

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Amendments to Florida Rules of Workers' Compensation Procedure

MARSHAL: PLEASE RISE . HEAR YE.HEAR YE.HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA , DRAW NEERX GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES , THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING , LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. WE HAVE ONLY ONE CASE ON THE DOCKET THIS MORNING , AS A RESULT OF THE HURRICANE. OUR DOCKET HAS CANCELLED , AND TOMORROW NO ORAL ARGUMENT WILL BE HELD. THIS MORNING WE CALL THE CASE OF THE AMENDMENTS T O THE FLORIDA RULES OF WORKERS COMPENSATION PROCEDURE. ARE THE PARTIES READY? ALL RIGHT.MR . JACOBS , AND I GUESS , YOU HAVE YOUR TIME DIVIDED WITH YOUR , YOU ARE GOING T O GO NINE MINUTES.

YES.

CHIEF JUSTICE: AND THEN MR. SICK ING IS GOING TO TAKE THE NEXT TEN, IS THAT HOW IT IS GOING? THEN WE G O DIRECTLY TEN , TEN.ALL RIGHT. YOU MAY PROCEED.

THANK YOU. MAY IT PLEASE THE COURT. MY NAME IS JEFFREY JACOBS. I A M APPEARING ON BEHALF THEFLORIDA BAR WORKERS COMPENSATION RULESCOMMITTEE.MR. SICKING WILL B E SPEAKING ON BEHALF THE WORKERS COMPENSATION SECTION OF THE FLORIDA BAR. WE ARE BEFORE THE COURT ON THE BY ANNUAL REPORT OF THE COMMITTEE. THE REPORT PROPOSES RULE CHANGES TO THE FLORIDA RULES OF WORKERS COMPENSATION PROCEDURE.

CAN I ASK JUST A QUESTION , A PRACTICAL QUESTION , BECAUSE I KNOW WE ARE TALKING ABOUT SOME LEGAL ISSUES. HAS THERE BEEN SOME ATTEMPT TO WORK OUT , BETWEEN THE DEPARTMENT OF ADMINISTRATIVE HEARING AND WORKERS COMPENSATION SECTION , RULES TO SEE THAT WE CAN'T JUST COME UP WITH RULES THAT ARE ACCEPTABLE THAT ARE JUST ADOPTED , WHETHER THEY ARE ADOPTED BY THE COURT, THAT THEY ARE THE SAME RULES. HAS THAT BEEN DISCUSSED?

YES, YOUR HONOR. THE BAR HAS HAD MEETINGS WITH THE DEPUTY CHIEF JUDGE, AND THE MEETINGS HAVE BEEN UNSUCCESSFUL.

CHIEF JUSTICE: UNSUCCESSFUL?

YES. THE AMENDMENTS TO THE RULES ARE NECESSARY, BECAUSE OF THE 2002 AND 2003 LEGISLATIVE CHANGES TO THE WORKERS COMPENSATION LAW .

LET ME ASK YOU ANOTHERQUESTION, A PRACTICAL QUESTION BEFORE YOU GET TOO FAR IN IT. THE RULES THAT HAVE BEEN PROMULGATED B Y DOA , DOES THE SECTION HAVE ANY OPPORTUNITY TO MAKE ANY KIND OF COMMENTS OR ANYTHING ABOUT THEM , BEFORE THEY WERE ACTUALLY ADOPTED?

YES, YOUR HONOR. DOA USED THE CHAPTER 120PROCEEDINGS AND TESTIFIED AT PUBLIC HEARINGS. I TESTIFIED A S A MEMBER OF THE WORKERS COMPENSATION SECTION , AS WELL AS THE RULES COMMITTEE TESTIFIED AT THE THREE PUBLIC HEARINGS AND MADE BOTH WRITTEN

AND VERBAL COMMENTS .

PARTICULARS AS OPPOSED TO WHETHER OR NOT DOA HAD THE AUTHORITY IT DO IT.

AT THE BEGINNING , THERE WAS A STATEMENT MADE CHALLENGING DOAs AUTHORITY TO DO IT , BUT PERSONALLY I WENT THROUGH EVERY SECTION AND I KNOW OTHER PEOPLE HAVE GONE THROUGH EVERY SECTION AND MADE COMMENTS , BOTH PUBLIC AND PRIVATE .

CHIEF JUSTICE: ALSO I JUST NOTICED , ARE THERE SUBSTANTIVE, NOT SUBSTANTIVE , ARE THERE DIFFERENCES THAT ARE SIGNIFICANT DIFFERENCES IN THE PROCEDURAL ASPECTS OF THESE RULES?

YES , YOUR HONOR , VERY SIGNIFICANT DIFFERENCES THAT FRANKLY AFFECT A PARTY'S RIGHT TO A FAIR TRIAL , AFFECT THE ADMINISTRATION OF THE WORKERS COMPENSATION PROCEEDINGS , AND

MAY I ASK YOU , THERE HAS BEEN AN ARGUMENT MADE ABOUT OUR JURISDICTION HERE , SO CAN YOU EXPLAIN TO ME , UNDER WHAT AUTHORITY WE ADOPT THESE WORKERS COMPENSATION RULES, WHAT CONSTITUTIONAL AUTHORITY DO WE HAVE .

THE CONSTITUTIONAL AUTHORITY WOULD COME FROM ARTICLE V SECTION 2-A , WHICH THIS COURT HAS USED SEVERAL TIMES IN THE PAST , IN ADOPTING RULES PROCEDURES , INCLUDING THE MOST RECENT IN 2002.

WHAT IS THE PROVISION OF THAT? WHAT PROVISIONS , WHAT PROVISION , SPECIFICALLY , BECAUSE THAT PROVISION DEFINES WHAT THE COURTS ARE. IT DOESN'T MENTION

THE COURTS RULE-MAKING , CONSTITUTIONAL RULE-MAKING AUTHORITY. HOWEVER, AND THIS NEEDS TO BE CLEAR , WE ARE NOT TAKING THE POSITION THAT THE COURT NEEDS TO REACH A CONSTITUTIONAL ARGUMENT. OUR POSITION IS SIMPLY ONE OF STATUTORY INTERPRETATION.

CHIEF JUSTICE: BUT IF THE CONSTITUTION DOESN'T GIVE US THAT AUTHORITY , BASED ON THE JUSTICE'S DISSSENT , THE LEGISLATURE CAN'T GET THE STATUS , CAN THEY?

THAT'S TRUE. JUSTICE ENGLAND DID HAVE HIS DISSSENT IN 1977 , 1989 - - IN 1977 AND 1979. IN 1980 , THOUGH , HE APPARENTLY WITHDREW HIS DISSSENT TO THE RULE

MAYBE HE WAS JUST EXASPERATED THAT HE WASN'T GETTING THE MAJORITY.

BUT THEN LATER , IN 1994 , JUSTICE OVERTON 'S OPINION , WHICH HAD A MAJORITY OF THIS COURT , THERE WAS A DECISION MADE THAT THE WORKERS COMPENSATION JUDGES ARE IN THE EXECUTIVE BRANCH OF THE GOVERNMENT. NOW, ARE THERE ANY OTHER INSTANCES IN WHICH THIS COURT ADOPTS RULES THAT GOVERN THE CONDUCT OF AN EXECUTIVE BRANCH AGENCY ?

NOT THAT I AM AWARE OF , YOUR HONOR .

IS THIS SITUATION DIFFERENT OR IS IT ANALOGOUS TO , SAY, THE PUBLIC SERVICE COMMISSION, WHICH , OF COURSE , ONCE A DECISION IS MADE, IT IS APPEALED TO THE COURT, BUT DO THE COURTS PROMULGATE RULES BY WHICH THE PUBLIC SERVICE COMMISSION ACTUALLY HEARS ?

I DON'T KNOW, YOUR HONOR.

I GUESS WHAT WE ARE GETTING AT IS WE HAVE SEEN, THIS WE CALL IT QUASI-JUDICIAL BUT IN FACT IT IS AN ADD MIGHT NOT STRAIGHT I HAVE PROCEEDING AN ADMINISTRATIVE PROCEEDING OUTSIDE THE DOMAIN OF THE COURTS , AND IT IS JUST DIFFICULT TO UNDERSTAND WHERE WE

WOULD HAVE THE JURISDICTION , NOW THAT DOA HAS STEPPED IN , TO MAKE OVER RIDE THEIR RULES.

THIS COURT HAS JURISDICTION FROM THE LEGISLATE YURX UNDER 440.29 SUBSECTION 3, AND IT IS THE LEGISLATURE 'S INTENT IN CHAPTER 440 , THAT BOTH BOTH SUPREME COURT AND THE EXECUTIVE BRANCH, SERVE SEPARATE RULE-MAKING FUNCTIONS.

DO YOU AGREE TAKE THERE HAS TO BE SOME KIND OF CONSTITUTION AL UNDERPINNING FOR THAT AUTHORITY?

YES, YOUR HONOR.

SO IT IS EITHER GOING TO BE UNDER ARTICLE V SECTION 2 OR NOWHERE.

YES, YOUR HONOR , AND I UNDERSTAND YOUR POINT.

