WERE NINE AMICUS BRIEFS, AND THEY WERE ALL COMING IN, I THINK, RATHER LATE IN THE PROCESS. SOMETIMES OUR JUDGES GET OVERWHELMED BY TOO MANY, TOO LONG, TOO-LATE BRIEFS BEING FILED. I THINK THIS NEW RULE WILL HELP THAT A LOT, BECAUSE, AGAIN, HAVE THESE BRIEFS FILED EARLIER IN THE PROCESS, AND THEY ARE GOING TO BE SHORTER. THEY ARE, ALSO, GOING TO IDENTIFY THE ISSUES. AGAIN, I HAVE SOME PROBLEM WITH THE COURT NOT SAYING, LOOK, WHEN WE GET 100 AMICUS BRIEFS WITH EVERYBODY'S CONSENT THAT, IS ENOUGH. WHAT IS ENOUGH? I THINK 50 BRIEFS ON AN ISSUE IS ENOUGH. 20 BRIEFS ON AN ISSUE IS ENOUGH. AT SOME POINT, I THINK THE COURT HAS GOT TO DEFEND ITSELF, AND THE FINAL POINT IS YOU CAN REQUIRE AN ELECTIVE FILING, BUT IF THERE ARE TOO MANY, YOU ARE NOT GOING TO GET US TO READ THEM.

IF YOU ARE SAYING THAT THE COURTS SHOULD RETAIN INHERENT AUTHORITY TO NOT ALLOW THE FILING, THEN ISN'T IT, BECAUSE THE JUDGE SEEMED PRETTY PLAIN WHERE IT SAYS "OR IN CONSENT OF THE PARTIES", WOULDN'T WE HAVE TO --

-- LET THEM FILE IT. AS I SAID, THIS MIGHT BE SOMETHING THAT I THINK THE APPELLATE RULES MIGHT THINK ABOUT AND CONSIDER. WE DIDN'T THINK ABOUT IT. WE HAVE NEVER THOUGHT ABOUT IT. I MEAN, THIS IS THE SAME RULE WE HAVE BEEN LIVING WITH FOR MANY YEARS, AND SO I THINK THIS IS AN ISSUE WE WOULD BE VERY HAPPY TO ADDRESS AND SEE HOW, YOU KNOW, WHAT THEY THINK ABOUT IT. ALL I CAN DO IS TALK FROM MY POINT OF VIEW.

CHIEF JUSTICE: THANK YOU. THANK YOU. I WOULD APPRECIATE THE COMMENTS BY COUNSEL, ALWAYS, ON THIS RULE, AND WE WOULD LIKE TO PAY PARTICULAR TRIBUTE TO THE LONG-STANDING CHAIR OF THIS COMMITTEE, AND THE NEW CHAIR, AND WE KNOW THAT THESE ARE VERY IMPORTANT POSITIONS, TIME-CONSUMING POSITIONS, AND THE COURT IS DEEPLY INDEBTED TO THOSE OF YOU WHO ARE WILLING TO PROVIDE THAT SERVICE, AND WE APPRECIATE THAT. THE COURT WILL BE IN RECESS.