In re: Amendments to the Rules Regulating The Florida Bar

MARSHAL: PLEASE RISE . HEAR YE.HEAR YE.HEAR YE.THE SUPREME COU RT OF THESTATE OF FLORIDA IS NOW IN SESSION.ALL WHO HA VE CA USE TO P LEA , DRAW NEAR, GIVE ATTENT ION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES , THE GREAT STATE OF FLORIDAAND THIS HONORABLE COUR T. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.PLEASE BE SEATED.

CHIEF JUSTICE: GOO D MORNING, LADIES AND GENTLEMEN, AND WELCOME T O THE FLORIDA SUPREME COURT . I WANT TO, FI RST , BEFORE I CALL THE FIRST CASE , WELC OME OUR AUDIEN CE TODA Y. I UNDERSTAND THAT WE HAVE GOT 88 STUD ENTS F ROM THE FLORIDA STATE COLL EGE OF LAW , WHO ARE UNDERGRADUATE STUDYENTS, PARTICIPATING IN THE FSU LAW SCHOOL PROGRAM , AND WE HO PE THAT YOU ENJOY YOUR VISIT TO THE COURT , AND ENJOY YOUR EXPERI ENCE THIS SUMMER. THE FIRST CASE ON THIS MORNING'S DOCK ET IS IN RE AMENDMENTS TO THE RU LES REGULATING THE FLORIDA BAR , AND WHAT W E ARE GOING TO DO , AS I UNDERSTAND IT, AND I WANT TO M AKE SURE WE HAVE , MS. STONE, ARE YOU GOING TO BE AR GUING FOR , IN FAVOR O F THE AMEN DMENTS ? ALL RIGH T . WE ARE GOIN G TO P UT A L IGHT ON AT 15 MINUTES, AND THEN , AS I UNDERSTAND IT , THE, THOSE THAT ARE MA KING COMMENTS , THERE IS FOUR MINUTES EACH, AND JUST FOR MAINTENANCE TIME, WE A REG OING TO PUT THE RED LI GHT ON AT THE END OF FOUR MINUTES, SO IF YOU USE INTO THE NEXT PERSON'S MI NUTES , YOU CAN , THE NEXT P E RSON C ANGRAB THAT PERSON OFF THE PODIUM. ALL RIGHT. MS. STONE , IF YOU WOULD PROCEED.

THANK YOU. I AM A DELE STONE WITH THE LAW FIRM O F ATKINSON , DONER, STONE, MANKUTA AND PLOUCHA IN FORT LAUDERDALE , AND I AM THE SPECIAL CHAIR OF THE COMMITTEE, AO INTED BY THE PRESIDENT TOD ARONOVITZVITZ IN 200 2. I A LSO HAVE MS. ELIZABETH TARBERT FROM THE FLORIDA BAR AND MR. TO NY BOGGS FRO M THE FLORIDA BAR , ANTICIPA TING YOUR QUESTIONS. BEFORE WE START, IF IT I S ALL RIGHT WITH THE COURT , I WOULD LIKE TO GIVE YOU AB OUT A MINUTE CAPSIZATION OF THE PROCESS.THIS HAS BEEN GOING ON S INCE 2001, IN TERMS OF WH ER E WE ARE AND WH Y WE ARE HERE TODAY. IN 2 000 1 RX TER RY RUSSELL AOINTED ME AS CHAI R TO T HESPECIAL COMMITTEE TO REVI EW PROPOSED CHANGES TO THE ABA MODEL RULES. WE HAD A COMMIT TEE AT THAT TIME I WAS AP POINT ED IN 2001 AND SUBSEQUENTLY THE ABA CHANGED THEIR RULES IN 2002 AND I WAS, AG AIN , AOINTED BY PRESIDENT ARONOVITZ , TO THE COMMITTEE TO REVIEW THE MOD EL RULES WH ICH WERE AROVED BY THE ABA SI NCE 2002, AND OVER A PERIOD OF ABOUT TWO YEARS, WE HAD NO LESS THAN 15 CONFERENCESWITH THIS COMMITTEE, TELEPHONIC AND PERS ONAL CONFERENCES.IN ORDER TO REVIEW THESE RULES, I BROKE THE COMMITTEE OUT INTO SUBCOMMITTEES. IT WAS REVIEWED V ERY CAREFULLY.WE HAD AN INTERIM REPORT I N 2003 WHICH WAS PUBLIS HED , AND BASED U PON THAT INTE RI M REPORT, WE RECE IVED A L OT O F COMMENTS. THAT REPORT WAS NOT ONLY PUBLISHED.IT WAS SE NT AND WE IN VITED COMMENTS FROM ALL OF THE B ARCOMMITTEES AND THE B ARSECTION, SO WE HAVE HAD A VERY FA IR AND O PEN PR OCESS . FROM THAT P OINT, WE DEVELOPED A FI NAL REPORT, WHICH WAS SUB MITTED TO THE BOARD OF GOVERNORS, T HEBOARD OF GOVERNORS HEARD THAT FINAL REPORT IN DECEMBER OF 2003 , AT THEIR MEETING.AGAIN , IT WAS PUBLISHED FROM A FINAL REPORT TO HAVE THE ENTIRE ETHICS RULES REVIEWED COMPREHENSIVE REVIEW OF THE ETHICS RULES, AND IT WAS PUBLISHED NO LESS THAN TH REE TIMES IN 2004 , AND WE HAD A FEW OTHER COMMENTS. WE REVIEWED IT AGAIN , AND IT GOT TO THIS POINT WHE RE WE HAVE THE PE TITION, W HICH WAS FILED IN DECEMBER 2004 , AND WE AEAR BE FORE YOU TODAY , TO, ON A PET ITION TO THE RULES.WE F EEL IT WAS A

VERY FAIR AND OPEN PROCESS N TERMS OF THE METHODOLOGY OF WHAT THE COMMITTEE USED, WE REVIEWED THE ACTUAL CHAN GES THAT THE ABA MADE AND LOOKED AT THE ABA M ODEL RULES VERSU S THE FLORIDA RULES, W HEREPOSSIBLE AND WHERE WE FE LT IT WAS AROPRIATE , GIVEN OUR HISTORICAL CONTEXT AND THE POLI CY THAT HAS BEEN ESTABLISHED BY THIS COURT, WE WANTED TO ST ICK AS CLOSELY TO THE MODEL RULES AS POSSIBLE. IN IN STANCES WHERE WE DIDN'T , MOST OF THE TIME IT WAS BECAUSE FL ORIDA IS MORE RESTRICTIVE IN THEIR RULES, AND WE WOULD NOT DE VIATE FROM THAT, BUT WE WERE , ALSO , AWARE, AND WE MADE A POINT OF UNDERSTA NDING THE HISTORICAL CONTEXT OF WHY PREVIOUS RULES CHANGES HAD BEEN MA DE. SO THE CHANGES THAT YOU SEE BEFORE YOU, HAVE BEEN DONE IN THAT CONTEXT .

