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Amendments to the Rules Regulating The Florida Bar

THE NEXT MATTER ON THE COURT'S DOCKET THIS MORNING IS THE AMENDMENT TO THE RULES REGULATING THE FLORIDA BAR.

CHIEF JUSTICE: GOOD MORNING EVERYONE. MR. McGRANE, YOU ARE ON FIRST.

THANK YOU. THANK YOU. IF IT PLEASE THE COURT, MY NAME IS MILES McGRANE. I AM HERE REPRESENTING THE FLORIDA BAR.

MR. McGRANE YOU, RECOGNIZE, SINCE JUSTICE HARDING HAS RETIRED, YOU ARE NO LONGER REQUIRED TO WEAR A BOW TIE.

I THOUGHT HE MIGHT BE WALKING AROUND TODAY OR I MIGHT SEE MR. MACFARLAND TODAY, SO I THOUGHT I WOULD WEAR THE UNIFORM. WE ARE HERE TODAY, FOR THE BAR'S MASTER FILING OF CONSOLIDATED AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR, ALL OF WHICH ARE READY FOR FINAL COURT ACTION. THIS FILING REPRESENTS A COMPILATION OF RULE PROPOSALS DEVELOPED OVER A SPAN OF TIME FROM MAY 2001 TO FEBRUARY 2003. NOW, THERE ARE, THERE IS ONE OTHER BAR RULES MATTER PENDING WITH THE COURT, RELATING TO UNBUNDLED LEGAL SERVICES, AND LATER, THE BOARD WILL WRAP UP ANOTHER SHORT YEAR OF RULE AMENDMENTS. HOWEVER, THOSE MATTERS WILL NOT IMPACT ON WHAT WE ARE HERE TODAY ON. THIS SUBMISSION WAS FORMATED IN CONFORMANCE WITH THE COURT'S NEWLY PROMULGATED GUIDELINES FOR FORMAL PETITIONS TO AMEND ALL RULES OF COURT. SOME OF THESE AMENDMENTS ARE EDITORIAL. SOME ARE SUBSTANTIVE. SOME ARE AT THE REQUEST OF THE COURT. SOME ARE JUST AS WE SAY, EDITORIAL CHANGES. WE HAVE PRESENTED THEM ALL IN GREAT DETAIL IN THE BRIEF WE FILED. WE HAVE, TODAY, WITH US, A NUMBER OF PEOPLE, SHOULD THE COURT HAVE QUESTIONS. WE HAVE JEFFREY COHEN, WHO CHAIRS THE BOARD OF LEGAL SPECIALIZATION. WE HAVE KIMBERLY ASHBY, AND SHE IS HERE FOR RAP TILE, AND SHE IS -- FOR REPTILE, AND SHE HERE IN SUPPORT OF THE CONSTRUCTION LAW CERTIFICATION. WE HAVE LORI HOLCOMB FROM UPL, FLORIDA BAR, ELIZABETH TARBO AND PAUL HILL AND OF COURSE WE HAVE WITH US TONY BACHS.

ARE YOU GOING TO ANSWER QUESTIONS HERE ABOUT THE SPECIFIC PROVISIONS, BECAUSE ONE OF THE PROVISIONS THAT WAS COMMENT BAD IS THE PROVISION THAT AN ATTORNEY WHO IS SUSPENDED COULD NOT BE SPRFLSED BY -- SPLFSED BY A SUBORD -- SUPERVISED BY A SUBORDINATE THAT WAS IN HIS OFFICE, AND THERE SEEMS TO BE SOME QUESTION ABOUT WHETHER OR NOT THAT PARTICULAR AMENDMENT TO THE RULE IS NECESSARY.

JUSTICE QUINCE, WE HAVE THE APPROPRIATE PERSON TO GIVE WHATEVER ANSWER YOU NEED. IT WILL NOT BE THIS PERSON, I ASSURE YOU. BUT, YES, THAT IS WHY WE HAVE THE CAST WE HAVE. WHAT WE HAVE SUGGESTED IS, UNLESS THE COURT HAS ANY SPECIFIC QUESTIONS NOW, WE WOULD LIKE TO RESERVE ALL OF THE TIME WE HAVE IN RESPONDING TO THE COMMENTS.

I THINK IT IMPORTANT THAT WE GO TO THE SUBSTANCE. I WOULD LIKE TO HEAR FROM THE BAR, RATHER THAN IN A REBUTTAL FASHION, TO OUTLINE THE RULE THAT JUSTICE QUINCE IS TALKING ABOUT, AND THE RELATED RULE WITH SMALL LAW FIRMS AND WHAT HAPPENS IN THAT AREA, SO RATHER THAN JUST A REBUTTAL, I THINK WE NEED A FULL PRESENTATION AS TO THE REASONS WHY WE NEED THE RULE, WHAT IS GOING ON IN THE FIELD, WHAT ARE THE ABUSES, THAT KIND OF THING, AND WE CAN KIND OF SORT THIS OUT.

I WILL DEFER, THEN, TO MR. BOGGS.

MR. BOGGS, YOU ARE ON.

MR. BOGGS, IF YOU WILL, IN ADDITION TO THE QUESTION, BECAUSE I THINK THEY ARE CLOSELY RELATED, THE ISSUES WITH REGARD TO SMALL LAW FIRMS AND NO CONTACT WITH THEM AND DOES THAT PUT THEM OUT OF BUSINESS, THAT A TAXABLE EVENT, ALL OF THOSE RELATED ISSUES THAT GO INTO WHAT HAPPENS IF YOU HAVE GOT A SMALL OFFICE PRACTITIONER WHO IS SUSPENDED, AND I THINK IT IMPACTS A GREAT MANY FLORIDA LAWYERS HERE.