IT JUST SEEMS TO ME THAT , WHEN YOU READ ARTICLE V THAT , ARTICLE V CREATES SEVERAL TYPES OF COURTS, THE SUPREME COURT, COURTS OF APPEAL , CIRCUIT COURTS AND COUNTY COURTS, AND THEN SAYS THERESHALL BE N O OTHER COURT. SO I AM TRYING TO FIGURE OUT, UNDER WHICH KIND OF SYSTEM THE JCC 'S FALL.

THE JCC 'S ARE VERY SIMILAR AND PERFORM SIMILAR FUNCTION TO SAY CIRCUIT COURT JUDGES AND THIS COURT HAS FOUND A QUASI-JUDICIAL FUNCTION.

DOA HEARING OFFICERS , RIGHT?

THEY D O DIFFERENT THINGS.

BUT THEY ARE BOTH ADMINISTRATIVE HEARINGOFFICERS WHO WOULD ADJUDICATE CLAIMS.

DIFFERENT TYPES OF CLAIMS. DIFFERENT AUTHORITY.

I UNDERSTAND.

THEY ARE CERTAINLY QUASI-JUDICIAL OFFICERS, IN TERMS OF THEIR RESPONSIBILITIES, ARE THEY NOT ? HELPING US ALONG , AND I REALIZE IT IS VER Y DIFFICULT , BECAUSE THE SECTION OF THEFLORIDA STATUTES THAT YOU CITE , SEEMS TO BE AN EXPRESS REQUEST BY THE LEGISLATURE , TO THIS COURT , AND, BUT , ARE YOU PREPARED TO ADDRESS THE ISSUE , ASSUMING WE CONCLUDE THAT THERE IS NO CONSTITUTIONAL BASIS FOR US TO EXERCISE RULE-MAKING AUTHORITY, WITH REFERENCE TO THE WORKERS COMP PROCEEDINGS , WHERE DOES THAT LEAVE US ? DOESN'T THAT LEAVE US WITHOUT THIS AUTHORITY , EVEN THOUGH THE LEGISLATURE HAS SPOKEN , AND IT SEEMS TO ME THAT IS PRETTY CLEAR EXPRESSION OF A REQUEST FOR THIS COURT TO ADOPT RULES , BUT DOESN'T THAT , REALLY, LEAVE US WITHOUT THE AUTHORITY TO DO THIS, MUCH AS WE DON'T HAVE THE AUTHORITY UNDER THE APA , T O SET OUT RULES. JUST TRYING TO HAVE A MEANINGFUL DISCUSSION ABOUT THIS , BECAUSE WE ARE ALL VERY TROUBLED BY THE LACK OF SOME CONSTITUTIONAL BASE FOR US T O PRESCRIBE RULES FOR AN EXECUTIVE ADMINISTRATIVE PROCEDURE. COULD YOU HELP ME.

YES. IN .

IN OPINE.

IN 1973 , PRIOR TO THE ENACTMENT OF 440.29-3 , WHICH GAVE THIS COURT STATUTORY AUTHORITY TO ENACT RULES, THE COURT ADOPTED RULES OF PROCEDURE FOR WORKERS COMPENSATION. THE AT THAT POINT IN TIME, THE WORKERS COMPENSATION SCHEME WAS

DIFFERENT , BUT THAT IS WHEN THE COURT FIRST ANNOUNCED THAT WORKERS COMPENSATION WAS A QUASI-JUDICIAL PROCEDURE, BECAUSE CERTAINLY ONCE IT REACHES THE APPELLATE LEVEL , AT THAT POINT THE COURT HAS A DIRECT INTEREST . IN OUR SITUATION NOW , WITH THE DIFFERENCE OF THE RULES , AND IN PARTICULAR THE RULES PROMULGATED B Y DOA , THERE ARE VARIOUS ISSUES THAT ARE RIGHT NOW, IN THE FIRST DCA AND ARE AFFECTING THE RIGHT TO A FAIR TRIAL FOR WORKERS COMPENSATION. WITH THE CONSTITUTIONAL UNDERPINNINGS, I BELIEVE THE COURT CAN GO BACK TO ITS 1973 RATIONALE , AND

BUT THAT IS THE KEY , IS IT NOT? WOULD YOU AGREE ? THAT I S , THAT IF WE CONTINUE TO ADHERE TO THAT , BUT WE HAVE HELD , IN MANY SETTINGS , THE ZONING PROCEDURES BEFORE COUNTY COMMISSIONS OR COUNTY GOVERNMENT, THAT THESE ARE QUASI-JUDICIAL PROCEEDINGS, BUT YET WE HAVE NOT INVOKED PROCEDURES FOR THEM TO FOLLOW. THERE ARE LOTS OF SITUATIONS WHERE WE CHARACTER OOITION CHARACTERIZE THE PROCEEDINGS ARE QUASI-JUDICIAL BUT WITHOUT CERTAIN RULE-MAKING AUTHORITY.WOULD YOU NOT AGREE?

YES, YOUR HONOR. I AM NOT FAMILIAR WITH THOSETYPES OF PROCEEDINGS, BUT , YES.

CHIEF JUSTICE: MR . JACOBS , YOU HAVE USED YOUR TEN MINUTES.I DON'T KNOW HOW , AGAIN , WITH MR . SICKING , IT IS U P BETWEEN THE TWO OF YOU , IF HE WANTS TO GIVE YOU SOME OF HIS TIME .

IF I COULD JUST HAVE ABOUT A MINUTE TO - -

AS LONG A S HE CREEDS HIS MINUTE. AS HE CEDES HIS MINUTE.

AS I MENTIONED EARLIER , THE LEGISLATIVE INTENT IN CHAPTER 440 WAS TO ALLOW THIS COURT TO WRITE RULES OF PROCEDURE BEFORE THE JUDGES OF WORKERS COMPENSATION CLAIMS, THE RULES OF PROCEDURE THAT GOVERN THE PRACTICE BEFORE THE JUDGES , THE PRACTICE OF THE PARTIES BEFORE THE JUDGES . FLORIDA RULES O F WORKERS COMPENSATION PROCEDURE MANDATES IMPEACHMENT AND DISCLOSURE WITNESSES AND EXHIBITS NEED TO BE DISCLOSED, WHEREAS THE DOARULES DO NOT. AND THERE ARE SEVERAL OTHER PROBLEMS. 440.45, SUBSECTION 4 WHICH DOA RELIES ON, IS SPECIFICALLY LIMITED TO THIS SECTION IN THE FIRSTSENTENCE. THAT TERM NEEDS MEANING. AND FOR THOSE REASONS, WE REQUEST THAT YOU ACCEPT JURISDICTION AND ADOPT THERULES OF PROCEDURE AS PROPOSED .

CHIEF JUSTICE: THANK YOU .

THANK YOU.

CHIEF JUSTICE: THANK YOUVERY MUCH .

YOUR HONOR , MAY IT PLEASE THE COURT. I AM RICHARD SICKING FOR THE WORKERS COMPENSATION SECTION.THE POSITION OF THE JUDGE OF COMPENSATION CLAIMS , IS UNIQUE , AND I T WAS A CONSTITUTIONAL COMPROMISE THAT WAS MADE IN 1973, IN WHICH THE COURT INVOKED ARTICLE V SECTION 2-A, TO ADOPT RULES O F PRACTICE ANDPROCEDURE FOR THIS VERY UNUSUAL JUDGE, BECAUSE HIS FUNCTION IS PURELY JUDICIAL. HE ISN'T LIKE THE DOA ALJ , WHO MAKES RECOMMENDED ORDERS BACK TO THE AGENCY THAT GRANTED OR DENIED SOME PRIVILEGE FROM THE STATE GOVERNMENT, WHICH THE STATE IS ALWAYS A PARTY. THE WORKERS COMPENSATION JUDGE ADD JUDD INDICATES AND MAKES FINAL ORDERS , ORDERING PEOPLE TO PAY MONEY TO OTHER PEOPLE OR NOT TO PAY MONEY TO OTHER PEOPLE.

ARTICLE V PROVIDES FOR THIS JUDICIAL OFFICER TO BE REGULATED BY THE COURTS.

BECAUSE UNDER ACCESS TO COURTS AND DUE PROCESS OF THE LAW , YOU , WHENEVER I USE THE WORD YOU , I MEAN THE JUDICIAL BRANCH. IT HAPPENS TO BE THE FIRST DCA NOW. ARE IN

CHARGE OF THE WHOLE PROCESS, AND HE IS MAKING THIS TRANSFER OF PROPERTY RIGHTS , UNDER A CONSTITUTIONAL COMPROMISE THAT WAS MADE EVEN MANY , MANY DECADES AGO , AND THE 1973 COMPROMISE, IF YOU LIKE , TO ACCEPT THAT , WAS BECAUSE IT IS NECESSARY. WORKERS COMPENSATION IS A HUGE VOLUME. IT IS A HUGE BURDEN UPON THE SYSTEM. IT IS NOT ADMINISTRATIVE LAW. IT IS NOWHERE NEAR BEING ADMINISTRATIVE LAW. PROPERTY RIGHTS ARE BEING ADJUDICATED HERE, HUGE PROPERTY RIGHTS AND IN GREAT NUMBER.

CHIEF JUSTICE: JUSTIS CANTERO.