CHIEF JUSTICE: WELL, IT DOES SOUND LIKE THEY WERE CERTAINLY STUDIED AND WE ARECIATE ALL YOUR SERVICE IN DOING T WHAT I WO NDER I N TERMS OF HOW YOU WANT TO DO, THIS YOU KNOW T HERE ARE SPECIFIC COMMENTS TO SPECIFIC RULES. OBVIOUSLY WE ARE NOT GOING TO BE ABLE TO GO THROUGH ALL OF THEM. DO YOU WANT TO SAVE YOUR TIME AND LET U S HEA R FROMTHOSE THAT ARE OP POSING CERTAIN RULES . FIRST I AM GOING TO ASK WHETHER THE JUSTIC ES HAVE ANY QUE STIONS OF YOU , OF ANY SPECIFIC RULES, AND THEN IF NOT , WE CAN GO SPECIFICALLY TO THE , THOSE THAT HAVE CONCERN.

THAT IS WHA T WE W ERE GOING TO SUGGEST.ANY QUESTION S YOU HAVE, AND THEN WE WILL S AVE YOUR TIME, WHATEVER IS -- SAVE OUR TIME , WHATEVER IT LEFT OVER, FOR ANY REBUTTAL.

I HAVE ONE WITH RE GARD TO WORKING WITH PUBLIC DEFENDERS AND S TATEATTORNEYS WITH REGARD TO THOSE C OMMENTS.THEY SEEMED TO REALLY POINT OUT AND TO SOLIDIFY THE DIFFERENCES BETWEEN THE CONTEXTS WHERE THE LAWYERS MAY BE AEAR ING. WHAT IS THE RESULT OF ANY OF THAT? ARE WE GOI NG TO BE DISCUSSING ALL OF THOSE T HIS MORNING?

I WOULD LIKE ELIZABETH TARBERT TO ANSWER THA T QUESTION FOR YOU.

YES. WE CAN CERTAINLY DISC USS THAT THIS MORNING. WE DID REC EIVE SOME COMMENTS EARLY FROM SOME PROSECUT ORS AND SOME PUBLIC DEF ENDERSAND THOSE WERE CAREFU LLY CONSIDERED, AND SOMETIMES WE MADE CHANGES AND SOM ETIMESTHE BAR DID NOT. SOME OF THE PROSEC UTORS A REA LITTLE LATE COM ING TO THE TABLE AND DID NOT FILE COMMENTS UNTIL AFTER THE PETITION WAS ACTUALLY FILED. SO WE WOULD CERTAINLY B E OPEN, WE WOULD LOVE TO ADDRESS WHAT EVER YOU WOULD , SPECIFICALLY HAVE QUE STIONS ABOUT THIS MORNING.

I AM MORE CONCERNED ABOUT THE PROCESS OF WORKING OUTSOME OF THESE DIFFERENCES , RATHER THAN, BECA USE THERE CERTAINLY ARE DIFFERENCES. I THINK EVER YONE RECOGNIZES BETWEEN THE TWO KINDS OF PRACTICES.THAT WAS REALLY THE POINT , AND WE STILL ARE AT A PO IN T THAT WE DON'T HAVE AG REEMENT IN A LOT OF AREAS , T HEN.

THAT'S RIGHT. WE DON'T HAVE AGREEMENT IN A COUPLE OF AREAS, AND THE PROCESS THAT WE WENT THROUG H IN WORKING IT OUT WAS TO ISSUE THE INTERIM REPORT AND INVITE KMEJTS AND THEN DEAL WITH THOSE, AND WE INVITEDPEOPLE TO AT TEND OUR MEETINGS AND ADDRESS WHATEVER COMMENTS THEY H AD TO THE COMMITTEE AS WELL AND TO THE BOARD.

I HAVE SOME SPE CIFIC QUESTIONS. REALLY , THERE ARE A DISCREET NUMBER OF AREAS WHERE THERE ARE COMMEN TS AND OOSITION TO THE RULES, OF ALL OF THE MYRIAD CHANGE THAT IS YOU PRO POSE, AND , REALLY , MOST OF THEM ARE GOVE RNMENT LAWYER TYPE OF COMMENTS . PROSECUTORS, DEFENSE COUNSEL AND GOVERNMENT LAWYERS, ANDI WOULD LIKE YOU TO AD DRESS THOSE RELATED TO THOSE KINDS OF RULES. FOR EXAMPLE , 4-1.7 , T HECOMMENT WAS ABOUT WHE THER A LAWYER, A GOVERNMENT LAWYER CAN REPRESENT MORE THAN ONE ENTITY WITHOUT HAVING TO GET WRITTEN CONSENT FROM DIFFERENT GOVERNMENT AGENCIES . AND 4-3.3 , THE LAWYERS COMMENTED THAT THE RULE AND THE COMMENTS SEEM CONTRADICTORY,

BECAUSE THE DEFENSE LAWYER CANNOT , WHEN HE REASONABLY BELI EVES THAT TESTIMONY IS FALSE, CANN OT WITHDRAW, SO THE COMMENTS SAY BUT THE RULES SEEM TO SAY OTHERWISE N 4- 3.6 - - OTHERWISE . IN 4-3.6, THE RULE REQUIRES THE PROSECUTOR TO REP EAT, WHEN MAKING PUBLIC STATEMENTS THAT THE DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY. 4-3.8 SEEMS TO SIGNIFICANTLY REPRESENT A CH ANGE TO A PROSECUTOR'S RESPONSIBILITIES. AND 4-3.8 PAREN E , SEEMS TO CHANGE THE RULE REGARDING THE LAWYER AS WITNESS AND REQUIRE MORE THAN IS CURRENTLY REQUIRED, IN ORDERTO SUBPOENA A LAWYER FOR TESTIMONY. THOSE ARE REALLY THE BROAD, REALLY, WHAT I WOULD CALL CONTROVERSIAL KINDS OF PROPOSALS THAT REALLY GENERATED A LOT OF COMMENTS. I DON'T KNOW IF PE OPLE AREGOING TO HAVE OO SITION IN OTHER RULES, BUT THOS E ARE THE ONES THAT STOOD OU T TO ME AS, REALLY , REQU IRING A RESPONSE. IF YOU COULD RESPOND TO THOSE COMMENTS .

JUSTICE CANTERO , DO Y OUWANT TO HAVE THOSE THAT ARE COMMENTS, BECA USE IT M I GH T BE EASIER , OTHERWISE WE WILL CONSUME THE REST OF YOUR TIME. HOWEVER YOU WANT TO DO IT IS FINE.

I CAN ANSWER FOR 4 - 1.7 , AND I AM GOING TO ALLOW , I AM A TRANSACTIONAL ATT ORNEY, SO WHEN IT COMES TO CRIMI NAL DEFENSE OR CRIM INAL PROSECUTIONS, I AM LESS COMFORT WBL THAT PROCESS SO I WOULD ASK MS. TARBERT TO DO THAT. BUT THE GOVERNMENT WAS VERY CONCERNED THAT WE ADDED THE PROVISION THAT SAID GOVERNMENT LAWYERS ARESUBJECT TO 4-1.7 AND 4-1. 9. THOSE ARE THE CONFLICT OF INTEREST RULES. IN FACT, IT WAS ALREADY IN THE COMMENT. WE DID TRY WORK WITH THE GOVERNMENT LAWYERS ON THIS. IN FACT, THEY WERE THE ONES THAT AFTER WE PRESENTED I T TO THE B OARD 6 GOVERNORS , W E TRIED TO HAVE A SPECIAL CONFERENCE WITH THEM TO W ORK OUT THE DIFF ERENCES FOR M WE DON'T FEEL THERE IS ANY SUBSTANTIVE CHANGE TO THAT RULE. WE ADDED IT TO THE RULE BECAUSE WE WANT IT TO B E CLEAR AND NOT JUST H E EQUIVOCAL AS A COMMENT .