YES, SIR. THERE ARE TWO RULES INVOLVED, RULE 3-6.1, WHICH IS THE RULE ABOUT CERTAIN SUSPENDED, DISBARRED AND DISCIPLINARY LAWYERS, AND THE RULE YOU ARE TALKING ABOUT IS 8.6, PUTTING THEM OUT OF BUSINESS, THE AUTHORIZED BUSINESS ENTITY RULE. LET'S START WITH 3-6.1, BECAUSE THAT IS WHERE IT DOES BEGIN. THAT RULE AS WE ARE PROPOSING IT, MAY NOT, FOR A PERIOD OF THREE YEARS FROM ENTRY OF THE ORDER, PURSUANT TO SUSPENSION, DISCIPLINARY OR DISBARMENT BECAME EFFECTIVE, BE EMPLOYED BY OR WORK UNDER ANOTHER ATTORNEY WHO IS SUPERVISED BY THE INDIVIDUAL AT THE TIME OR IS SUBJECT TO GIVEN THE ORDER. WHAT I AM SAYING IS IF I WORK FOR MR. McGRANE AND HE IS SUSPENDED, HE CAN'T WORK FOR ME DURING THE PERIOD OF SUSPENSION, AND WE PROPOSED THAT RULE --

IS IT JUST FOR THE PERIOD OF SUSPENSION OR FOR THREE YEARS?

I AM SORRY, JUSTICE BELL, YOU ARE CORRECT. IT IS FOR PARED OF THREE YEARS.

WHY -- FOR A PERIOD OF THREE YEARS.

WHY FOR A PERIOD OF THREE YEARS?

WE POLLED DIFFERENT DISTRICTS AROUND THE COUNTRY AND WE FIRST STARTED PROPOSING AN ABSOLUTE LIFETIME BAN. ONCE YOU ARE SUSPENDED, YOU CAN'T WORK FOR SOMEONE WHO WORKED FOR YOU. WE GOT COMMENTS FROM THE MEMBERSHIP OF THE BAR THAT SUGGESTED THE THREE-YEAR PERIOD OF TIME, HAS NOT THAT IS THE BASIS FOR WHICH WE WENT WITH THREE YEARS.

WHAT ARE WE REALLY TRYING TO REMEDY HERE BY DOING THAT?

WHAT WE ARE TRYING TO REMEDY IS ON A SHORT-TERM SUSPENSION, PRIMARILY, YOUR HONOR, WHERE AGAIN IF I WORKED FOR MR. McGRANE AS A BRAND NEW ASSOCIATE AND HE BECOMES SUSPENDED FOR 30, 60, 90 DAYS, AND WHAT HAPPENS THEN IS, IF HE STARTS WORKING FOR ME, WHO IS REALLY THE ONE CALLING THE SHOTS? WHO IS REALLY THE ONE RUNNING THE OFFICE?

REALLY, SAY LET'S GO TO SOMEONE WHO HAS A TEN-DAY SUSPENSION.

YES, MA'AM.

AND THAT REALLY IS GOING TO SERVE THE INTERESTS OF THE BAR IN SAYING THAT, FOR THAT TEN-DAY PERIOD, YOU COULDN'T WORK FOR WHOEVER THAT --

LET ME GIVE YOU AN EXAMPLE. YOU GO TO OKALOOSA COUNTY. YOU HAVE POWELL, POWELL AND POWELL, ALL OF THE POWELL FAMILY WORKING, UNDER YOUR EXAMPLE, IF ONE OF THE POWELLS HAD A MINOR PROBLEM BUT SIGNIFICANT ENOUGH FOR A TEN-DAY SUSPENSION, THEY COULD NO LONGER PRACTICE WITH ANY OF THE FAMILY MEMBERS FOR THREE YEARS?

NO, SIR. FOR THE PERIOD OF SUSPENSION.

ONLY --

ONCE THE LAWYER IS OFF SUSPENSION, THE LAWYER IS ELIGIBLE TO PRACTICE LAW AND THE LAWYER CAN PRACTICE LAW. OUR INTENT IS NOT TO APPLY A THREE-YEAR BAN PERIOD BUT A BAN DURING LENGTH OF SUSPENSION UP TO THREE YEARS.

A TEN-DAY SUSPENSION IS, IN THAT TIME, GENERALLY YOU ARE NOT GOING TO HAVE, I MEAN, I DON'T KNOW, IS THAT WHERE THE PROBLEM OCCURS, OR IS IT REALLY WHERE THERE IS A LONGER SUSPENSION AND WHAT SOMEONE IS TRYING TO DO IS REALLY GET AROUND THE BAN, BY HIRING, HAVING, WORKING FOR SOMEBODY THAT WAS THEIR SUPPORTNANT AND REALLY DOING THE EXACT SAME THING THEY WERE DOING BEFORE.

THE PRIMARY FOCUS OF OUR INTENT IS FOR SHORTER TERM SUSPENSIONS. CLEARLY A LONGER TERM SUSPENSION HAS, AS YOU GET DOWN THAT TIME PERIOD PAST SUSPENSION, THERE ARE LESS --

THE PROBLEM I HAVE IS, IF YOU HAVE GOT A TWO-PERSON LAW FIRM, THAT PERSON EFFECTIVELY IS NOT, AND THE SHORT SUSPENSION, AND THEY HAD AN ASSOCIATE, WHAT, THEY DO NOTHING, WHERE SOMEBODY WHO IS IN A LARGER LAW FIRM, SINCE IT IS A NO-BRAINER, I MEAN THEY HAVE GOT A LOT OF OTHER PEOPLE THAT WEREN'T THEIR SUBORDINATES, DOESN'T THAT PREJUDICE OR ADVERSELY IMPACT THE SMALL PRACTITIONER REALLY DID HAVE JUST ONE OTHER ASSOCIATE THAT THEY, WHAT ARE THEY SUPPOSED TO DO FOR THAT TIME?

THE FOCUS OF THE BAR WAS NOT ON LARGE VERSUS SMALL FIRMS. THE FOCUS --

DO YOU AGREE THAT YOU COULD HAVE THE SAME ABUSE FOR THE LARGE LAW FIRM, BECAUSE YOU HAVE GOT TOO MANY LAWYERS, AND THAT SUSPENDED LAWYER COULDN'T WORK FOR ANYBODY, BUT IN A SMALL FIRM, IT IS GOING TO BE A DIRECT PROBLEM, ESPECIALLY IN A SHORT SUSPENSION OF TEN DAYS.