ISN'T THAT TRUE OF MANY TYPES OF DOA HEARINGS? THERE ARE ALL KINDS OF STATE AGENCIES IN THE STATE OF FLORIDA, AND CLAIMS UNDER THOSE AGENCIES , DISPUTES UNDER THOSE AGENCIES , LICENSING DISPUTES GET ADJUDICATED BY DOA HEARING OFFICERS, WHETHER SOMEONE'S LICENSE SHOULD BE REMOVED , HIS ABILITY TO PRACTICE HIS PROFESSION, PROPERTY RIGHTS , HOSPITAL CERTIFICATES OF NEED CAN BE ADJUDICATED BY DOA HEARING OFFICERS PRIVILEGES.

RIGHTS NOT PRIVILEGES. THE PROPERTY RIGHTS INVOLVED HERE ARE PART OF A CONSTITUTIONAL COMPROMISE THAT TOOK PLACE BY WHICH THE EMPLOYEE'S RIGHT TO A TRIAL BY JURY AND A TRIAL BEFORE AN ARTICLE V JUDGE WAS EXCHANGED FOR THIS SYSTEM.

BUT THAT IS NOW , THE QUESTION AS TO WHETHER THE , AT SOME POINT , THE WORKERS COMPENSATION SYSTEM BECOMES UNCONSTITUTIONAL, BECAUSE THE QUID PRO QUO THAT MADE IT FAIR , MAKES IT UNFAIR. THE BENEFITS COULD BE SO REDUCED , BUT NOW WE ARE TALKING ABOUT PROCEDURE , AND ISN'T THE , IF THE PROCEDURE, I MEAN , THEY ARE STILL ACCORDED DUE PROCESS , AND IF THE PROCEDURES THAT ARE ADOPTED BY DOA DO NOT AFFORD A LITIGANT DUE PROCESS , THEN THAT IS A CONSTITUTIONAL CHALLENGE TO THE PROCEEDINGS. SO YOU ARE SAYING , NOW WE ARE TALKING ABOUT WHO IS GOING TO MICROMANAGE THE WAY THAT THOSE JUDGES DO BUSINESS ON A DAY-TO-DAY BASIS, AND THAT IS PROCEDURAL. THAT IS NOT EVEN SUBSTANTIVE.

BUT YOU CAN'T BE UMPIRES WITHOUT A RULE BOOK , AND THE JUDICIAL BRANCH IS THE UMPIRE , AND THE VOLUME OF CASES AND THE AMOUNT , THE NUMBER OF DOA CASES THAT GO UP ON APPEAL IS MINISCULE. WORKERS COMPENSATION IS A \$2 BILLION A YEAR INDUSTRY. WE HAVE HUNDREDS OF THOUSANDS OF INJURIES.

IS YOUR CLAIM THAT SOMEHOW IN DOAs ADOPTION OF THESE RULES THAT , THEY ARE NARROWING RIGHTS THAT HAVE BEEN RECOGNIZED UNDER OTHER PROCEDURAL RULES, SO TO SORT OF MAKE THE PROCESS LESS FAIR FOR THE INJURED WORKER ? BECAUSE THAT IS NOT REALLY, IF THAT WERE THE CLAIM, THAT IS NOT THE CLAIM BEING MADE HERE IN THESE PROCEEDINGS. HERE WE ARE JUST TALKING ABOUT WHETHER THIS COURT HAS THE AUTHORITY UNDER THE CONSTITUTION , TO APPROVE RULES OF PROCEDURE , AND WHETHER THE RULES OF PROCEDURE, THEN , END UP GETTING ADOPTED , CREATE SOME UNFAIRNESS THAT DIMINISHES RIGHTS OF WORKERS THAT THEY HAD BEFORE , TO ME , IS A SECOND DIFFERENT INQUIRY .

I JUST WANTED TO MAKE THE POINT THAT THIS WAS A CONSTITUTIONAL COMPROMISE THAT WAS MADE BY YOUR PREDECESSOR.

SO YOU ARE NOT MAKING THE CLAIM THAT I SUGGESTED , THAT IS RIGHT NOW IT IS WHAT HAS EXISTED , THAT THEY HAVE SO CHANGED THE RULES THAT THERE IS NO PROCESS THAT LITIGANTS ARE GETTING.

I DIDN'T QUITE GET IT, I WILL ANSWER YOUR QUESTION THEN. I WILL GIVE YOU A PRACTICAL EXAMPLE WHICH MAY CONCERN YOU. IN YOUR RULES, ALL STIPULATIONS HAD TO BE IN WRITING AND APPROVED BY THE JUDGE , BECAUSE THE STATE, THE JUDGE , WAS , WE CAN'T ALLOW EMPLOYEES AND EMPLOYERS TO OPERATE ON THEIR OWN IN THIS. THAT IS WHY IT IS NOT

ADMINISTRATIVE LAW. WHEN DOA REPEALED YOUR RULES UNDER STATUTORY AUTHORITY, A CLAIM OF STATUTORY AUTHORITY AND SUBSTITUTED THEIR OWN , THEY HAVE NO EQUIVALENT. IF WE REACH AN AGREEMENT AFTER A PETITION IS FILED , THEIR VIEW IS THAT THAT IS JUST AN AGREEMENT. WE HAVE A DIVISION AMONG THE JUDGES OF COMPENSATION CLAIMS. SOME OF THEM STILL SIGN ORDERS APPROVE !!ING STRAIGHT STIPULATIONS AND ADMINADMINISTRATION AGREEMENTS. SOME DON'T. WHAT HAPPENS WITH DOAs RIGHT ON THIS POINT, I T MEANS THAT THE PARTIES REACH AN AGREEMENT TO RESOLVE THEIR DISPUTE AFTER THE PETITION WAS FILED, AND IF THEY HAVE ANY FURTHER DISPUTE , WHAT DO WE DO? THEIR SOLUTION IS WE GO TO THE CIRCUIT COURT WITH A SUIT FOR BREACH O F CONTRACTOR TO THE COUNTY COURT, IF IT IS A LESSER AMOUNT OF MONEY , BECAUSE THEY DON'T VIEW IT AS A WORKERS COMPENSATION DISPUTE ANYMORE. THEY ARE WRONG. THE PEOPLE OF FLORIDA, THE LEGISLATURE OF FLORIDA WANTED WORKERS COMPENSATION TO BE UNIQUE , TO BE CONSIDERED UNIQUE BUT SUPERVISED BY THE JUDICIAL BRANCH OF THE GOVERNMENT.THEY HAVE IMPOSED UPON , IT IS A GOOD IDEA FOR THEM THAT GETS IT OFF YOUR DESK AND O N TO THEIR BEVERAGE AND GETS IT OFF THEIR BUDGET AND ON TO YOUR BUDGET, BUT THEY DIDN'T HAVE SPECIFIC AUTHORITY FROM THE LEGISLATURE TO DO THAT , EITHER. THERE ARE MANY THING INS HERE FROM WHICH THEY HAD NO AUTHORITY FROM THE LEGISLATURE.THEY CAN VIOLATE THE APA , AND WE ARE JUST LEFT , I AM SORRY.

MR . SICKING, WE ARE NOT HERE TO REVIEW THEIR RULES , ARE WE? WE ARE HERE T O DETERMINEWETHER TO ADOPT THE PROPOSED RULES FROM THE WORKERS COMPENSATION RULES COMMITTEE , CORRECT?

PRECISELY , BECAUSE YOUR RULES SAY THAT THE , YOUR RULES GOVERN WORKERS COMPENSATION PROCEDURE. THEIR APA RULE SAYS THAT THEY HAVE REPEALED YOUR RULES AND SUBSTITUTED THEIR OWN , AND SO I WANTED , BECAUSE QUESTIONS WERE ASKED BEFORE IS THERE ANY PRACTICAL DIFFERENCE. YES , THERE ARE MANY PRACTICAL DIFFERENCES, ANDTHAT ONE HAPPENS TO BE AN INFRINGEMENT UPON THE JUDICIAL BRANCH , WITHOUT EVEN ANY PERMISSION BY THE LEGISLATIVE BRANCH.

YOU ARE SAYING THAT IS SOMETHING THAT IS A DIFFERENCE IN PHILOSOPHY ABOUT HOW THESE PROCEEDINGSARE GOING TO BE RUN , BUT , AGAIN , THE PROBLEM HERE IS WE ARE NOT FACED WITH WHETHER A PARTICULAR RULE IS BEYOND THEIR AUTHORITY AND IS BEYOND THE LEGISLATIVE INTENT AND WHETHER THAT CAN BE LITIGATED IN , HERE OR MAYBE GO THROUGH THE APA. I ASSUME THERE WAS A CHANCE TO OBJECT TO THAT, BEFORE IT WAS ADOPTED , AND ISN'T THE PROPER WAY TO GO WITH THIS RULE-MAKING , IS TO GO UP TO THE FIRST DISTRICT ON THAT?

I THINK I WOULD DISAGREE WITH THAT FOR THIS REASON. BECAUSE OF THE APA , AND I AM TALKING ABOUT 125.36 SUBSECTION 1 , AND THIS IS THE DIFFERENCE BECAUSE OF THE SEPARATION OF LEGISLATIVE POWERS. THE LEGISLATURE CANNOT GIVE TO DO A O R TO ANY AGENCY YOU HAVE THE POWER T O PRACTICE AND DO YOUR PROCEDURE.THAT IS NOT A LAW. THERE ARE CONFLICTING INTERESTS HERE , ALWAYS THE SAME CONFLICTING INTERESTS , EMPLOYEE VERSUS EMPLOYER.