YOU ARE SAY ING IT IS EQUIVOCAL --

ACTUALLY THE COMMENT.

REGA RDING 4-1.7 , THE RE IS NO GOVERNMENT LAWYERS IN THE COMMENT AND 4-1.9 SAYS THAT GOVERNMENT LAWYERS ARE SUBJECT TO THE GENERAL CONFLICT OF INTEREST RULES. IN ADDITION TO THE SPEC IA L CONFLICT OF INTERE ST RULE , WHICH IS IN THE C URRENT 4-1.11, WHICH TALK S ABOUT THE SPECIAL SITUATION WHE N A LAWYER MOVES FROM GOVERNMENT PRACTICE TO PRIVATE PR ACTICE , SO THE RULES THEMSELVES , DO NOT HAVE ANY EXCEPTIONS. THE GEN ERAL CONF LICT OF INTEREST RULES DO NOT HAVE ANY EX CEPTIONS FOR GOVERNMENT LAWYERS. THE ONE THING, I THINK , A NDTHEY WILL HAVE TO SPEAK F ORTHEMSELVES, THAT THEY ARE MOST CONCERNED ABOUT, IS WE DID ADD A PROVISION IN RULE 4-1.7 THAT ALIE S TO ALL LAWYERS, WHETHER THEY ARE GOVERNMENT LAWYERS OR NOT, WHICH IS THAT IF YOU HAVE A CURRENT CONFLICT OF INTEREST THAT REQU IRES A CLIE NT'S CONSENT, IT M UST B E CONFIRMED IN WRITING, NOT THAT THE CLIENT HAS TO S IGN OFF ON IT OR CON SIT WENT -- CONSTITUENT OR CLIENT , OR LAWYER ON BEHALF OF THE CLIENT, BUT THE CLIENT , SOMETHING MUST BE PUT IN WRITING TO THE CLIENT TO CONFIRM THAT THEY HAD THE AROPRIATE CONSULTATION AND THE CLIENT HA S IN FACT , CONSENTED TO THE CONFLICT OF INTEREST.

I ALSO WANT TO POINT OUT THAT ONE OF THE ISSUES THAT, IN THE NARRATIVE WHEN THE GOVERNMENT LAWYERS EXPLAINED THEIR CONCERNS, AND I NOTICED IT AND ELIZABET H AND I HAD , BOTH , DISCUSSED WITH THEM , I S THAT THEIR UNDERSTANDING OF WHO THEIR CLIENT IS , IS A L I TTLE M U RKY, AND I THINK THAT IS AN ISSUE THAT THEY NE ED TO ADDRESS , BUT WHEN THEY TALK ABOUT THEFACT THAT THEY REPRES ENT A CITY AND YET THEY H AVE TO, ALSO, REPRESENT SOME OF THE CITY STAFF AND THE CITY COMMITTEES UN DER THEM, T HAT MAY BE ONE CLIENT OR IT MAY NOT BE, BUT ONE OF THE ISSUES THAT WE FEEL THAT THEY HAVE A

PROBLEM WITH , IS UNDERSTANDING WHO THE CLIENT IS. IS IT THE ORGANI ZATION , IS IT THE SUBCOMMITTEE OF THE ORGANIZATION, AND THAT IS REALLY NOT SOMETHING THAT W E THINK NEEDS TO BE ADDRESSEDWITHIN THE RULES, IN TER MS OF THE SPECIFICS OF THAT.

WHAT ABOUT THE , THE GOVERNMENT BAR 'S COMMENT CONCERNING THE PREAMBLE. THEY WANTED A STAT EMENT IN THE PREA MBLE THAT T ALKSABOUT THE DIFFERING REPRESENTATION THAT IS AGOVERNMENT LAWYER MIGHT HAVE , AND SO WHY IS THAT NOT A GOOD THING TO PUT INTO THE RULES IN THE PREAMBLE ?

WELL , THERE ARE T WO PARTS OF THE PARAGRAP H THAT THEY WANT TO ADD INTO THE PREAMBLE, ONE OF WHI CH SAYS THAT A GOVERNMENT LAWYER M AY BE ABLE TO REPRESENT MULTIPLE GOVERNMENT CLIENTS IN A SITUATION WHERE A PRIVATE LAWYER COULD NOT . THE BAR IS OO SED TO T HENOTION THAT GOVERNMENT CLIENTS SHOULD RECE IVE A LESSER PROTECTION THAN PRIVATE CLIENTS, A AND IN ADDITION TO THE FACT THAT IT REALLY DOESN'T HAVE THAT MUCH EFFECT, FIRST BECAUSE IT IS IN THE PREAMBLE AND SECOND BECAUSE IT JUST SAYS "MAY". IT DOESN'T SAY WILL BE, IT SAYS THEY MAY BE. THE SECOND PART H AS TO D O WITH THE AUTHORITY OF GOVERNMENT LAWYERS, A NDWHETHER OR NOT THEY ARE GIVEN SOME FORM OF AUTHORI TYTO MAKE DECISION ON BE HALF OF CLIENTS , IS , REA LLY, N OTA MATTER OF THE RULES OF PROFESSIONAL CONDUCT. IT IS A MATTER OF OUTSIDE LAW, AND, AGAIN , THAT IS N OTREALLY AN ISSUE THAT NECESSARILY BELONG S IN T HERULES OF PROFES SIONAL CONDUCT .

MAY I AS K A QUESTION ON THE PUBLIC DEFENDERS' CONCERN ABOUT THE WR ITTEN CONFIRMATION. AND WHETHER OR NOT THE RECORDING OF IT DUR ING THE HEARING AND BE FORE A COU RT WITH A COURT REPORTER , IS THAT SUFFICIENT, AND THE RESPONSE WAS THAT I T MIGHT SATISFY THE CONF IRMING IN WRITING REQUIREMENT. CAN YOU SPE AK TO THAT.

WELL , IT MIGHT O R I T MIGHT NOT, BUT I HAVE TO S AYTHE ISSUE OF WHETH ER OR NOT A COURT RECOR DING SATISFIES AS A WRITTEN REQUIREMENT, I THINK, DOES NOT ACTUALLY GO TO THE HEART OF THE ISSUE, WHICH IS, IS IT THE LAW YER'S RESPONSIBILITY TO MAKE SURE THE CLIENT UNDERSTA NDS WHAT THE NA TURE OF THE CONFLICT IT IS AND WHET HER OR N OTTHEY SHOULD BE CONS ENTING T O IT, AND I DON'T THINK AN ENTRY BY THE COURT CAN TAKE THE PLACE OF THAT , AND THE BAR ALSO DOES NOT BELIEVE THAT IT IS EXTRAORDIN ARILY BURDENSOME IN THE RARE INSTANCE IN WHICH THERE IS A CONFLICT FOR THE CLIENT TO CONSENT, BY THE LAWYER HAVING A CONFI RMING DOCUMENT CREATED BY HIM OR HERSELF, THAT GOES TO THE CLIENT.