I AM NOT SURE I COMPLETELY UNDERSTAND YOUR QUESTION, BUT MY FEELING IS THAT THERE IS NO DISPARATE TREATMENT OF ANY LAWYER UNDER THIS RULE. A SUSPENDED LAWYER, IRRESPECTIVE OF THE SIZE OF THE FIRM, CANNOT WORK FOR, UNDER THIS RULE, A LAWYER WHOM WAS SUPERVISED BY THE LAWYER.

I AM ASKING YOU, IT WAS A TWO-PERSON FIRM AND I HAVE AN ASSOCIATE, AND I AM SUSPENDED AND THAT IS IT, I CAN'T DO LAW CLERK WORK FOR THAT ASSOCIATE, CORRECT?

NOT FOR THAT ASSOCIATE, CORRECT.

I HAVE NO OTHER ASSOCIATES.

BUT YOU CAN WORK FOR A MEMBER OF THE FLORIDA BAR.

HOW REALISTIC IS THAT FOR A TEN, 20, 30, 40-DAY SITUATION WHEREAS IF I AM IN A LAW FIRM THAT HAS NINE OTHER ASSOCIATES AND TEN OTHER PARTNERS, I CAN JUST STAY THERE AND SWITCH WHAT I AM DOING.

YOUR HONOR, FOR A TEN-DAY SUSPENSION, I DON'T THINK IT IS MUCH OF AN IMPOSITION FOR ANYONE TO SAY FOR TEN DAYS YOU CANNOT GO IN AND WORK FOR THAT LAWYER. IS NOT PREJUDICIAL TO THE LAWYER SUSPENDED AND NOT PREJUDICIAL TO THE LAWYER LEFT BEHIND AND CANDIDLY, I DON'T THINK IT IS PREJUDICIAL FOR THE CLIENT, AND THIS COURT, BY SUSPENDING A LAWYER, SAID YOU ARE NOT TO BE TRUSTED NOW, TO PRACTICE LAW, FOR MISCONDUCT.

LET'S JUST HAVE A BAN THAT THEY CAN'T GO INTO THEIR OFFICE.

THAT IS WHERE WE STARTED, YOUR HONOR, BUT BASED UPON COMMENTS FROM MEMBERS, WE WENT TO THE THREE-YEAR LIMIT, AS OPPOSED TO A TOTAL AND ABSOLUTE BAN.

I THINK IF YOU OUTLINED THE EVIL TO BE CORRECTED, HAVE YOU SUFFICIENTLY, YOU THINK, STATED THAT, IS THAT ARE WE EXPERIENCING, ON SUSPENSIONS THAT WHAT IS HAPPENING IS THAT LAWYERS ARE CONTINUING TO PRACTICE UNDER THE KBOOIS OF -- UNDER THE GUISE OF SOMEONE ELSE. THAT IS WHAT WE ARE TRYING TO DO?

YES, JUSTICE LEWIS, IT HAPPENS FROM TIME TO TIME, AND WE CITED TWO RECENT INSTANCES, ONLY FOR THE ILLUSTRATION THAT IT DOES, IN FACT, OCCUR.

DO YOU HAVE A SUGGESTION THAT WOULD REMOVE NOT FACIALLY, BUT IN OPERATION, THE DISCREPANCY THAT JUSTICE PARIENTE HAS ASKED ABOUT, THAT THIS DOES, AS A PRACTICAL MATTER, IMPACT SMALL PRACTITIONERS, SMALL ORGANIZATIONS MUCH MORE SEVERELY THAN THE LARGE ORGANIZATIONS THAT HAVE NAMES THAT THE PEOPLE ARE NO LONGER THERE. SO WOULD YOU HAVE A SUGGESTION ON HOW TO REMOVE THAT, BECAUSE YOU HAVE SEEN, I MEAN YOU HAVE SEEN WHAT THE CONCERN IS, IS THAT IT BASICALLY CLOSES DOWN.

YES, SIR. I UNDERSTAND THE CONCERN, BUT I DON'T THINK IT IS THERE. I HAVE A PROBLEM WITH WHETHER IT UNFAIRLY OR UNJUSTLY EFFECTS -- AFFECTS A SMALL FIRM VERSUS A LARGE FIRM, BOGGS AND SMITH AS OPPOSED TO HOLLAND & KNIGHT. THE ISSUE TO ME, IS THE LAWYER WHO IS SUSPENDED SHOULD NOT BE OUT -- SHOULD NOT BE PUT IN THE POSITION, IRRESPECTIVE WHERE HE WORKS AND WHAT SIZE FIRM, OF BEING ABLE TO CONTROL THE SHOTS THROUGH SOMEONE ELSE FROM BEHIND THE SCENES. THAT IS WHERE WE ARE.

I UNDERSTAND THE EXAMPLE, BUT LET'S SAY IT IS A ONE-PARTNER FIRM WITH ONE ASSOCIATE AND THE PARTNER IS SUSPENDED FOR 60 DAYS AND THEY HAVE 400 CASES IN THE OFFICE AND THE ASSOCIATE IS SIX MONTHS OUT OF LAW SCHOOL. WHAT IS THE ASSOCIATE GOING TO DO WITH THESE 400 CASES, NOW, MOTIONS FOR SUMMARY JUDGMENT, DEPOSITIONS, TRIALS COMING UP, DO THEY JUST HAVE TO GIVE THOSE 400 CASES TO SOMEBODY ELSE?

NOW I UNDERSTAND THE BASIS OF THE QUESTION. YOU ARE TRABLING ABOUT 4 -- YOU ARE REALLY TALKING ABOUT 4-8.6 AS OPPOSED TO 4-8.1. IF THERE WERE ONE 36789 PA AND ONE -- ONE PA AND ONE SHAREHOLDER AND THE PA CREASES RENDERING SERVICES, THE SCENARIO YOU HAVE THEN IS AN OWNER OF A LAW FIRM WHO IS NOT QUALIFIED TO VENDER LEGAL SERVICES RECEIVES INCOME DURING THE PERIOD OF SUSPENSION, AND THAT IS WHAT 8.4-6 IS BASED UPON. SO NOW I UNDERSTAND YOUR QUESTION, SO FROM THAT PERSPECTIVE, IT DOES EFFECT A -- AFFECT A SMALLER FIRM UNDER 4-8.6 MORE THAN IT WOULD THE HOLLAND & KNIGHT. HOWEVER, I THINK YOU HAVE TO SAY THAT THE ASSOCIATE IS RESPONSIBLE FOR DOING WHATEVER THE ASSOCIATE HAS TO DO AND CAN DO, AND IF THAT INCLUDES ASSOCIATING OTHER PEOPLE ON AN INTERIM BASIS, IF IT INCLUDES PASSING CASES OFF BECAUSE THE LAWYER CAN'T HANDLE 400 CASES DURING THAT PERIOD OF SUSPENSION, THEN THAT HAS TO HAPPEN.