ISN'T THAT DIFFERENT WHEN SOMEONE IS CHALLENGING A SPECIFIC SET OF RULES FROM DOA THAT SAYS, WELL , THIS GOES BEYOND THE LEGISLATIVEAUTHORITY OR THE LEGISLATURE DIDN'T HAVE AUTHORITY IN THE FIRST PLACE, TO DELEGATE TO DOA FOR THESE RULES? AGAIN, THE ISSUE HERE , IS WHETHER WE SHOULD ADOPT THESE PROPOSED RULES AS PART OF OURS .

BUT THAT GOES BACK TO THAT CONSTITUTIONAL COMPROMISE IN 1973 , WHERE YOUR PREDECESSORS DECIDED AND QIS WEISSLY SO , THAT IF YOU HAD AND WISELY SO,THAT IF YOU HAD TO PIECEMEAL AND SORT YOUR WAY THROUGHALL OF THIS PROCEDURE, THAT THAT IS A WASTE.

YOU HAVE SAID A NUMBER OF TIMES, BUT WHAT WE ARE REALLY LOOKING FOR IS SOMETHING YOU CAN POINT US TO THAT SAYS THAT THIS COURT TRULY HAS THE AUTHORITY TO PROMULGATE THESE RULES FOR WORKERS COMPENSATION PROCEEDINGS .

BECAUSE WORKERS COMPENSATION IS SUPERVISED ENTIRELY BY THE JUDICIAL BRANCH OF THE GOVERNMENT, AND YOU HAVE TWO CHOICES. YOU HAVE CHOICE NUMBER ONE, WHICH IS TO TELL US HOW TO RUN OUR PROCEDURES. NOTHING TO DO WITH SUBSTANTIVE RIGHTS, WHICH IS EXECUTING YOUR POLICIES . OR LEAVE US JUST TO WANDER AROUND , AND IT IS A DECISION THAT WAS MADE MANY YEARS AGO, THAT THE BEST WAY TO DO THIS , TO USE THE JUDICIAL RESOURCES TO THE BEST , WAS TO TELL US HOW TO PROCEDURALLY OPERATE .

CHIEF JUSTICE: WAIT. WAIT. WAIT. WE ARE IN , JUST AS LONG AS THE JUDGES KNOW AND WE CAN GO ON FOR A FEW MORE MINUTES, IF, WHY DON'T , IF THERE ARE QUESTIONS HERE, LET'S LET JUSTICE LEWIS AND JUSTICE BELL ASK THEIR QUESTIONS, AND WE WILL JUST EXTEND. WE ONLY HAVE THE ONE CASE THIS MORNING.

IF WE FOLLOW THAT RATIONALE , THAT BECAUSE ULTIMATELY YOU ARE GOING TO HAVE SOME OF THESE RIGHTS COME INTO THE JUDICIAL SYSTEM , WOULD IT NOT , ALSO , APPLY TO THE ABA, BECAUSE EVENTUALLY, THOSE RIGHTS ARE THEN TO FIND THEIR WAY INTO THE APPELLATE SYSTEM FOR APPELLATE REVIEW ?

NOT THE SAME . IS THE POINT I WAS TRYING TO MAKE BEFORE. IN THE APA CASES , THE ALJ IS ALWAYS DECIDING PRIVILEGES , LICENSES , WHATEVER , INVOLVING THE STATE. VERY FEW OF THE CASES EVER COME UP ON APPEAL. IT IS A COMPLETELY DIFFERENT PROBLEM. HIS ORDERS ARE RECOMMENDED ORDERS. HE IS NOT ADJUDICATING PROPERTY RIGHTS, AND IT HAS NOTHING TO DO WITH A SUBSTANTIVE ORDER

SUBSTANTIVE ORDER

THIS IS CRADLED INTO IT, BECAUSE YOU ARE GOING CRADLED INTO IT, BECAUSE YOU ARE ULTIMATELY GOING TO BE MAKING THE DECISION .

WE BASE ON TENS OF THOUSANDS OF CASES, DEPENDING ON WHAT THE JUDICIAL BRANCH DECIDES IS THE LAW. THE WORKERS COMPENSATION DIVISION IS HUGE , WAY BEYOND , THE APA JUDGES , YOU SIT THERE AND FILE ONE AND GET A HEARING IN 30 DAYS. IN WORKERS COMP , WE WAIT A YEAR AND-A-HALF. WE HAVE TENS OF THOUSANDS OF CASES. THIS IS A VERY IMPORTANT AREA OF THE LAW TO THE PUBLIC, AND THE SIMPLEST WAY TO DO IT , IS TO DO WHAT HAS BEEN DONE FOR 30 YEARS, TO BE SO JUDICIALLY ACTIVE NOW TO SAY EVERYBODY WAS ALWAYS WRONG. WE NEVER SHOULD HAVE DONE ANYTHING. THAT IS MY POINT. I AM SORRY.

LET ME ASK YOU ONE LAST , BECAUSE YOU HAVE REFERRED TO THIS CONSTITUTIONAL COMPROMISE. COULD YOU POINT TO US, THE EVIDENCE THAT YOU BELIEVE EXISTS , OF THAT CONSTITUTIONAL COMPROMISE. THAT IS , IS IT LANGUAGE IN THE CONSTITUTION? WHERE WOULD WE GO AND LOOK TO FIND THAT THAT ORIGINAL COMPROMISE WAS MADE THAT VESTED JURISDICTION IN THIS COURT, FOR ESTABLISHING THESE RULES.

THE ORIGINAL 1973 DECISION BY THE COURT , WHICH WAS BEFORE THE INVITATION FROM THE LEGISLATURE , FOR YOU TO ADOPT RULES OF PRACTICE AND PROCEDURE FOR WORKERS COMP , IT WAS DONE BY AN UNANIMOUS COURT, AND THE COURT EXPLAINED THAT THE REASON WE ARE DOING THAT , IS BECAUSE THE ACTIONS OF THE JUDGE OF COMPENSATION CLAIMS, IS MORE JUDICIAL THAN QUASI-JUDICIAL. THEIR LANGUAGE NOT MINE. AND THEY DISCUSSED THE FACT THAT WHAT THEY WERE DOING WAS DIFFERENT , AND THEY UNDERSTOOD

THAT IS AT THE FOUNDATION

YES.

CHIEF JUSTICE: YOU ARE SAYING THAT DECISION INTERPRETED ARTICLE V AND THAT WE SHOULD NOT REcede FROM THAT PRECEDENT.

EXACTLY.

CHIEF JUSTICE: YOUR TIME IS OVER YOUR TIME. THANK YOU VERY MUCH.

GOOD MORNING . I AM SCOTT STEVENS O N THE OTHER SIDE, ARGUING BEFORE THE COURT.

WE ARE HERE, I GUESS , ON A MOTION OF PETITION FROM THE COMMITTEE, TO ADOPT WORKERS COMP SAYINGS RULES. ARE WE LIMITED COMPENSATION RULES. ARE W E LIMITED , DESPITE WHAT THE ARGUMENTS ARE THAT YOU MADE, TO DETERMINING WHETHER OR NOT TO ADOPT THESE PARTICULAR RULES, AND CAN WE GO BEYOND THAT IN THIS KIND OF PROCEEDING, TO SAY, WELL , THE ENTIRE SCHEME O F RULES IS UNCONSTITUTIONAL , WHEN WE ARE HERE ON THIS NARROW PETITION?

WELL , I A M CERTAINLY NOT GOING TO URGE THE COURT TO HOLD THE ENTIRE SCHEME UNCONSTITUTIONAL, BECAUSE AS AN ADMINISTRATIVE OFFICIAL, THAT WOULDN'T BE MY ROLE. IT IS NOT THE POSITION OF THE OFFICE OF JUDGES O F COMPENSATION CLAIMS OR DOA, THAT THE COURT NEEDS TO HOLD THE SCHEME UNCONSTITUTIONAL , IN ORDER TO FOCUS ON ON THE RELIEF THAT WE ARE ASKING FOR TODAY, WHICH IS TO NOT APPROVE THOSE RULES , AND , YES, SIR, YOU ARE RIGHT. THAT IS THE FOCUS OF WHAT I S INVOLVED TODAY. WE AGREE WITH THAT FULLY.

CHIEF JUSTICE: WELL , IN THIS , IF WE START WITH THE CONSTITUTIONAL PROVISION , BUT WE HAVE THE AUTHORITY BUT WHAT DOES THE LEGISLATURE INTEND, HOW WOULD IT B E EXERCISED, WHAT WE HAVE IS THAT YOU HAVE GOT THIS 440.29-3 , WHICH IS UNDER PROCEDURE BEFORE THE JUDGE OF COMPENSATION CLAIMS , THAT IS PROCEDURE, AND IT SAYS THE PRACTICE AND PROCEDURE BEFORE THE JUDGES OF COMPENSATION CLAIMS, SHALL BE GOVERNED BY RULES ADOPTED BY THE SUPREME COURT, EXCEPT TO THE EXTENT THAT SUCH RULES CONFLICT WITH THE PROVISIONS OF THIS CHAPTER . NOW , THAT WAS ENACTED IN , AFTER THE 1973 OPINION, CORRECT?

YES, SIR.