IN YOUR COMMI TTEE O N DOING, THIS WAS THERE AN YONE THAT WAS AN EXPERIENCE ED PUBLIC DEFENDER OR PROSECUTOR?

WE DID HAVE A LAWYER THAT WAS A PRIVATE CRIMINAL DEFENSE LAWYER.

REALITY OF IT F ROM MY EXPERIENCE AS A TRIAL JUDGE , THAT YOU ARE DOING A DOC KET DAY OR A P LEA DAY AND YOU HAVE 150 PE OPLE YOU AREDOING LIKE THIS, AND THE ATTORNEY GETS UP AND SAYS , YOUR HONOR, I HAVE A CONFLICT WITH THIS OTHERPERSON, AND THE DISCUSSION IS HAD WITH COUNSEL , WITH THE DEFENDANT, WITH THE COURT, WITH THE COURT REPORTER. AND WHAT THE BAR IS SAYING, THAT IS NOT SUFFICIENT. YOU WANT IT FOLLOWED UP IN WRITING.

WELL, THE BAR'S POSI TI ON, I THINK, IS THAT T HAT CONVERSATION WITH THE CLIENT HAS TO HAEN BEFORE THEY EVER GET INTO THE COURT ROOM AND HAVE A SEPARATE CONVERSATION WITH THE COURT , AND THE BAR'S POSITION, ALSO , I THINK, IS THAT IT IS NOT EXTREMELY BURD ENSOME I N THE RARE IN STANCE WHERE Y OUWOULD HAVE THAT PRO BLEM, FOR THE LAWYER TO FOLLOW UP WITH A CLIENT .

CHIEF JUST ICE: FOR EXAMPLE IN THAT SITUATION , IF THE LAWYER SAID , YOURHONOR , I HAVE DISCUSSED THIS EXTENSIVELY WITH MY CLIENT. MY CLIENT AG REES, AND THE CLIENT SAYS I AGREE , AND IT IS RECORDED , I MEAN , THAT HAS BEEN A QUE STION THAT, THEN, BEC OMES , WHAT YOU SAID WAS THAT YOU JUST WANT TO MAKE SURE THAT IT IS THE LAWYER FULFILLING THE OBLIGATION, RATHER THAN THE COURT.

YES. AND I WILL SAY THE COMMITTEE 'S OPINION WAS THA T THEYTHOUGHT THAT THE ELECTRONIC RECORDING WOULD SUF FIC E. TO BE HONEST , THOUGH, I A M NOT SO SURE , BEC AUSE THE CLIENT DOESN'T RECEIVE A COPY OF THE ELECTRONIC RECORDING.

IT IS REALLY MORE OF THE CLIENT HAVING SOMETHING THAT THE CLIENT HAS , AND IT IS REALLY TO ENSUR E THE INTEGRITY OF THE PROCESS. WE ARE GOING, TO I K NOW , USE UP A LOT OF YOUR T IME, A NDJUSTICE CANTERO HAS SPECIFIC RULES.MY SUGGESTION IS GOIN G TO B E THAT WE LET THE COMMENTATORS MAKE THEIR ARG UMENT AND THEN , SINCE YOU SOUND LIKE YOU ARE VERY WELL VERSED IN ALL OF THESE CRIMINAL ISSUES, HAVE YOU COME UP AND THE REMAINING TIME . IF THAT IS SATISFACTORY. THANK YOU VERY MUCH.

THANK YOU. MAY IT PLEASE THE COURT.I AM JIM MURPHY AND IMMEDIATE PAST PRE SIDENT OF THE LAW SE CTION OF THE FLORIDA BAR. WE FOUND CONCERN WITH ONLY ONE RULE , PRO POSED RULE 4-1.18, WHICH ADDR ESSES POTENTIAL CONFLICTS BET WEEN CURRENT CLIENTS AND FORMER PERSPECTIVE CLIENTS WHO DISCUSS POSSIBLE REPRESENTATION WITH A LAWYERBUT DON'T EN D UP HIRING T HELAWYER. LET ME GIVE YOU A HYPOTHETICAL THAT WILL ILLUSTRATE OUR CONCERN. MEETING A CORP ORATION IS LOOKING -- MEGA CORPORATION IS LOOKING TO HIRE NORTHEAST COUNSEL IN ALL OF ITS BANKING AND CIVIL RI GHTS MATTERS.IT SENDS OUT A PROPOSAL TO 30 LAW F IRMS , 20 OF WHICH RESPOND. MEGA CORPORATION REVIEWS THE RESPONSES AND INTERVIEWS LAW FIRMS, INCLUDING SMITH A NDSMITH WITH LAW OF FICES ALL OVER THE COUNTR Y. MR. JONES , A PART NER I N SMITH AND S MITH'S OFFICE , LEADS THE OFFICE IN MA KING A PRESENTATION. THERE ARE TWO ROU NDS OF INTERVIEWS. THE MEGACORPORATION D URING THE INTERVIE WS, REVEALS A GOOD BIT OF ITS STRUCTURE , IN INTERVIEWS , ITS POLI CIES TOWARDS VE NDORS AND LITIGATION STRATEGIES , BECAUSE THEY ARE TRYING TO FIND A FIRM THAT HAS PARTICULAR FEE STRUCT URES AND EXPERTISE TO MEET I TSNEEDS.AFTER THE FI NAL R O UND OF INTERVIEWS, MEGA CORPORATION DOES NOT PICK SMITH AND SMITH BUT AN OTHER LAW FIRM . NOW TWO YEARS LATER , MEGA FINDS ITSELF IN BANKRUPTCY PROCEEDINGS.BIG BANG HAP PENS TO BE SM IT H AND SMITH'S LARGES T AND OLDEST CLIENT IN FLORIDA . GENERAL COUNSEL OF BIG BANG , AROACHES JOHN SMITH , THE ENGAGEMENT PARTNER AT SMITH AND SMITH'S MI AMI OFFICE , ABOUT REPRESENTING BIG BANG IN THE CHA PTER 11 PROCEEDINGS INVOLVING MEGA CORPORATION. UNDER THE FLORIDA BAR PROPOSED RULE, SMITH AND SMITH LIKELY COULD NOT TAKE THE CASE, E VEN THOU GH BIG BANG IS ITS LARGEST AND OLDEST CLIENT IN FLORIDA. SMITH AND SMITH NEVER REPRESENTED MEGA CORPORATION AND N EITHER MR. JONE S OR ANY OF THE OTHER NEW YO RK LAWYERS INVOLVED IN THE R FP AND INTERVIEW PROCESS WITH MEGA CORPORATION, W OULD HAVE ANY INVOLV EMENT IN THE BANKRUPTCY PROCEEDINGSHANDLED ON BEHA LF OF BIG BANG. FURTHERMORE , SMITH AND SMITH TOOK THE CASE , SO THE FLORIDA COURT ALYING THE NEW RULE 4-1.18 PROPOSED BY THE BAR, LIKELY WOULD BE DISQUALIFIED FROM CONTIN UING TO REPRES ENT BIG BANG IN THE PROCEEDINGS , AND THE LAWYERS WHO REPRESENTED BIG BANG IN THE BANKRUPTCY PROCEEDINGS,IF THEY TOOK THE CASE , WOULD BE SUBJECT TO DISCIPLINARY SANCTIONS . YOUR HO NORS , THE LE GAL LANDSCAPE IS CHAN GED DRAMATICALLY IN RECENT YEA RS AND MANY LAWYERS , INCLUDING MYSELF AND OTHER BU SINESS LAW SECTION MEM BERS , T O DAY PRACTICE IN LAW FIRMS OF OVER 1 00 , 5 0 ON O R 1,000 LAWYERS IN -- OVER 100 , 500 OR 1,000 LAWYERS IN MANY DIFFERENT CITIES ACROSS THEUNITED ST ATES. IT HAENS ALL THE TIME AND THE AB A'S POSITION FOR THE LAST 15 YEARS, BEGINNING FORMAL OP INION 90-3 58 , IN SCREENING PROS PECTIVE CLIENTS, IS PERMIS SIBLE TO AVOID DISCLAIM IN G EN TIRE LAW FIRMS. FLORIDA COURTS HAVEN'T CONSIDERED THE ISSUE BUT BY THE WAY , COURTS IN OTHER JURISDICTIONS HAVE AND T HEVAST MAJORI TY H ELD THAT LAW