ON WHAT AUTHORITY DOES A SIX-MONTH ASSOCIATE HAVE TO SIGN RETAINER AGREEMENTS OR TRANSFER FILES TO ANOTHER LAW FIRM?

IT IS CLEARLY AN ISSUE, BUT IT STILL IS AN ISSUE THAT IS THERE NEVERTHELESS, IN A SOLE PRACTITIONER'S FIRM. THE LAWYER WHO IS SUSPENDED CAN, IN FACT, DO THOSE THINGS ABOUT TRANSFERRING CASES, ET CETERA, YOU KNOW, AND THE LAWYER WHO IS AN ASSOCIATE NEVERTHELESS HAS PROFESSIONAL OBLIGATIONS TO THE CLIENT OF THE SAME NATURE AND THE SAME TYPE THAT THE OWNER OF THE FIRM HAS, SO IT IS NOT JUST BUSINESS ENTITY, BUSINESS INTERESTS THAT NEED TO BE FOCUSED ON HERE BUT IT IS THE OBLIGATIONS OF THE ATTORNEYS WHO ARE THERE, THEIR CAPACITIES AND ET CETERA. I UNDERSTAND THE FEELING OF THE COURT,

BUT IF YOU HAVE GOT A SINGLE LAWYER, YOU SIMPLY SHOULD NOT TRUST, IN ALL INSTANCES, THAT LAWYER TO BE BACK BEHIND THE SCENES AND NOT BE, AS I SAID IN THE COMMENTS, A PUPPET MASTER. THERE ARE INSTANCES IN WHICH IT OCCURS. IT IS A VERY DIFFICULT THING TO FERRET OUT, BECAUSE IT IS USUALLY A TWO-PERSON BACK ROOM KIND OF CONVERSATION. AND IT IS JUST YOU HAVE ALREADY SAID, BY SUSPENDING THAT LAWYER, THAT LAWYER SHOULD NOT BE PRACTICING LAW, SO WHILE NOT PRACTICING LAW AND NOT AUTHORIZED, THAT LAWYER SHOULD NOT BE DIRECTING THE CONDUCT OF ANOTHER.

WHO IS THE AUTHOR OF THE SLIDING SCALE?

YES.

HOW YOU COME UP WITH THAT AND WHY THAT DOESN'T UNDULY PUNISH SOMEBODY FOR EXERCISING THEIR RIGHT FOR GOING TO A HEARING.

YES. THANK YOU. WHAT WE ARE TALKING ABOUT HERE IS THERE ARE THREE PLACES IN THE RULES CURRENTLY, WHERE IT TALKS ABOUT AN ADMINISTRATIVE FEE, WHICH IS A FLAT FEE OF \$750, IRRESPECTIVE OF WHERE THE CASE IS RESOLVED IN THE DISCIPLINARY PROCESS. WE HAVE ASKED THE COURT TO DELETE REFERENCE TO THAT FEE IN INDIVIDUAL RULES AND TRANSFER IT TO ONE RULE FOR CLARITY AND CHANGE IT FROM A FLAT FEE TO A SLIDING SCALE, FROM 1,000 UP TO \$5,000. THE BAR IS SPENDING THIS YEAR, \$.9 MILLION ON LAWYER DISCIPLINE -- \$9.9 MILLION ON LAWYER DISCIPLINE ALONE. WE OPENED ABOUT 8600 FILES, AND FOR EXAMPLE TO SHOW YOU THE LOW END, AND THIS IS NOT REPRESENTATIVE, IF YOU DIVIDE THAT AMOUNT INTO THE TOTAL BUDGET, IT COST ABOUT \$940 TO OPEN UP EVERY FILE, BUT WE KNOW THAT NOT EVERY FILE TAKES \$940 OF WORK. SOME FILES TAKE A LOT MORE THAN THAT. IF YOU GO TO THE OTHER END OF THE EXTREME AND TAKE THE 414 DISCIPLINARY OPINIONS THAT THIS COURT HANDED OUT THIS YEAR AND DIVIDED THAT INTO THE COST, IT IS SOMEWHERE AROUND \$21,000 PER FILE, BUT NOT EVERY CASE THAT GOES INTO THE SYSTEM TAKES \$21,000 WORTH OF TIME, SO YOU HAVE GOT A HIGH AND A LO. I CAN'T SIT HERE AND TELL YOU IT COSTS "X" NUMBER OF DOLLARS, BECAUSE WE DON'T HAVE ACCOUNTING TEAMS IN FLIES DO THAT, SO WE ARE ASKING TO -- IN PLACE TO DO THAT, SO WE ARE ASKING YOU TO RECOGNIZE SOMEWHERE ON THE LOW END, A MORE PROPORTIONAL COST ASSOCIATED WITH THOSE LAWYERS.

I GUESS THE FILING OF \$350 TO FILE A CASE. OBVIOUSLY 9 OVERHEAD FOR -- OBVIOUSLY THE OVERHEAD FOR SOMEBODY THAT GOES TO TRIAL FOR A THREE-MONTH TRIAL SHOULD BE \$100,000, WHEREAS SOMEBODY THAT GETS DISMISSED OUT, SAME THING. YOU KNOW, I AM CONCERNED ABOUT THERE MAY AND LEGITIMATE REASON TO RAISE THE ADMINISTRATIVE FEE, BUT THE ACTUAL SLIDING SCALE CONCEPT, CONCERNS ME, AS FAR AS THE PUNITIVE ASPECT OF IT FOR SOMEBODY THAT GOES TO, YOU KNOW, AND GETS A LESSER SANCTION THAN THE BAR HAD OFFERED.