THAT WAS , SO IT WAS , INSTEAD OF A REPUDIATION OF WHAT WE HAD DONE , IT WAS ACTUALLY A N AFFIRMATION OF WHAT HAD BEEN DONE , CORRECT ? AND THAT HAS REMAINED UNCHANGED UNTIL THE PRESENT TIME. IS THAT CORRECT?

ALSO TRUE , YES.

ALL RIGHT. NOW, WE HAVE THE OTHER STATUTE THAT THE , IS BEING RELIED ON , IS FOUND IN 440.45, WHICH SPEAKS TO THE OFFICE OF THE JUDGES OF COMPENSATION CLAIMS , AND ALL OF THE PROVISIONS , UP TO WHERE YOU GET TO PROVISION 4 , ALL DEAL WITH WHAT WOULD BE CONSIDERED TO BE ADMINISTRATIVE ITEMS ABOUT HOW JUDGES GET APPOINTED , AND HOW , IF YOU HAVE A COMPLAINT AGAINST THE JUDGE, HOW THAT GOES , WHETHER THERE SHOULD BE DISCIPLINE, WHAT WE REALLY THINK ABOUT, AGAIN, WHAT OUR OFFICE O F STATE COURT ADMINISTRATORS DOES , IF THERE IS , THE NEXT ONE IS THE DEPUTY CHIEF JUDGE SHALL ESTABLISH TRAINING AND CONTINUING EDUCATION, AND THEN IT SAYS , AND THE OFFICE SHALL ADOPT RULES TO EFFECT THE PURPOSES OF THIS SECTION . NOW , WHEN WE READ AREAS OF STATUTORY CONSTRUCTION , THIS SECTION IS AT MOST , 440.45 , WHICH IS A SECTION THAT DEALS PURELY WITH THE ADMINISTRATIVE SIDES OF THINGS. NOW , I AM HAVING TROUBLE, THEREFORE , IF WE GET PAST THAT WE HAVE THE AUTHORITY, WHICH THIS COURT HAS SAID THAT WE HAVE

HAD FOR THE LAST 40 YEARS UNDER THE CONSTITUTION, TO SEE HOW THAT STATEMENT IS , WITHOUT A REPEAL OF SUBSECTION 3 , IS , MEANS THAT THE COURT NO LONGER HAS THE AUTHORITY TO GOVERN THE PRACTICE AND PROCEDURE, WHICH IS THE EXPLICIT GRANT OF AUTHORITY, WHEN THIS TALKS ABOUT YOUKNOW, THAT RULE , SUCH RULES SHALL INCLUDE PROCEDURAL RULES , APPLICABLE RULES, ANDYOU DON'T REALLY , AND UNIFORM CRITERIA FOR THE MEASURING OF THE PERFORMANCEOF THE OFFICE. IT IS A VERY STRANGE WAY TO HAVE A SEPARATE SECTION DEALING WITH THE OFFICE , SO COULD YOU HELP ME ON THE STATUTORY CONSTRUCTION BASIS.IN OTHER WORDS , IF WE GETPAST THE CONSTITUTION , I HAVE A REAL PROBLEM WITH THIS BEING A CONFLICT THAT DOESN'T CLEARLY SAY THAT WE HAVE NO MORE AUTHORITY TO ADOPT PROCEDURAL RULES AFFECTING HOW THE ACTUAL TRIAL OF THE CASE IS GOING TO PROCEED.

YES, YOUR HONOR . I FRANKLY SHARED THE SAME CONCERNS OF THE STATUTORYLANGUAGE, UP TO THE POINT , AND WHAT I WOULD LIKE TO DO IS TO FOLK OUTS VERY LAST SENTENCE OF THAT SECTION , AND TO ME THE LAST SENTENCE WAS THE VERY THING THAT KEPT ME FROM TILTING THAT MAYBE WE DON'T HAVE THIS AUTHORITY , OH, YES WE HAVE THE AUTHORITY BUT MAYBE IT IS A CLEAR COMMAND FROM THE LEGISLATURE , AND MY PREDECESSOR IN THE OFFICE WHO DIDN'T EXERCISE THAT SAME AUTHORITY , PERHAPS RELIED ON THE SAME KINDS OF CONCERNS THAT YOU HAD, BUT PERHAPS THE FACT OF THE MATTER IS AN ADDITIONAL PIECE OF LEGISLATION CAME ALONG , ABOLISHING THE OFFICE AND CREATING A NEW OFFICE, AND I THOUGHT IT WAS PRETTY CLEAR FROM THE LAST WORDS OF THAT SENTENCE , THAT THESUPREME COURT APPROVE RULESOF PROCEDURE , UNTIL THE OFFICE OF COMPENSATION CLAIMS APPROVED BY THIS SECTION, COMES INTO PLAY.

SO THIS LANGUAGE WAS LIKE THIS, FROM '93 ON , BUT WHEN YOU CAME, SOMEONE INTERPRETED I T DIFFERENTLY THAN YOU INTERPRETED IT .

WELL , YES , ALTHOUGH I N '93 , WHEN THE STATUTORY LANGUAGE WAS FIRST PUT THERE , THERE WAS SOMETHING IN THE WAY OF ESTABLISHING THE RULES ADMINISTRATIVE LY , AND THAT IS THAT THE RULES THAT EXISTED AT THE TIME , PROVIDED FOR APPELLATE PROCEDURE AS WELL AS PROCEDURE BEFORE THE ADMINISTRATIVE BODY . OBVIOUSLY IT WOULD HAVE BEEN UNCONSTITUTIONAL FOR AN ADMINISTRATIVE BODY T O PURPORT TO MAKE RULES FOR THIS COURT OR FOR THE DISTRICT COURT OF APPEAL , SO THERE WAS SOME SOMETHING IN THE WAY. THAT IMPEDIMENT WAS REMOVED, WHEN THE APPELLATE RULES WERE TRANSFERRED FROM THE WORKERS COMPENSATION RULES TO THE GENERAL 9 POINT APPELLATE RULES IN '96 OR '97.

CHIEF JUSTICE: I AGREETHAT THAT SENTENCE DEFINITELY MAKES IT ANOTHER, YOU KNOW , MAKES IT CONFUSING , BUT WHEN IT MAKES IT CONFUSING , I T MEANS IT MAKES IT AMBIGUOUS , AND THEN, YOU KNOW , AGAIN, THEN IT IS THE PLACEMENT OF WHERE THESE TWO SECTIONS ARE THAT SEEM TO B E THE PROBLEM. I MEAN, THAT THE ONE , THE BRANCH OF THIS ALREADY IS RIGHT IN THE SECTION I N DEALING WITH HOW THE PROCEDURE GOES , WHEREAS THEOTHER STATUTE IS DEALING MORE LIKE WHAT WE WOULD THINK OF THE RULES OF JUDICIAL ADMINISTRATION , WHICH YOU KNOW, I DON'T KNOW IF ANY OF OUR RULES DEAL WITH ADMINISTRATIVE MATTERS, BUT YOU KNOW, THAT THOSEWOULD BE SOMETHING THAT WOULD BE EX-CLUSIVE IVELY WITHIN YOUR AUTHORITY , ANDIS THERE ANY LEGISLATIVE HISTORY AS TO WHEN THIS WAS ENACTED ? USUALLY THERE IS A STATEMENT.IF THEY WANT US OUT OF THE RULE-MAKING BUSINESS , YOU WOULD EXPECT THE LEGISLATURE TO SAY WE EXPECT THE SUPREME COURT WILL HAVE NO MORE BUSINESS ADOPTING RULES.

YOUR HONOR , THAT SENTENCE THAT I READ , IS IN MY VIEW , THE THING THAT DOES THAT.

I UNDERSTAND THAT , BUT IN THE LEGISLATIVE HISTORY , AS FAR AS THE , ANY INTENT THAT NOT THAT I KNOW OF, THEREIS NO OTHER ADDITIONAL MATERIAL.

USUALLY SOMETHING THAT IS , YOU KNOW, AGAIN , GETTING BACK TO A PRACTICAL QUESTION,WHICH IS WHEN THIS COURT ADOPTED THE EVIDENCE CODE , WE HAVE TRIED FOR YEARS , THERE IS OVERLAP PROCEDURES , SUBSTANCE, TO KIND OF WORK AWAY OF COMEDY , TO JUST MAKE SURE THAT MAYBE THEY ARE THE SAME, SO THEN THERE IS NOT A DISAGREEMENT. ARE WE, CAN I ASK YOU THAT SAME PRACTICAL QUESTION , ARE WE IN SOMETHING WHERE THERE IS SOME REAL BIG ISSUES THAT SOME PROCEDURES THAT ARE IN THE COURT RULES, ARE JUST , THERE IS A PHILOSOPHY IN YOUR OFFICE , SHOULDN'T BE IN THESE RULES , OR ARE WE , IS IT TERRITORIAL ITCH? I MEAN , GIVE TERROR ISM? TERRITORIAL ISM? IS THERE SOMETHING ADDRESSED IN THE WORKERS COMPENSATION RULES?

THERE IS SOMETHING

GIVE ME ONE EXAMPLE.