FIRMS CAN A VOID DISQUALIFICATION BY SCREENING INDIVIDUAL LAW YERSWHO ARE INVOLVED IN CONTACTS WITH PERSPECTIVE CLIENTS. SCREENING HAS ALSO BEEN ADOPTED FOR CONFLICTS INVOLVING PERS PECTIVE CLIENTS BY 13 , 13 OF THE 15 STATES WHICH, T O DATE, HAVE REVISED THEIR ETHI CS RULES FOLLOWING THE ABA REVISED MODEL RULES. ONLY ONE STATE FO LLOWS WHAT FLORIDA PROPOSES TO DO. IDAHO , W HICH REFUSES TO ALLOW SCREEN ING WITH RE SPECT TO PERSP ECTIVE CLIENTS. IN FACT , FLO RIDA , T HEFLORIDA RULES HAVE NEVER ADDRESSED THIS ISSUE BEFORE PREVIOUSLY , CONCERNING CONFLICTS OF INTEREST INVOLVING PERSPECTIVE CLIENTS. NEITHER HAVE FLORIDA COU RTS,TO MY KNOWLEDGE, AND I AM UNAWARE OF ANY OPINIONS B Y THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE, BUT BY T HEWAY , THE FLORIDA RULES CURRENTLY PROVIDE THAT FORMER GOVERNMENT LAWYERS AS WELL AS JUDGES AND LAW CLERKS WHO MOVE INTO PR IVATE PRACTICE, CAN B E SCREEN ED, SO THAT THEIR LAW FIRMS ARE NOT DISQUALIFIED . THE NEW RULES OF THE BAR ADD SCREENING TO BE PERMISSIBLE WHEN LAW FIRMS HIRED MEDIATORS OR THIRD PARTY NEUTRALS, AS WELL AS PARALEGALS AND OTHER NONLAWYERS.

CHIEF JUSTIC E: DID YOU EXPRESS , THE BUSINESS LAW S ECTION EXPRESS THIS CONCERN TO MS. ST ONE'S COMMITTE E?

WE DID .

CHIEF JUST ICE: I NOTICE A COMMENT , FORMAL COMMENT W ASNOT FILED.

AT AENDIX E , PAGE 67 T O THE FLORIDA BAR'S PETITION ARE THE COMMENTS THAT WAS PRESENTED BY THE BUSI NESS LAW SECTION. WE AO INT ADD COMMIT TEE THAT LOOKED INTO -- WE AOINTED A COMMITTEE THAT LOOKED INTO THE ENTIRE RULES , AND WE HAD S E RIOUS CONCERNS CONCERNING 4-1 8. IT IS ATTA CHED T O T HEFLORIDA BAR'S PET ITION.

DO YOU HAVE A PROPOSED SUGGESTION?

OUR SUGGESTI ON IS TO DO EXACTLY WHAT THE ABA DID AND NOT INCLUDE THE PROVISION THAT THE FLORIDA BAR HAS INSERTED IN 4-1.18 THAT I AM PUTS DISQUALIFICATION TO THE ENTIRE -- THAT IMPUTES DISKFX TO THE ENTIRE F IRM,BASED ON CONTEXT THAT INDIVIDUAL MEMBERS OF THE FIRM MAY HAVE HAD WITH PERSPECTIVE CLIENTS. YOUR HONORS , WE THIN K IF THAT IS NOT ALLO WED, IF THE RULES DO NOT PROVIDE LAW FIRMS WITH THE ABILITY TO SCREEN INDIVIDU AL LAWYERSFROM CONFLICTS INVOLVING PERSPECTIVE CLIENTS WHO DON'T HIRE THE FIRM, IT WILL , IN MANY INSTAN CES , OP ERATE UNFAIRLY AND UNNECESSAR ILY TO DE PRIVE CLIENTS I N THE PUBLIC IN FLORIDA , WITH T HERIGHT TO EN GAGE LAWYERS OF THEIR CHOOSING. IT WILL CAUSE LAW FIRMS - -

CHIEF JUSTICE: YOU ARE OUT OF YOUR TIME. I JUST WANT TO MAKE SURE IF ANYONE HAS, BE CAUSE THIS IS A SIGNIFICANT ISSUE. ANY QUESTIONS FOR YOU .

THANK YOU.

MAY IT PLEASE THE COURT. I AM JOE LANG FROM CARLTON FIELDS IN TAM PA , AND I AM HERE REPRESENTING PETER WINDERS, WHO IS OUR GEN ERAL COUNSEL, AND ALSO THE L AWFIRM OF CAR LTON FI ELDS. AS YOU SAW IN OUR COMMENT ON PAGE 2, WE , A LSO , HAVE THE AUTHORITY TO REPRESENT SHUTTS AND B OWEN AND TR ENEM AND KEMPER IN OUR POSI TION. I FIRST , WOULD WEL COME ANY QUESTIONS ABOUT THE COMMENT , BUT WE BELI EV E THAT --

WHICH RULE ARE YOU ON?

4-1.1 0. IT IS ABOUT LA TERAL SCREENING . AND OUR CHINGS -- OUR POSITION --

YOU ARE GOING BEYOND WHAT THE BUSINESS LAW SECTION WANTS IN REGARDS TO

PERSPECTIVE CLIENTS AND SAYYOU CAN SCREEN WHEN LAWYERS TRANSFER FROM FIRM TO FIRM, CORRECT?

YES, YOUR HONOR.

WOULD THAT BE A SIGNIFICANT CHANGE FROM THE CURRENT FLORIDA LAW?