THERE, WELL, FIRST OF ALL THERE IS DISCRETION IN THIS RULE AND ALL OF THE RULES OF COURT, TO RECOMMEND OR NOT RECOMMEND ANY OF THESE TAXABLE COSTS, INCLUDING THE ADMINISTRATIVE FEE, AND I THINK THAT YOU HAVE TO TRUST THE REFEREES IN THIS COURT TO EXERCISE APPROPRIATE DISCRETION IN CIRCUMSTANCES AND IN A SLIDING FEE THERE ARE HIGHER COSTS ASSOCIATED WITH ALL THING INS THE LEGAL SYSTEM NOT JUST BAR AND FOR EXAMPLE IF YOU WANT TO TAKE RIGHT TO A JURY TRIAL, IT IS GOING TO COST YOU MORE FEES ASSOCIATED WITH A JURY TRIAL. HERE WE ARE SAYING THAT THE INITIAL COST IS SOMEWHERE AROUND \$1,000. IF YOU RESOLVE THE CASE BEFORE A JUDICIAL REFEREE IS APPOINTED, IT SHOULD BE \$1500. IF YOU RESOLVE IT AFTER THE REFEREE IS APPOINTED BUT BEFORE THE FINAL HEARING IS HELD, IT SHOULD BE \$2,000. IF AFTER THE FINAL HEARING BUT BEFORE THE REFEREE RENDERS AN OPINION, ANOTHER \$1600, AND IF YOU GO ALL THE WAY AND YOU LOSE, YOU ARE SUBJECT PERHAPS TO A \$5,000 AS AN ADMINISTRATIVE FEE TO THE BAR. CHIEF CHEE IT MAY HAVE TO DO WITH THE ADEQUACY OF MR. CHIEF JUSTICE

IT MAY HAVE TO DO WITH THE ADEQUACY OF THE TIME PROVIDED BUT WE HAVE GONE OVER THE TIME PROVIDED. THANK YOU VERY MUCH. MR. WEISS.

THANK, SIR. MAY IT PLEASE THE COURT. MY NAME IS JACK WEISS. I AM HERE ON BEHALF OF THE SEVEN COMMENTERS, AND WITH ME IS RICHARD BLISS, WHO WILL BE ADDRESSING THE EMPLOYMENT AND THE OTHER ISSUES. I AM HERE AS TO THE SLIDING SCALE. WE ARE HERE AS THE LOYAL OPPOSITION. WE ARE NOT CONDEMNING THE SYSTEM. I THINK JUST BY VIRTUE OF THE FACT THAT WE HAVE COMMENTED ON VERY FEW OF THE RULES IT EXPRESSES INDIRECTLY ARE SATISFACTORY WITH THE SYSTEM. BY WAY AFTER BACKGROUND, I WAS BAR COUNSEL FROM '74 TO '83. RICHARD McMARCH LANE WAS MY FIRST BOSS -- McFARLAIN WAS MY FIRST BOSS AND HE NEVER SUCCEEDED IN TEACHING ME HOW TO TIE A BOW TIE. RONNIE YOUNG IS BAR COUNSEL, CURTIS, OUR FORMER CHAIR OF THE GRIEVANCE COMMITTEE AND JOHN HUME IS A FORMER BOARD MEMBER AND OTHERS, SO WE HAVE AN ARRAY OF PEOPLE WHO HAVE COMMENTED ON THE RULES. THE SLIDING SCALE INCREASE IS FRANKLY STATED OFFENSIVE IN ITS HUGE INCREASE IN SCOPE. THE CONCEPT, NONE OF US HAVE A QUARREL WITH THE CONCEPT OF ADMINISTRATIVE FEES BEING IMPOSED, BUT THE BREDTH OF THIS INCREASE IS JUST SHOCKING. I SUBMIT TO THE COURT THAT, PERHAPS IF WE NEED A FEE INCREASE, IT SHOULD BE REFERRED TO THE SPECIAL COMMISSION ON LAWYER REGULATION THAT IS NOW BEING SET UP, CHAIRED BY HANG COX OUT OF JACKSONVILLE. -- BY HANK COX OUT OF JACKSONVILLE. WE DO NOT HAVE A FISCAL ANALYSIS THAT IS REALLY CONVINCING, TO SHOW US THE NEED FOR THIS, FOR SUCH A LARGE INCREASE. ACCORDING TO THE BAR'S CHART THEY ATTACHED IN THEIR FILING, WE WILL BE THE MOST EXPENSIVE STATE IN ASSESSING FEES FORM THE ONLY STATE THAT WILL COME CLOSE IS ARIZONA. THERE WERE ONLY NINE STATES LISTED.

THERE WAS SOME SUGGESTION THAT, THAT THE BAR'S COSTS HAD INCREASED 80 PERCENT OVER THE LAST FEW YEARS AND MAYBE A 80 PERCENT INCREASE IN THE ADMINISTRATIVE FEE WOULD BE SUFFICIENT. WHAT IS YOUR TAKE ON THAT?