I THINK THE ONE THAT OUGHT TO BE ADDRESSED IS THE ONE MR. SICKING RAISED , WHO TELLS PEOPLE TO GET OUT OF OUR PLACE AND GO TO CIRCUIT COURT. THAT IS NOT CORRECT AT ALL. WE HAVE A RULE THAT SIMPLY GOVERNS WHAT PEOPLE SHOULD DO, IF THEY REACH A STIPULATION. THE BIG DIFFERENCE IS THAT , PRIOR TO THE ENACTMENT OF THE ADMINISTRATIVE RULES, IT USED TO BE THE CASE THAT EVERY TIME THE LAWYERS WHO WERE INVOLVED IN LITIGATION BEFORE A JUDGE OF COMPENSATION CLAIMS, HAD A STIPULATION. THEY WOULD TAKE THE STIPULATION TO THE JUDGE AND MAKE THE JUDGE SIGN IT , BEFORE THEY WOULD CONSIDER IT A BINDING STIPULATION. I COULDN'T BELIEVE THAT THE JUDGES WERE ALLOWING THEMSELVES TO SERVE ESSENTIALLY , AS STIPULATION CLERKS, AND SO WE NOW HAVE A RULE THAT SAYS THAT THEY DON'T BRING STIPULATION TO SAY THE JUDGE FOR ENFORCEMENT , UNTIL SOMEBODY HAS ACTUALLY ACTED INCONSISTENTLY WITH IT , AND THE RULE THAT WE HAVE IS WITH IT, AND THE RULE THAT WE HAVE IS PRETTY EXPLICIT ABOUT THE JUDGE'S AUTHORITY TO ENTER AN ORDER APPROVE !!ING A STIPULATION, AT WHICH POINT IT BECOMES ENFORCEABLE IN CIRCUIT COURT.

YOU I REALIZE THERE IS SOME VALUE IN POINTING OUT , PERHAPS , WHETHER THERE ARE SUBSTANTIAL DIFFERENCES FOR FAIRNESS .

CHIEF JUSTICE: I ASKED FAIRNESS.

THAT IS WHAT I WANTED , BUT YOU KNOW , WE NEED TO RETURN. THERE WAS A QUESTION ABOUT WHETHER THERE WAS ANY LEGISLATIVE HISTORY, YOU KNOW, WITH REFERENCE TO THE LANGUAGE THAT YOU RELY ON , AND I ASSUME THAT YOU HAVE NO LEGISLATIVE HISTORY TO POINT TO U S .

THAT'S CORRECT , SIR.

AND THEN WE HAVE THE DIFFICULTY THAT , IF YOU ARE RIGHT , THE LEGISLATURE HAS LEFT THE SECTION OF THE STATUTE EXPRESSLY AUTHORIZING THIS COURT TO PASS THESE RULES , ON THE BOOKS , RIGHT UP TO THIS MINUTE. ALL RIGHT. WHICH IS COMPLETELY INCONSISTENT , IF THAT WAS THE INTENT HOW MANY YEARS AGO, YOU KNOW, WHEN THIS LANGUAGE WAS PUT ON THERE, AND THAT DOESN'T SAY ANYTHING ABOUT THE FACT THAT THIS COURT RULED IN 1973 OR WHENEVER IT HAS BEEN CITED THAT, WE HAD THE CONSTITUTIONAL AUTHORITY TO PASS THESE RULES , AND YOU KNOW, THAT THE LEGISLATURE HASN'T SPOKEN TO THAT , SO I AM, YOU KNOW, WE HAVE A DIFFICULT SITUATION HERE , BUT HOW DO YOU AVOID THE FACT THAT THIS COURT HAS ALREADY DECIDED THAT IT HAS THE CONSTITUTIONAL AUTHORITY TO PASS THESE RULES? HOW DO YOU , HOW DO YOU DEAL WITH THAT?

WELL , SIR, IT IS NOT REALLY IN MY ROLE TO DECIDE WHETHER THE COURT HAS OR DOESN'T HAVE THE CONSTITUTIONAL AUTHORITY. I THINK

THAT IS THE PREVAILING LAW FROM THIS COURT.

YES AND I HAVE ALWAYS ASSUMED THAT THIS COURT HAS THE AUTHORITY, BECAUSE IT WOULDN'T BE UP TO ME TO DECIDE WHO DOES OR DOESN'T HAVE CONSTITUTIONAL AUTHORITY, ONCE YOU HAVE SPOKEN TO THE SUBJECT.

YOU AGREE WE HAVE SPOKEN. I AGREE THERE WAS A PRONOUNCEMENT TO THAT EFFECT, BUT I THINK THE JONES AND CHILES DECISION MAY HAVE CHANGED AND BEEN INCONSISTENT WITH THAT, BECAUSE OBVIOUSLY IN THAT CASE SOMEBODY THOUGHT IT WAS REASONABLE TO RAISE THE ARGUMENT THAT JCC'S WERE JUDICIAL BRANCH OFFICIALS, WHICH, AFTER JONES AND CHILES, WE CERTAINLY KNOW THAT THERE WAS NOT, SO IT MAY OR MAY NOT BE TRUE THAT THE COURT STILL HAS CONSTITUTIONAL AUTHORITY TO DO THAT. I THINK THAT IS REALLY THE ISSUE THAT MR. TAYLOR IS INTENDING TO ADDRESS, BECAUSE IT IS REALLY NOT MY ROLE, AND I AM ALSO OVER MY TIME.

THE YOUR OPPONENTS SAY BASICALLY THAT THERE IS A DIFFERENCE BETWEEN OTHER DOA HEARING OFFICERS AND THOSE JUDGES OF COMPENSATION CLAIM, AND THAT IS THAT YOUR DECISIONS ARE APPEALED DIRECTLY TO THE FIRST DISTRICT. THAT'S CORRECT. ISN'T IT?

SOME OF THE DIVISION OF ADMINISTRATIVE HEARINGS CASES ARE APPEALED DIRECTLY TO THE FIRST DISTRICT, BUT BY AND LARGE, IT IS CORRECT.

BUT BY AND LARGE THE OTHERS ARE, ACTUALLY THE AGENCY HAS TO PUT THEIR STAMP OF APPROVAL OR DISAPPROVAL ON IT, BEFORE ANYTHING DISAPPROVAL ON IT, BEFORE ANYTHING ELSE CAN HAPPEN TO IT, IS THAT CORRECT?

THAT IS THE MODEL, YES.

DOES THAT MAKE ANY DIFFERENCE IN THE SITUATION, THE FACT THAT YOU HAVE TO TAKE YOUR CASES DIRECTLY TO THE FIRST DISTRICT?

IF IT IS DIFFERENT, BUT I DON'T SEE HOW THAT DIFFERENCE IMPACTS ON WHAT THE COURT WANTS TO DO TODAY. I THINK THAT WE FACE A LEVEL OF JUDICIAL REVIEW THAT IS VERY SEARCHING, AND THE FIRST DISTRICT COURT OF APPEAL HAS NOT BEEN THE LEAST BIT SHY ABOUT TELLING US THAT THEY DO NOT THINK WE ARE AFFORDING DUE PROCESS TO PARTIES THAT ARE LITIGATING BEFORE US. THAT SUGGESTION, THE RULES NEED TO BE FORMULATED IN A CERTAIN WAY IN ORDER TO ASSURE DUE PROCESS, ONE THAT IS LOST ON ME BECAUSE THE DISTRICT COURT OF APPEALS IS VERY VIGILANT, MAKING SURE THAT

CHIEF JUSTICE: YOU ARE INTO THE TIME OF MR. TAYLOR, SO IF YOU WANT TO CONCLUDE OR YOUR HONOR, IT IS VERY CLEAR TO ME THAT THE COURT UNDERSTANDS ALL THE ISSUES AND I REALLY COULDN'T ADD ANYTHING AT THIS POINT. THANKS VERY MUCH.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM HERE FOR MARY ANN STILES, WHO WAS SCHEDULED TO BE HERE ORIGINALLY. I AM HERE IN HER PLACE. WE TRY TO COME TO THIS FROM A DIFFERENT PERSPECTIVE. I WILL TRY TO EXPLAIN HOW WE THINK THE DOA RULES NEED TO BE LEFT IN PLACE AND THE RULES PROPOSED BY THE COMMITTEE DO NOT NEED TO BE ADOPTED.

YOU COME TO THE COURT AS A PRACTITIONER?

YES, SIR, WORKERS COMP PRACTITIONER SINCE 1990, BOTH HERE IN FLORIDA AND ALSO IN GEORGIA. I WASN'T A LAWYER IN 1974 BUT WASN'T AWARE OF THIS DISPUTE BACK THEN, OF COURSE.

AS A PRACTITIONER , DO YOU REPRESENT INJURED WORKERS OR DO YOU REPRESENT INSUREDS AND EMPLOYERS OR A MIX OR HOW WOULD YOU CHARACTERIZE YOUR PARTICIPATION IN THE SYSTEM?

THE VAST MAJORITY O F MY PARTICIPATION IN THE SYSTEM IS O N BEHALF OF EMPLOYER CARRIERS AND INSURANCE COMPANIES.

SO ARE YOU BRINGING TO THE COURT, THE VIEWPOINT OF THE EMPLOYER CARRIERS , THAT THEY WOULD RATHER HAVE THESE RULES PROMULGATED BY DOA, OR ARE YOU , YOU ARE COMING AS AN OFFICER OF THE COURT. TELL US , YOU KNOW , WHAT REPRESENTATION YOU HAVE OR INTEREST THAT YOU ARE REPRESENTING HERE .

YOUR HONOR , MY POSITION HERE I S AS AN OFFICER OF THE COURT AND A LAWYER OF FLORIDA.