IT WOULD BE A CHANGE FROM THE CURR ENT LAW , BU T IT HAS BEEN EMBRACED BY THE ET HICS COMMISSION, THE ABA ETH ICS COMMISSION 2000 , AND YOU CAN SEE ON PAGE 1 2 OF OUR COMMENT, WHAT THE ETHICS COMMISSION 2000 RECOMM END ED. THE ABA HO USE OF DELE GATES DID NOT AC CEPT THAT RECOMMENDATION, ON A FA IRLY CLOSE VOTE . IT WAS 176-TO-130 , BUT THE ETHICS COMMISSION , ITS ELF , RECOMMENDED CHANGING THE MODEL RULE 1.10 , AND ALLOWING LATERAL SCRE ENING , BUT WITH SOME FAI RLY PROTECTIVE CAVEATS, AN NUL SEE ON PAGE 12 THAT % THE A% -- THAT A PERSON ALLY DISQUALIFIED LAWYER AND NO PART OF THE FEE ATTRIBUTED TO THE MATTER AND WRIT TEN NOTE CYST PROMPTLY GIVE N TO ANY AFFECTED FORMER CLIENTS, TO EN ABLE IT TO ASCERTAIN CLIENTS WITH THE PROVISIONS OF THIS RULE, SO FAIRLY PROTECTIVE CAVE ATS. THIS WAS NOT AC CEPTED BY THE ABA HOUSE OF DELEGATES , AS I SAID, BUT IT HAS BEEN ACCEPTED IN V ARIOUS RENDITIONS .

AS FAR AS NOT BEING AND ON,ED ANY PART -- NOT BEING AORTIONED ANY PART OF THE FEE, AS FAR AS SOME LAWYERS' INSTRUCTIONS, THAT WOULD BE IMPRACTICAL, WOULDN'T IT, WHERE THE FIRM POOL S ALL T HEFEES AND THEN DISTRIBUTES I T TO THE SHAREHOLDERS?

THERE WOULD CERTAI NLY NEED TO BE SOME LOGISTICAL CHANGE INS THE WAY LAW FIRMS WORK, IF THIS RULE OR SOME VERSION OF THIS RULE GETS ADOPTED BY THE COURT. AND THERE MAY BE SOME PRACTICAL PROBLEMS WITH THAT , BUT WE DO, THAT IS ONE ASPECT OF THE MO DE L RULE THAT COULD C REATE SOME PRACTICAL PROBLEMS, BUT WE CERTAINLY HAVE SCREENING , AND THIS IS WHERE I WANTED TO GO BEFORE I RU N OUT O F TIME. WE HAVE SCREENING FOR GOVERNMENT LAWYERS, FORMER LAW CLERKS , FORMER JU DGES , AND IN A FIRM LIKE CARLTON FIELDS, WE HAVE ABOUT 200 SCREENS CURRENTLY IN PLACE, AND THEY WORK JUST FI NE. THE FI LES ARE LA BELED , S O THAT THE NAMES OF THE PERSONS WHO ARE SCREENED , RIGHT ON THE FILE -- A RERIGHT ON THE FILE LAB ELS , AND WE HAVEN'T EXPERIENCED ANY PROBLEMS WITH THOSE 2 00SCREENS TO SPEAK OF, AND I WANT TO REFER YOU TO T HEROBERT KRAMER -

CHIEF JUSTICE: THOSE SITUATIONS ARE NONBUSINESS SITUATIONS. HERE YOU ARE T ALKING A BOUTSOMEBODY THAT COULD HAVE BEEN REPRESENTING THE OOSING SIDE IN LITI GATION AND COMES OVER TO YOUR FIRM, AND YOU ARE SUG GESTING THAT THAT KIND OF SI TUATION , THAT YOU COULD DEAL WITH ANY CONFLICT OF INTEREST THRO UGH SCREENING, WITHOUT E VEN HAVING TO AD VISE THE NEW CLIENT THAT THAT LAWYER W ASON THE OTHER SIDE ?

OH, NO. THERE WOULD BE WR ITTEN ADVICE. WE, THE RULE THAT WE ARE PROMOTING WOULD GIVE WRI TTENNOTICE TO THE CLIE NT. WHAT IT TAKES A WAY IS THE VETO PO WER OF THE FORMER CLIENT. GENERALLY, THE REASON WE HAVE ABOUT 200 SCREENS AT CARLTON FIELDS, IS GENE RALLY FORMER CLIENTS CONSENT TO THIS. AND THEY JUST SAY PUT U P A SCREEN AND DON'T LET THAT ATTORNEY WORK, SO WE PUT UP A SCREEN

CHIEF JUSTICE: ISN'T THAT REALLY FOR THE INTEGRITY OF THE SYSTEM? IF THEY USUALLY CONSENT, THEN, ISN'T THAT, RE ALLY, THE BE TTER WAY TO KEEP I T ?

AND GIVING WRITTEN NOTICE WOULD STILL GIVE THEM THEABILITY TO CONDITION SENT. WHAT IT T AKES A -- TO CONSENT. WHAT IT TAKES AWAY IS THE VETO POWER AND INCREA SES THE ABILITY OF ATTORNEYS TO MOVE FROM FIRM TO FIRM , IN A V ERY CHANGED LEGAL ENVIRONMENT FROM WHEN THIS R ULE WAS ORIGINALLY PUT IN PLACE. I AM OUT OF TIME, BUT I WOULD BE HA Y - -

CHIEF JUSTICE: JUSTICE BELLS HAS A QUIC K.

JUST ONE , AND HELP ME OUT BECAUSE I DON'T KNOW THEANSWER TO IT, BUT IF IT BECOMES THE SITUATION WHERE A CLIENT OBJECTS , DO YOU EVER GO BEFORE THE T RIALJUDGE AND ASK THEM ON THE DISQUALIFICATION QU ESTION, OR DOES THE RULE T RUMP A DECISION BY THE TR IAL COURT?

I BE LIEVE THE RULE CURRENTLY WOULD TRUMP THAT. I BEL IEVE CURREN TLY , THAT CONFLICT IS IMPUTED TO T HEWHOLE NEW FIRM, WITHOUT WRITTEN CONSENT, AND THAT IS WHY WE WOULD LIKE TO SEE THIS RULE CHANGED . THANK YOU.

CHIEF JUSTICE: NEXT GROUP U P. MR. RADSON FOR THE GOVERNMENT LAW SECTION.

MAY IT PLEASE THE COURT. MY NAME IS MA RION RADSON, AND I AM MAKING THIS ORAL ARGUMENT ON BEHALF OF T HECITY, COUNTY AND LOCAL LAW SECTION OF GOVERNMENT LAW.

CHIEF JUSTICE: YOU HAVE HEARD THEIR RESPONSE TO YOUR CONCERNS THAT , IS THAT IT IS ALREADY IN THE, IT IS ALREADY THER E. YOU HAVE ALREADY AL WAYS BEEN SUBJECT TO T.