WELL, WITH ALL DUE RESPECT, AND I AM NOT IN ANY WAY IMPLYING BAD FAITH, I DON'T KNOW EXACTLY EXACTLY HOW THAT 80 PERCENT HAS ARISEN. I AM GOING TO DEFER TO PATRICIA AT KIN IN HER FINANCIAL ANALYSIS THAT SHE PUT FORTH IN HER RESPONSE THAT WAS FILED, SIMPLY PUT, TO INCREASE THE SLIDING FEES AS MUCH AS THEY ARE HERE, SOLELY TO MAKE UP A 80 PERCENT INCREASE, IS IMPRACTICAL, AND IT IS NOT GOING TO WORK. WHAT I AM PRIMARILY CONCERNED ABOUT, AND I REPRESENT A LOT OF LAWYERS IN FRONT OF GRIEVANCE COMMITTEES AND IN FRONT OF REFEREES, IS THAT THIS ADMINISTRATIVE FEE IS, IT IS AUTOMATICALLY IMPOSED. I AM NOT AWARE OF ANY CASES WHERE IT HAS BEEN CHALLENGED. I HAVE NEVER HAD A CLIENT CHALLENGE IT. I HAVE NEVER HAD A REFEREE QUESTION WHETHER IT SHOULD BE AUTOMATICALLY IMPOSED. IT IS DONE THAT WAY. NOW, REMEMBER ON TOP OF THE BAR'S ADMINISTRATIVE FEES, IT GETS ITS COSTS, AND THE CHALLENGES ON COSTS ARE FEW AND FAR BETWEEN, AND BASICALLY, I AM AWARE OF NO ISSUES ON THE ADMINISTRATIVE FEES, BECAUSE THEY HAVE BEEN SO REASONABLE IN THE PAST. I AM NOT SAYING \$750 ADMINISTRATIVE FEE HAS NOT MADE SOME OF MY CLIENTS GULP, BUT IT IS NOT AN UNREASONABLE FEE. WHEN YOU START GETTING TO THE POINT WHERE IT IS A \$2500 FEE FOR GOING TO TRIAL OR A \$5,000 FEE IF YOU TAKE IT UP TO APPEAL, THEN YOU ARE GOING TO START GETTING INTO SOME CHALLENGES, AND ARE WE NOT CREATING A MOTION PRACTICE QUAGMIRE HERE? ANOTHER PROBLEM THAT I HAVE WITH THESE FEES IS THERE IS NO PROCEDURE FOR IF THE RESPONDENT PRAE VEILS. IF A RESPONDENT IS -- PREVAILS. IF A RESPONDENT IS ACQUITTED, SHOULD HE OR SHE NOT GET AN ADMINISTRATIVE FEE? WELL, THEY DON'T BUT MAYBE THEY SHALL.

THE THEORY BEHIND REQUIRING THE ADMINISTRATIVE FEE IS THAT THE PERSON WHO HAS BEEN CALLED BEFORE THE GRIEVANCE COMMITTEE AND THOSE IN THAT CATEGORY, SHOULD REALLY BEAR THE BURDEN OF THE DISCIPLINARY KIND OF PROCESS, RATHER THAN THOSE ATTORNEYS WHO HAVE NOT AND THROUGH THE BAR DUES, AND THAT IS WHAT IT HAS BEEN IN THE PAST.

IT IS A DISPROPORTIONATE SHARE, AND I CERTAINLY HAVE NO PROBLEM IN THE PAST WITH IT BEING A DISPROPORTIONATE SHARE OF THE BURDEN, BUT TO PENALIZE THOSE LAWYERS, WHEN THERE HAVE BEEN 5,000 CASES DISMISSED OR WHATEVER THE FIGURES ARE, THAT IS TAKING IT DISPROPORTIONATE TO COMPLETELY UNJUST, AND SHOULD NOT THOSE FILING FRIVOLOUS GRIEVANCES BEAR SOME SHARE OF THE COST THAT A LAWYER HAS TO DEFEND HIMSELF? NOW THAT, A RHETORICAL QUESTION AND THE OBVIOUS ANSWER IS NEW YORK CITY BECAUSE WE CAN'T, BUT THERE IS SOME UNFAIRNESS IN THE SYSTEM, AND PART OF THE UNFAIRNESS IN THE SYSTEM IS THOSE 6500 LAWYERS THAT HAVE BEEN ACQUITTED, THEY GET NO REIMBURSEMENT OF THEIR COSTS OR THEIR ATTORNEYS FEES OR ANYTHING ELSE. THE LAWYER WHO SUCCESSFULLY DEFENDS HIMSELF OR HERSELF GETS NO REIMBURSEMENT BACK FROM THE BAR FOR SO DOING. THE LAWYER WHO TENDERS A JUDGMENT FOR A 30-DAY SUSPENSION AND IT IS REJECTED, HE STILL HAS TO PAY THE COSTS TO THE BAR.

IS THERE ANY SCALE THAT YOU SEE WOULD BE WORKABLE? FOR EXAMPLE, YOU MENTION THE FRIVOLOUS KINDS OF CLAIMS THAT ARE MADE AGAINST THE LAWYER THAT ARE FERRETED OUT AT THE GRIEVANCE COMMITTEE OR EVEN AT THE BAR LEVEL THOSE ARE FERRETED OUT, BUT IT GOES BAST THE -- GOES PAST THE GRIEVANCE, DO YOU SEE ANY TYPE OF SLIDING SCALE OF ANY TYPE THAT IS WORKABLE, VALID AND HAS SOME BASIS IN COMMON SENSE TO TAKE THAT APPROACH. IF NOT, ONE WHERE YOU WOULD INCREASE IT TO TAKE AN APPEAL, BUT SOMEWHERE WITHIN THAT ENTIRE PROCESS, IT MAKES SENSE TO HAVE SOME KIND OF SCALE, DEPENDING UPON THE NATURE OF WHAT IS HAPPENING IN THE PROCEEDING.

CERTAINLY, JUSTICE LEWIS, AND REMEMBER THAT IS WHAT WE USED TO HAVE. WE USED TO HAVE A FEE AT THE GRIEVANCE COMMITTEE LEVEL AND THEN BASICALLY DOUBLED IT, IF IT WENT UP TO THE REFEREE LEVEL, AND IF WE ARE GOING TO GO DOWN THAT PATH, I THINK WE SHOULD HAVE A STUDY BITE COX COMMISSION, TO LOOK AT THE PHYSICAL FEASIBILITY OF DOING SOMETHING LIKE THAT.

WOULDN'T IT, AS FAR AS YOUR CONCERN THAT IF SOMEBODY GOT A LESSER SANCTION --
YES, MA'AM.