YOU ARE NOT HERE IN ANY WAY , TIED TO YOUR REPRESENTATION TO YOUR EMPLOYERS OR INSUREDS.

NO, YOUR HONOR. IF THERE WERE A CHALLENGE TO ONE OF THESE RULES AND I WAS RETAINED TO REPRESENT ONE OF THE PARTIES IN A CHALLENGE TO ONE OF THOSE RULES, THEN I WOULD BE HERE AS A N ADVOCATE FOR THAT CLIENT , BUT THERE IS NO CHALLENGE PENDING AS TO THESE RULES UNDER 120. THERE HAS NEVER BEEN A CHALLENGE FILED TO THESE RULES UNDER 120, SO I AM NOT HERE ADVOCATING ON BEHALF OF ANY CLIENT. OKAY .

WHAT DO YOU SEE AS WRONG WITH THE STATUS QUO?

I DON'T THINK THERE IS ANYTHING WRONG WITH THE STATUS QUO, IN THE SENSE THAT THIS COURT HAS NOT FAILED TO CARRY OUT ITS FUNCTION SINCE 1973 OR , CERTAINLY , SINCE 1974 , APPROXIMATELY , WHEN THE LEGISLATURE PUT 440.29 ON THE BOOKS , BUT I DO THINK THAT , SINCE THE AGENCY HAS STEPPED IN , THAT THERE IS NO BASIS ANY LONGER , AND THAT JONES V CHILES CASE , RECOGNIZES THERE IS NO CONSTITUTIONAL BASIS FOR THIS COURT , TO CONTINUE T O TREAT THIS SYSTEM ANY DIFFERENTLY THAN ANY OTHER ADMINISTRATIVE MATTER . AND THE ARGUMENT THEY ARE MAKING, IS ESSENTIALLY THE EXACT ARGUMENT THEY MADE IN JONES V CHILES! HISTORICALLY , COMP HAS BEEN DIFFERENT , SO YOU NOW NEED TO CONSTRUE THE CONSTITUTION AND THE STATUTE , TO KEEP THAT DIFFERENCE IN PLACE.

LET ME ASK YOU THE SAME QUESTION I ASKED YOUR COLLEAGUE ON THE OTHER SIDE OR YOUR PREDECESSOR S. ARE YOU ASKING US HERE TO INVALIDATE THE SCHEME OF RULES, THAT HAS BEEN IN EXISTENCE , OR SIMPLY TO DECLINE TO ADOPT THE RULES AS PROPOSED RIGHT NOW.

I WOULD RESPECTFULLY REQUEST THAT YOU DECLINE TO ADOPT THE RULES, AND THE REASON FOR THAT IS , IN MY PERCEPTION , THERE IS CERTAINLY NOTHING ARTICLE V , WHICH GRANTS THIS COURT EXPRESS AUTHORITY TO ADOPT THESE RULES . THE AUTHORITY CLEARLY COMES OUT O F 440.29. NOW, IN 1973

CHIEF JUSTICE: BUT I F WE DECLINE TO ADOPT THESE , OR THIS IS HERE ON THE TWO-YEAR CYCLE , THAT WILL STILL KEEP WHATEVER RULES ARE I N EXISTENCE, IN EXISTENCE. ARE YOU ASKING THAT W E REPEAL THOSE RULES?

I UNDERSTAND WHAT THE QUESTION IS. YES , I AM ASKING YOU TO REPEAL THOSE RULES. YES.

HAVE YOU FILED ANY KIND OF PETITION TO , FOR, I DON'T KNOW , WRIT OF MANDAMUS O R ANYTHING BASED ON THAT ARGUMENT, BECAUSE RIGHT NOW ALL WE HAVE IS PROPOSED RULES TO US, AND SOMEBODY WHO , PARTIES WHO OPPOSE US ADOPTING THE PROPOSED RULES , WE DON'T SEEM TO HAVE ANY KIND OF CASE THAT SAYS INVALIDATE THE ENTIRE SCHEME.

WELL , I WOULD TRY TO RESPOND TO YOUR QUESTION THIS WAY . UNTIL DOA ADOPTED ITS RULES , THE RULES OF THIS COURT REMAIN IN PLACE BY VIRTUE OF 440 .29, WITHOUT ANY QUESTION. UNDER 440.45 , BASED UPON THE LAST SENTENCE CRYED BY JUDGE STEVENS , THERE WAS A BELIEF THAT BY JUDGE STEPHENS , THERE WAS A BELIEF THAT THE RULES WOULD BE IN PLACE.

WHAT IS THE BASIS OF THE BELIEF?

THAT THE LANGUAGE IN 440.45 SUB4, THAT SENTENCE IS UNNECESSARY, IN MY OPINION , I F ALL THAT THE LEGISLATURE INTENDED TO DO, WAS TO GIVE THIS AGENCY , THIS SUBAGENCY , THE ABILITY TO ADOPT RULES ABOUT HOW TO ADMINISTER THE OFFICE!

AGAINST, GOING BACK , WHAT IS THE BASIS? THAT IS YOUR INTERPRETATION.

YES . THAT IS MY INTERPRETATION. I CANNOT POINT TO ANY LEGISLATIVE HISTORY, WHERE THE LEGISLATURE SAID , IN THE PASSAGE OF THE STATUTE 2000 2001-91 , THAT IT IS OUR INTENT THAT THE RULES OF THE SUPREME COURT OF FLORIDA DISAPPEAR THE DAY AFTER DOA ADOPTS ITS RULES. THAT IS TRUE.

LET'S REFER TO THIS SECTION , BECAUSE HISTORICALLY WE HAVE ALWAYS DEALT WITH LEGISLATIVE PROVISION PASS BY WAY OF DEFINITION.

YES.

THIS SECTION , THIS PART, WHAT IS YOUR RESPONSE T O CHIEF JUSTICE PARIENTE'S QUESTION, THAT THIS SPECIFICALLY USES THE WORD SECTION?

I WOULD HAVE T O S AY THE LEGISLATURE , IN THE PAST, HAS NOT ALWAYS DRAFTED LEGISLATION WITH A CRYSTAL CLARITY THAT PROBABLY THIS COURT AND OTHER PARTIES WOULD LIKE , AND IT IS THE JOB OF THIS COURT TO SORT THAT OUT . AND QUITE FRANKLY , IF YOU INTERPRET THE PHRASE THE WAY THE COMP COMMITTEE AND MR . SICKING AND THE SECTION WOULD LIKE, THEN YOU NULLIFY THAT LAST SENTENCE IN 440.45.

BUT JUST FRO M A PRACTICAL POINT OF VIEW WHAT HAPPENED? I DON'T KNOW WHAT OTHER CHANGES WERE ADOPTED IN 1994 , WHETHER THIS WAS WHEN THE DIVISION O F COMPENSATION CLAIMS WAS BEING ABSORBED INTO DOA , IS THAT AROUND THE TIME?

THAT WAS DONE IN 2001.

WAS THIS, THIS STATUTE CAME INTO EXISTENCE AFTER THAT OR AT THAT TIME ?

THE SENTENCE THAT W E ARE SPEAKING ABOUT AT THE END OF 440.45 , I THINK , HAS BEEN IN EXISTENCE SINCE , POSSIBLY , EFFECTIVE JANUARY OF '94, I THINK.

SO WE DON'T, AND THAT IS JUST ONE SENTENCE WAS ADDED?

NO. THERE WERE OTHER CHANGES MADE IN 1994.

I GUESS THAT , WHAT MY CONCERN IS , IS THAT, AGAIN, THE LEGISLATURE IS PRESUMED TO KNOW THE LAW , PRESUMED TO KNOW THEIR STATUTES , PRESUMED TO KNOW THAT WE HAVE SAID THAT WE HAVE GOT CONSTITUTIONAL AUTHORITY OVER THIS, AND THAT, IF THEY WERE INTENDING TO TAKE US OUT OF THE RULE-MAKING BUSINESS ENTIRELY, WHICH WE HAVE BEEN IN FOR THE LAST 40-PLUS YEARS THAT , THERE WOULD BE , IT WOULD HAVE BEEN WITHIN THE SECTION THAT DEALS WITH THE PRACTICE AND THE EXPLICIT AND BE EXPLICIT, AND I CAN UNDERSTAND THE ARGUMENT. AGAIN, I CAN SIT THERE IN FACT, WHEN I FIRST SAW , READ IT A YEAR AGO , WITHOUT LOOKING AT THE WHOLE THING, I SAID , MAYBE THAT IS WHAT THEY ARE

DOING , BUT WE ARE GETTING , IT IS SORT OF LIKE WE ARE GUESSING, AND YOU DON'T WANT TO GUESS AT SOMETHING AS, I GUESS , AS IMPORTANT TO THE SYSTEM AS THIS IS , AND YOU KNOW, THEN THE QUESTION WOULD BECOME , IF THEY , IF THE LEGISLATURE EXPRESSLY SAID THAT , WHETHER THEY, YOU KNOW , WHETHER, IN LIGHT OF OUR OPINION SAYING WE HAVE GOT RULE-MAKING AUTHORITY UNDER THE CONSTITUTION , WHETHER THEY COULD ACTUALLY DO THAT , SO WE ARE NOT THERE. SO HELP ME WITH THAT. HELP ME WITH THE FACT THAT ,IA, YOU SAY, WELL , YOU CAN READ THAT YEAH. I KNOW IT IS IN THAT SECTION. YEAH. I WOULD HAVE LIKED THEM TO HAVE BEEN CLEARER , BUT WITH ALL OF THAT, AND IT IS AMBIGUOUS , WHAT PRINCIPLE OF STATUTORY CONSTRUCTION SHOULD WE EMPLOY , TO GET TO YOUR VERSION , VERSUS WHAT I AM SAYING, WHICH IS IT LOOKS LIKE IT IS TALK ABOUT THE SECTIONS .