YES. I WOULD LIKE TO COMMENT O N THAT, MA DAM JUSTICE , PL EASE. FIRST OF ALL , RULE 4-1.11 , WHICH IS THE RULE AT ISSUE , WHICH INCORPORATES NOW FORTHE FIRST TIME , BY REFERENCE 4-1.7 AND IN FACT REPUBLISHES IT IN 4-1.11. THAT RULE NEVER ALIED TO CURRENT GOVERNMENT LAWYERS AND CONCURRENT CONFLICTS, SO THE COMMENT THAT THE BAR HAS MADE REFE RENCE TO , MS. TARBERT HAS S T ATED , DOESN'T ALY TO C U RRENT GOVERNMENT LAWYERS THAT HAVE CONCURRENT CONFLICTS. NOW, I DON 'T SUB MIT , AND THE SECTION DOESN'T TAKE THE POSITION THAT WE ARE NOT SUBJECT TO THE RULES OF PROFESSIONAL COND UCT. THAT HAS BEEN AR GUED IN OTHER STATES COURTS NOT I N FLORIDA. OUR POSITION IS THAT WE ARE DIFFERENT , AND WHAT WE ARE ASKING THE COURT TO DO , IS ADOPT PARAGRAPH 18 FROM THE ABA'S STA NDARD RECOMMENDED PARAGRAPH SC OPE SEC TION OF THE RULES , THAT HAS BEEN USED BY OTHER STATE COURTS AS GROUNDS FOR ALLOW ING GOVERNMENT LAWYERS TO REPRESENT MULTIPLE CLIENTS , PUBLIC CLIENTS, IN INTRA GOVERNMENTAL LEGAL CONTROVERSIES IN CIRCUMSTANCES WHERE PR IVATE LAWYERS CA NNOT REPRESENT MULTTIP HE WILL PRI VATE CLIENTS. -- MULTIPLE PRIVATE CLIENTS.

CHIEF JUSTICE: CAN Y OUGIVE US AN EXAM PLE OF THAT .

YES, I CAN. A POLICE OFFICER IS TERMINATED FOR A PARTIC ULAR ACTION. THE CITY ATTORN EY REPRESENTS THE MANAGEMENT IN THAT TERMINATION PROCEEDING . THE POLICE OFFICER IS, THEN , SUED IN A 19 83 ACTION , WHILETHE CITY AND THE POLICE OFFICER , AR ISE ING OUT OF THE SAME CIRCUMSTANCES , AND THE CITY ATTORNEY IS NOW ASKED TO PROVIDE DEFE NSE TO THE CITY AND THE POLICE OFFICER , SO ON ONE INSTANCE , THEY ARE ADVISING MANAGE MENT IN THE TERM NATION OF THAT OFFICER , AND IN ANOT HER INS TANCE THEY ARE DE FENDING THAT O FFICER IN A LAWSUIT AGAINST THE CITY. ANOTHER EXAMPLE, A COUNTY ATTORNEY IN ALAC HUA COUNT Y, FOR EXAMPLE - -

CHIEF JUSTICE: UNDER THAT CIRCUMSTANCE, THE PO LICE OFFICER WOULD HAVE TO CONSENT TO THE GOVERNMENT LAWYER 'S CONTINUED REPRESENTATION.

THAT IS CORRECT, AND ALL WE ARE ASKING - -

CHIEF JUSTICE: WHAT I S WRONG WITH THAT?

THERE I S NOTHING WRONG WITH THAT , AND AL L WE A REASKING IS THE AB ILITY T O CONTINUE TO DO THAT.

CHIEF JUSTICE: BUT THEPOLICE OFFICER NEED S TO B E ADVISED OF THE CONFLICT.

YES, MA'AM , AND ALL WE WANT TO DO IS THE ABI LITY , AGAIN , TO CONTINUE TO PROVIDE THAT COUNSE L. WE ARE CONCERNED THAT , WITHOUT PARA GRAPH 18 , OTHER LAWYERS REPRESENTING CLIENTS , WILL LOOK AT THE RULE AND SAY THERE MUST BE A REASON , NOW, WHY THE FLORIDA BAR , FOR THE FIRST TIME , EXPRESSLY DECI DED , A NDSUPREME COURT DECIDE D, TO ALY THE CONCURRENT CONFLICT RULES TO GOVERNMENT LAWYERS.THERE MUST BE A REASON. AND WHAT IS M ISSING I N T HEFLORIDA BAR RULES, IS THE VERY PARAGRAPH THAT HAS BEEN CITED BY OTHER STATE SU PREME COURTS AS THE GROUNDS FOR ALLOWING THOSE GOVERNMENT LAWYERS TO CONTINUE TO REPRESENT MULTIPLE CLIENTS AND INTRA GOVERNMENTAL LEGAL CONTROVER SIES. THAT IS WHAT WE ARE ASK ING FOR.WE DON'T THINK THE INCL USION OF THAT RULE , WILL MAKE US ABOVE THE LAW OR BE HALF T HERULES, BUT ME RELY ACKNOWLEDGE THAT WE HAVE THE RIGHT AND ABILITY TO DO THAT. THE OTHER EXAMPLE I WOULD USE , THE ALA CHUA COUNTY ATTORNEY, REPRESENTING NUMEROUS CONSTITU ENTS , THE COUNTY COMMISSION , THE COUNTY MANAGER , THE VARIOUS CONSTITUTIONAL OFFICERS W H O HE IS IN LITI GATION WIT H ATTHE SAME TIME , BUT PROVIDING THEM COUNSEL AT THE TA BLE. THE ATTO RNEY GE NERAL REPRESENTING THE PU BLIC SERVICE COMMIS SION, AND THEN LATER, HAVING TO SUE THE PUBLIC SERVICE COMMISSION FOR SOME ACTION THAT THEY MAY HAVE TAKEN , WE ARE JUST MERELY ASKING TO DO WHAT WE HAVE DONE FOR MANY Y EARS , WITHOUT COMPLAINT. OUR CONCERN IS, I F THIS COURT DOES NOT AD OPT PARAGRAPH 18 , WE , GOVERNMENT LAWYERS WILL, ONE , HAVE TO START DECIDING IF THEY ARE INTENTIONALLY CONFLICTED OUT BY THE RULES , W HETHER THE GOVERNMENTS ARE GOING TO HAVE TO HIRE MOR E LAWYERS FOR THAT PURPOSE AS AN I N EFFECT UNF UNDED MANDATE - -

CHIEF JUSTICE: YOU AREOUT OF TIME. DO ANY OF THE JUSTICES HAVE A SPECIFIC QUESTION OF MR . MADZ ONE?

-- OF MR . RA DSON ? UNFORTUNATELY THIS PRO CESSDOESN'T ALLOW US TO FUL LYDEVELOP EACH OF THESE , BUT WE, OF COURSE , HAVE YOUR COMMENTS AND THE RESPONSES , SO THANK YOU V ERY MU CH.

THANK YOU VERY MUCH.

CHIEF JUSTICE: I SA W MR . JACOBS WORR YING ABOUT HIS.

YOU COULD TELL.

CHIEF JUSTICE: I COULD .