COULDN'T, I MEAN, THAT RULE COULD BE ADJUSTED TO SAY IN THOSE SITUATIONS, THE FEE WOULD NOT BE, WOULD BE SOMETHING --

YES, MA'AM. IT HASN'T IN THE PAST, BECAUSE BASICALLY THE FEE HAS BEEN VERY REASONABLE, BUT IF WE START GETTING INTO SLIDING SCALES, ARE WE THEN CREATING YET ANOTHER LEVEL OF REFEREE PROCEEDINGS WHERE WE ARE GOING TO BE FILING MOTIONS AFTER THE REFEREE HAS FILED AND THEN QUIBBLING OVER THE COSTS AND THE ADMINISTRATIVE FEE? I DON'T THINK THAT IT IS A SOUND JUDICIAL ECONOMY TO GO THERE. I WOULD NOW LIKE TO ALLOW MR. LISS TO ADDRESS THE ISSUES.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS RICHARD LISS. I WOULD LIKE TO TOUCH ON THE PROPOSED RULE CHANGE INVOLVING SUPERVISION OF DISCIPLINED ATTORNEYS. BASICALLY THE BAR HAS SUGGESTED TWO SPECIFICALLY INSTANCES OF ABUSE, ONE THE FORRESTER CASE WHICH WE SUBMIT IS NOT PROPERLY BEFORE THIS COURT YET BECAUSE THERE HAS BEEN NO JUDICIAL DETERMINATION, INSOFAR AS THE PENDING REPORT OF REFEREE IS CONCERNED, AND THE OTHER DEMONSTRATED ABUSE POINTED OUT BY THE BAR IN THEIR FILING IS THE FORTUNADO CASE. WE WOULD ASK THE COURT TO READ THE CONSENT JUDGMENT WHICH HAS BEEN FILED BY THE BAR. I BELIEVE THE COURT WILL FIND, IN THE CONSENT JUDGMENT, THAT THE SOLE BASIS FOR THE PUBLIC REPRIMAND RECEIVED BY FORTUNADO, WAS THE FAILURE TO SUBMIT EMPLOYMENT REPORTS.

WOULD YOU COMMENT ON THE CURRENT PRACTICE WITHOUT ANY RULE CHANGE AND THEN COMMENT ON THE EFFECT THAT YOU PERCEIVE OF THE CHANGE.

THE CURRENT PRACTICE, CHIEF JUSTICE ANSTEAD, IS THAT ONCE AN ATTORNEY IS SUSPENDED OR GOES THROUGH A DISCIPLINARY RESIGNATION OR IS DISBARRED AND CHOOSES EMPLOYMENT AS A PARALEGAL, THERE NEEDS TO BE A NOTICE OF EMPLOYMENT SUBMITTED BY THE EMPLOYER AND EMPLOYEE. THERE HAVE TO BE QUARREL EMPLOYMENT REPORTS SUBMITTED TO THE BAR, AND THIS GIVES THE BAR SUFFICIENT INFORMATION TO KNOW WHERE THE ATTORNEY IS WORKING IN THEIR CURRENT EMPLOYMENT AND ALSO THE RULE HAS LIMITATIONS ON THE ACTIVITY THAT -- ACTIVITY THAT THE SUSPENDED OR DISCIPLINED ATTORNEY CAN ENGAGE IN. THEY CAN'T HAVE CLIENT CONTACT AND ALL OF THE SKIP LATER RULES INVOLVING PRACTICE OF LAW ARE IN PLACE. WE WOULD SUBMIT TO THIS COURT THAT THERE ARE AMPLE MEANS OF THE BAR TO ENFORCE THE PRESENT PRESENT RULE. YOU HAVE A CONTEMPT PROCEEDING THAT YOU CAN INITIATE AS THE BAR GENTS OFFENDING PARTY.

COULD YOU -- BAR, AGAINST THE OFFENDING PARTY.

COULD YOU TELL ME, YOU HAVE A CLIENT WITH A 30-DAY SUSPENSION. GIVE ME THE HYPOTHETICAL AS TO WHAT YOU TELL THE CLIENT, I MEAN YOUR CLIENT, THE LAWYER WHO HAS, IS EITHER, HAS ONE ASSOCIATE IN THE FIRM, YOU KNOW, THAT LAWYER IS THE PARTNER THAT IS SUSPENDED, ONE ASSOCIATE, SOMEBODY THAT HAS GOT TEN ASSOCIATES, TEN PARTNERS, AND SOMEBODY THAT HAS, AT THAT POINT, NOBODY WORKING FOR HIM OR HER. I MEAN, WHAT DO YOU, WHAT IS, I GUESS I WANT TO UNDERSTAND --

IN THE EXAMPLE INITIALLY GIVEN, JUSTICE PARIENTE, THAT YOU HAVE THE SOLE PRACTITIONER, PA, WITH AN ASSOCIATE, THE ADVICE GIVEN TO THE DISCIPLINED ATTORNEY WOULD BE THAT, READ 361 VERY CAREFULLY. IF YOU CHOOSE TO OFFSET YOURSELF FROM THE OFFICE COMPLETELY, THAT CAN BE DONE, BECAUSE NEVERTHELESS UNDER THE CURRENT BUSINESS ENTITY RULE, WHICH WE SUBMIT IS VERY WELL FOUNDED AND SHOULD REMAIN IN EFFECT, THE ENTITY STILL CAN MAINTAIN ITS LEGAL EXISTENCE, IF THE ATTORNEY IS SUSPENDED FOR 90 DAYS OR LESS, BECAUSE THAT BRINGS WITH IT AN AUTOMATIC REINSTATEMENT, SO IF THAT ATTORNEY HAS SOMEBODY IN THE FIRM WHO IS A DULY-LICENSED MEMBER OF THE FLORIDA BAR, THAT LAWYER CAN CONTINUE TO MAINTAIN THE OFFICE, REPRESENT CLIENTS, AND THE DISCIPLINED ATTORNEY CAN FULFILL THE ROLE AS PARALEGAL AND PROVIDE NECESSARY SUPPORT, AND WE ENCOURAGE AND INSIST THAT THEY UNDERSTAND THE RULE, NOT ENGAGE IN THE UNLICENSED PRACTICE OF LAW, DO ALL THE REPORTING REQUIREMENTS REQUIRED BY THE RULE.

YOU SAY THERE IS EQUALITY REQUIREMENTS. IN A SHORT ONE, THE QUARTER IS GOING TO BE UP.

IF YOU ARE TALKING A TEN-DAY SUSPENSION AS THE EXAMPLE --

MY CONCERN IS, AND YOU SAY THERE IS ONLY TWO EXAMPLES, I THOUGHT WHAT MR. BOGGS IS REALLY SAYING IS LISTEN, IT IS THE POTENTIAL FOR ABUSE THAT, WHEN SOMEBODY DOESN'T ABSENT THEMSELVES FROM THE OFFICE, SINCE WE DON'T NECESSARILY REQUIRE THAT, AND THEY ARE BASICALLY THERE DOING EVERYTHING IN THE NEXT OFFICE. THE CLIENT IS IN BUT THE CLIENT SEES THE LAWYER AND SAYS DON'T WORRY, I WILL BE BACK IN TEN DAYS, AND ESSENTIALLY THERE REALLY ISN'T ANY DISCIPLINE THAT HAS BEEN IMPOSED.