LET ME TRY IT THIS WAY , THEN . THERE IS CLEARLY NO EXPRESS CONSTITUTIONAL AUTHORITY UNDER ARTICLE V, FOR THIS COURT TO ADOPT RULES TO GOVERN AN ADMINISTRATIVE PROCEEDING FOR AN EXECUTIVE BRANCH AGENCY. THERE IS NO DISPUTE ABOUT THAT. IN 1973, THE COURT DID ADOPT A SET OF RULES . IT DID ADOPT A SET OF RULES BROUGHT TO IT BY THE IRC, WHICH AT THE TIME WAS THE AGENCY RESPONSIBLE FOR PROMULGATING RULES! NOW , IN 1973 , BECAUSE OF THE ENVIRONMENT THAT EXISTED IN 1973, THIS COURT OBVIOUSLY PERCEIVED THERE WAS A VACUUM AND THAT THERE WAS A NEED TO ADOPT SOME RULES OF PROCEDURE . SINCE 1973 SINCE 1973

LET'S ASK THE QUESTION WHAT DIFFERENCE DOES IT MAKE WHO BRINGS IT AND WHAT VACUUM EXISTS, IF YOU ARE TALKING ABOUT THE BASIC CONSTITUTIONAL AUTHORITY. IT SHOULD MAKE NO DIFFERENCE WHO BRINGS IT OR WHETHER OR NOT IT IS A VACUUM. IT SEEMS TO ME THOSE ARE ALL DISTINCTIONS TOTALLY WITHOUT A DIFFERENCE.

I AGREE WITH YOU, JUSTICE , AND I DON'T THINK THERE IS ANY CONSTITUTIONAL AUTHORITY FOR THIS COURT TO ADOPT THE RULES. IT HAS DONE SO, AND THAT IS NO CRITICISM. THE COURT HAS DONE SO. IT HAS DONE SO ORIGINALLY, BECAUSE IT THOUGHT IT NEEDED TO, AND SINCE 1974 , APPROXIMATELY , BECAUSE THERE WAS A STATUTE THAT SAID IT SHOULD, AND NO ONE HAS ADOPTED RULES UNDER AN ADMINISTRATIVE PROCESS , TO SUPPLANT YOUR RULES, SO YOURS HAVE REMAINED IN PLACE, BUT THE ISSUE IS NOW JOINED IN MY OPINION, AND THIS COURT NEEDS TO CONSTRUCT JONES V CHILES, AND THIS STATUTE , TO HARMONIZE WITH ARTICLE V.

BUT IF WE TAKE THAT WE, OUR RULES , ARE THERE EXCEPT TO THE EXTENT THAT THEY CONFLICT WITH THINGS HAD IN THE CHAPTER , THEN SOMEONE WOULD HAVE TO START TO POINT OUT , WHICH HASN'T BEEN DONE HERE, WHICH , THAT RATHER THAN THE WHOLESALE REPEAL OF RULES , WHICH RULES THAT ARE ADOPTED ARE PROPOSED TO BE ADOPTED CONFLICT , AND THERE HAS BEEN, INSTEAD, THIS WHOLESALE , JUST NONE OF THEM , BUT IT SEEMS THAT THE MIDDLE GROUND, WHICH WOULD BE LET'S HAVE COMITY HERE , WHICH WOULD BE, NOT COMEDY BUT COMITY, WOULD BE THAT WE WOULD SAY THAT THESE RULES ARE IN CONFLICT , AND THERE IS A GOOD REASON WHY THAT IS WHY , YOU ARE REALLY GETTING INTO SOMETHING THAT IS , THAT IS DETRIMENTAL TO THE ADMINISTRATION OF THE WORKERS COMPENSATION SYSTEM, SUCH AS THIS ISSUE , SO, AND I AM IN YOUR END OF YOUR TIME , BUT YOU HAVE , SINCE WE GAVE YOUR OPPONENT A MINUTE OR TWO, IF YOU WOULD LIKE TO ANSWER THAT AND FINISH UP.

I WILL TRY TO ANSWER THAT THIS WAY . EVERY ADMINISTRATIVE PROCEEDING IN THIS STATE , IS HANDLED BY ADMINISTRATIVE RULES. WORKERS COMP, TODAY , IS NO DIFFERENT THAN ANY OTHER PROCESS. CHAPTER 120 GOVERNS CITRUS CANCKER CASES , WHICH PROPERTY RIGHTS, UNEMPLOYMENT COMP, WHICH ARE CLEARLY BETWEEN PRIVATE PARTIES, AND OTHER STATE PARTIES , OF COURSE THAT, LITIGATE , AND EVERYONE OF THOSE, THIS COURT HAS FOUND , TO BE AN APPROPRIATE EXERCISE OF THE AGENCY'S AUTHORITY TO ADOPT RULES TO GOVERN THOSE PROCEEDINGS, AND WE THINK 440.45 GIVES THE AGENCY THE AUTHORITY TO DO THAT , AND WE THINK YOU CAN HARMONIZE WHAT YOU HAVE DONE IN THE PAST WITH WHAT IS HERE TODAY.

LET ME ASK YOU ONE LAST QUESTION, AND , REALLY , I WOULD INVITE, ALSO , YOUR COLLEAGUE WHO ARGUED EARLIER, TO HELP US WITH THIS, TOO. HAS THERE BEEN ANY ATTEMPT BY ANYONE , INCLUDING YOUR AGENCY , TO ASK THE LEGISLATURE TO CLARIFY AT LEAST THEIR INTENT IN THE FACE OF THIS CONFUSION , WHICH WE APPRECIATE THE CANDOR OF EVERYBODY HERE IN DISCUSSING THIS , INCLUDING YOUR CANDOR IN SAYING THAT YOUR PREDECESSOR , REALLY , TOOK A DIFFERENT TACT IN TERMS O F ASSUMING THAT , NO , THAT I T STILL LEFT THE RULE-MAKING AUTHORITY, YOUKNOW , WITH THE SUPREME COURT, BECAUSE THIS, AT LEAST , IS A KEY AND A SIMPLE ANSWER , TO A LARGE PART OF THE THING. THAT IS THAT, IF THE LEGISLATURE SAID, WELL , WE WILL JUST REPEAL THIS SECTION OR WELL MOVE THAT LAST SENTENCE OVER TO THIS SECTION OR WELL D O SOMETHING OR WE WILL DO SOMETHING, YOU KNOW, TO HELP OUT IN THIS COMMUNICATION HERE, DO, ARE EITHER OF YOU AWARE OF ANY EFFORTS T O SEEK THAT CLARIFICATION AND TO THE OUTCOME OF SEEKING THAT CLARIFICATION? I ASK BOTH OF YOU THAT.

I DO , I AM NOT AWARE OF ANY LEGISLATIVE CHANGE , SINCE 2001 , WHICH WOULD HAVE DONE BECAUSE ARE SUGGESTING,WHICH IS TO REPEAL 440.25.

OR ANY EFFORTS TO DO. THAT.

AND I AM NOT AWARE THAT ANY LEGISLATION HAS BEEN INTRODUCED IN THE PAST TWO SESSIONS THAT DIDN'T PASS , THAT WOULD ACCOMPLISH THAT PURPOSE , SO I HONESTLY HAVE TO SAY "I DO" NOT KNOW. THANK YOU.

THANK YOU.

YES, YOUR HONOR , THEREHAVE BEEN SOME EFFORTS MADE TO CONVINCED SOME OF LEGISLATIVE FOLKS TO CLARIFY THIS ISSUE, SO THAT WE DIDN'T HAVE TO HAVE THE PROCEEDING RESOLVED.IT IS KIND OF AN UNUSUAL RULE CHALLENGE THAT WE AREFACING TODAY .

THOSE JUST DIDN'T GET ACTED ON?

WELL, IT ONLY OCCURRED TO ME LAST YEAR THAT WE NEEDED TO TRY T O THAT , AND AS YOU MAY HAVE HEARD , THERE WAS A FAIRLY SUBSTANTIAL REWRITE OF THE WORKERS COMPENSATION LAWS IN THE PAST YEAR , AND I WAS TOLD THERE WAS A LOCKDOWN ANY THE WORKERS COMPENSATION ACT AT ALL, SO I WAS TOLD TO GO AWAY AND MAYBE COME BACK NEXT YEAR , AND THERE PLANT BEEN ANY PROGRESS IN THAT AND THERE HASN'T BEEN ANY PROGRESS IN THAT REGARD .

I APPRECIATE YOUR CANDOR.

CHIEF JUSTICE: THE COURT WISHES YOU A SAFE TRIP BACK TO YOUR HOMES AND TOWNS ANDTHAT YOUR FAMILIES WILL BE SAFE. THE COURT IS IN RECESS .

MARSHAL: PLEASE RISE.