I WOULD SUBMIT THAT THERE IS DISCIPLINE IMPOSED BECAUSE OF ONE OF THE REQUIREMENTS UNDER THE RULE IS THAT NOTIFICATION HAS TO BE SENT IN WRITING, TO THE CLIENTS, AND THAT HAS TO BE ATTESTED TO IN AFFIDAVIT FORM TO THE BAR, SO THE CLIENTS KNOW THE SITUATION, AND WE WOULD SUBMIT THAT IT IS FAR BETTER, UNDER THE REGULATORY PHILOSOPHY OF THIS COURT ARTICULATE HAD IN THOMPSON, PROSECUTE TO THE FULL EXTENT ALLOWED BY THE RULES, THOSE WHO VIOLATE THE RULES, BUT INSOFAR AS THE OTHERS, ESPECIALLY THE SMALL PRACTITIONER, SERVING THAT SHORT-TERM SUSPENSION, IT IS FAR

MORE BENEFICIAL TO ALLOW THEM TO REMAIN IN PLACE AS A PARALEGAL AND COMPLY WITH THE RULES. WE WOULD SUGGESTION THIS IS A CLASSIC CASE OF REGULATORY OVERKILL.

CHIEF JUSTICE: ALL RIGHT. WE ALSO HAVE HELPED YOU USE UP ALL OF YOUR TIME, AND UNLESS THERE IS A QUESTION FROM ANY OF THE JUSTICES OF ANYONE, THAT IS HERE --

I HAVE ONE. THERE WAS NO COMMENT ON, I HAVE A QUESTION ON THE FILING OF FEE CONTRACTS IN EXCESS OF THE STANDARD UNDER THE RULES, THERE IS A PROPOSAL THAT IT BE CHANGED, UNLESS THERE IS SOME QUESTION ABOUT THOSE THAT, THEY NOT BE FILED WITH THE BAR ANYMORE. WHAT IS THE RATIONALE BEHIND THAT? BECAUSE I KNOW IN THE TRIAL COURT, BENCH, JUDGES ARE SEEING SOME OF THESE IN EXCESS OF THE FEES, AND UNDER THE CURRENT RULE, YOU ARE SUPPOSEED TO COME BEFORE THE JUDGE, AND THE JUDGE HAS TO FIND A GOOD FAITH BASIS, AND WHATEVER, BUT IT IS HARD FOR THE INDIVIDUAL TRIAL JUDGE TO ASSESS WHAT IS GOING ON IN THE INDUSTRY. THAT IS REALLY MORE OF A FUNCTION FOR THE BAR IN THIS COURT, BUT -- FOR THE BAR AND THIS COURT, BUT AS FAR AS THE INDIVIDUAL TRIAL JUDGE, WHEN HE RECEIVES A CONTRACT, IT IS A FLAT 40 PERCENT CONTRACT AND HAS TO APPROVE IT, LET'S SAY, AS A PROBATE JUDGE AND LET'S SAY IT IS A NURSING HOME LITIGATION OR MEDICAL MALPRACTICE OR WHATEVER, HE IS PRESENTED WITH A FLAT 40 PERCENT CONTRACT IN EXCESS OF THE RULES, HOW IS THE JUDGE TO CONTEXTUALIZE THAT OR HOW IS THAT NOT GOING TO BECOME THE STANDARD PRACTICE REQUIRING THEM TO OCCUR, IF YOU ARE NOT GOING TO BE FILING WITH THE BAR?

I THINK YOU HAVE TO UNDERSTAND THAT CURRENTLY THOSE ARE FILED WITH THE BAR. WE DON'T DO A DE NOVO IF THE JUDGE APPROVES THEM. THAT IS THE JUDGE'S PREROGATIVE TO TAKE TESTIMONY AS NEEDED TO SATISFY THE JUDGE'S NEED FOR KNOWLEDGE AND UNDERSTANDING. WE LOOK AT THE CONTRACT VERY, VERY SPRF OFFICIALLY IF AT ALL -- SUPERFICIALLY, IF AT ALL.

THAT IS MY CONCERN, ON THE TRIAL LEVEL IF IT IS LOOKED AT SUPERFICIALLY, AND AT THE JUDGE LOOK AT IT SUPERFICIALLY AND THE BAR LOOKING AT IT SUPERFICIALLY, THERE IS NOBODY GOING TO DEAL WITH IT.

I THINK THAT IS PERHAPS THE CRUX OF THIS ISSUE. THE LAWYERS ARE FOLLOWING THIS RULE REAL WELL AND REPORTING IT TO THE BAR AND IF THE JUDGE FINDS CONTRACTS ARE OUTSIDE THE PARAMETERS OF THE RULE, THE BAR CAN RESPOND THEN, BUT AS IS NOW THERE IS VERY LITTLE REGULATORY ACTIVITY GOING ON BECAUSE, AGAIN, THE JUDGES ARE NOT FINDING OUTSIDE THE PARAMETERS OF THE RULE AND THE BAR IS ACCEPTING JUDICIAL FINDINGS.

CHIEF JUSTICE: THANK YOU VERY MUCH. THERE BEING NO OTHER QUESTIONS FROM THE PANEL, THE COURT IS GOING TO, FIRST OF ALL, EXPRESS ITS APPRECIATION FOR YOU ALL, AND ESPECIALLY RESPONDENTS, THAT IS THAT WE HAVE PEOPLE OBVIOUSLY THAT ARE VERY MUCH INVOLVED IN THESE MATTERS, AND SO THANK YOU ALL FOR SHOWING UP TODAY AND BEING THIS WONDERFUL RESOURCE. WE OBVIOUSLY HAVE THE EXTENSIVE WRITTEN FILINGS THAT YOU HAVE GIVEN TO US. SO THANK YOU VERY MUCH. THE COURT IS GOING TO TAKE A TEN-MINUTE RECESS AT THIS TIME, BEFORE HEARING THE LAST CASE.