GOOD MORNING AND MAY IT PLEASE THE COURT. MY NAME IS BU DDY J ACOBS AND I AM COUNSE L FOR THE FLORIDA PROSECUTING ATTORNEYSASSOCIATION.FOR 35 YEAR S I HAVE REPRESENTED 20 STATEATTORNEYS OF FLORIDA AND THEIR 1800 ASSISTANTS. WE ARE QUITE CONCERNED ABOUT THE FLORIDA BAR'S PROP OSED RULE CHANGE 4-3. 8-B AND 4-3.8-E, WHICH I S AN ADDITION. OUR CONCERNS ARE THAT, PARTICULARLY IN 4-3 .8 B , WHAT WE HAVE DONE IS THEY HAVE TAKEN THE CO MMENT FROM THAT RULE AND MOVED IT UP TO THE RULE STAT US. IT HAS BEEN A COMMENT F ORMANY YEARS AND NOW THEY H AVE MOVED IT UP TO A RULE STATUS. WE HAVE COMMENTED ON THESE MATTERS TO THE FLORIDA BAR , BEGINNING WITH OUR FIRST WRITTEN COMMENT BY STATE ATTORNEY BE RNIE Mc CABE , WAS MARCH 2004 , SO IT IS NOT NEW TO OUR CONCERNS. INTERESTINGLY ENOUGH, T HESENTENCE THAT DID MOVE UP FROM THE COMMENT, THE COMMENT ADDS TO WHAT THEY HAVE PROPOSED IN B. IT SAYS MAKE REASON ABLE EFFORTS TO ASSURE THAT THE ACCUSED HAS BEEN AD VISED O F THE RIGHT TO AND T HEPROCEDURE FOR OBTA INING COUNSEL AND HAS BEEN GI VEN REASONABLE OORT UNITY TO OBTAIN COUNSEL. THE NEXT SENTENCE IN THE COMMENT THAT THEY DIDN'T MOVE UP , SAYS PRECISELY HOW FAR THE PROSECUT OR IS REQUIRED TO GO I N THIS DIRECTION IS A MA

TTER OF DEBATE, AND AS LO NG AS IT IS A COMMENT, WE HAVEN'T HAD A LOT OF PROBLEM WITH IT, BECAUSE OF JU DGES GENER ALLY HANDLING THAT SORT OF THING AND WE ASSIST THEM , BUT THIS MAKES IT A RULE , WHICH IS SUBJECT TO A GRIEVANCE , AND I DE FEND ASSISTANT STATE ATTORNEYS IN GRIE VANCE MATTERS ALL THESE YEARS F ORM THE MOST EGREGI OUS ONE THAT I HAVE HAD TO BRING T O THIS COURT A FEW YEARS AGO BECAUSE OF A CONTACT WITH A PROSECUTOR WITH AN ACCUS ED. I THINK YOU ARE GE TTING INTO DANGEROUS TERRITOR Y. THE CASE BE CAUSE FLOR IDA BAR VERSUS FEINBERG, SO I SUBMIT TO YOU THAT THIS IS NOT A GOOD WAY TO GO , TO P LACE THIS BURDEN ON A PROSECUTOR.WE HAVE SI XTH AMENDMENTRIGHTS TO COUNSEL, OF THOSE PEOPLE CHARGED WITH CRI MES AND WHY SHOULD THE PROSECUTOR BE INVOLVED IN GIVING ADVICE TO AN ACC USED OR ANYB ODY , IN THIS PROCES S? I THINK THAT IS AN UNAD VISE -- AN UNWEISS MOVE. THE SECOND , IN 4-32 , IF WE ARE PRESENTING A F ACTO BASED , AND WE WA NT THE LAWYER PRESENTING RELE VANT , FACTUAL EVIDENCE ABOUT A PREVIOUS CLIENT, IT HAS TO B E ESSENTIAL TO THE SUCCESSFUL COMPLETION OF AN ON GOING INVESTIGATION OF APROSECUTION.I THINK THIS ELEV ATES THE LEGAL FIELD BEYOND ANY O THERPROFESSION. WE ARE SEEKING TO GET EVIDENCE. WE HAVE NO CRYS TAL BA LL AND IN THE EVID ENCE GATHERING PROCESS, WE D ON'T KNOW W HAT WE ARE GOING TO FIND . WE ARE TRYI NG TO GET TO THE TRUTH OF THE MATTER .

ISN'T THAT REA LL Y DESIGNED AS SUAV E A LIMITATION, S O THAT WE DON'T HAVE -- DE SIGNED AS SOMEWHAT OF A LIM ITATION , SO THAT W E DON'T HAVE ABUSE OF AN INVESTIGATION. IT IS NOT AN ATTEMPT IN THAT CONTEXT, TO FORCE SOMEBOD Y TO PROVE THEIR CA SE OR TO KNOW THE WH OLE CASE, BUT ISN'T THAT WHAT IT I S DESIGNED FOR , NOT TO BE ABUSEED?

IT BECOME AS GRIEVANCE AGAINST A PROSECUTOR AND H OWDO YOU GOVERN THAT GRIEVAN CE. I THINK THE THING THAT CONCERNS US IS WHAT IS THEPROBLEM.WE DON'T KNOW OF ANY ANECDOTAL EV IDENCE NOR IMPERICAL EVI DENCE I N T HESTATE OF FLORIDA. WE HAVE NOT HE ARD OF ANY. WE DON'T KNOW IF YOU HAVE HEARD OF SOME AND WE HAVE NOT. SO I DON'T KNOW WHY THIS COMES FORWARD AT THIS TIME .

CHIEF JUSTICE: YOU ARE TALKING BOTH THE ABA MODE LS UNDER THE RULE. UNDER E, IT SEE MS A LITTLE MORE LE NIENT , BEC AUSE IT DOESN'T INCLUDE THE REQUIREMENT THAT THERE IS ANOTHER ME THOD TO O BTAIN THE INFORMATION.

RIGHT. RIGHT.

CHIEF JUSTICE: DID YOU , THERE WAS , THE U. S. ATTORNEYS SEEMED TO BECONCERNED ABOUT AN OTHER RULE THAT YOU DIDN'T COMMENT ON.

AND THEY ARE COMING BEHIND ME , AND THEY ARE VER Y WELL REPRESENTED TO DAY, TOO , I ASSURE YOU.

CHIEF JUSTICE: BUT YOUCHOSE , THOSE ARE THE ONLY TWO ASPECTS.

WE JOIN HER COMMENTS ABOUT THO SE, BUT WE THO UGHT WE WOULD LIMIT OUR COMMENTS TO THOSE TWO, AND THAT I S WHERE WE ARE. I GUESS A BIG CONCERN I S THAT I A M HA NDLING GRIEVANCES ALL THE WHIL E. WE HAVE AN AVE RAGE OF ABO UT12 A MONT H THAT WE D EA L THAT NEVER GET HERE. WE TH RASH THEM OUT, BE FORE WE AR RIVE, BUT WHEN EVER YOU START MAKING THESE GRIEFABLE ACTIONS BY PROSEC UTORS , I THINK IT IS A VERY DANG EROUS PLACE IN WHICH WE FIND OURSELVES , WITH NO IMPERICAL DATA AND NO INDICATION THAT THIS IS A PROB LEM OR ABUSE .

IS THIS A WHOLE SALE RULE OF ALL ATTORNEYS, OR IS THIS INTENDED TO GET TO ATT ORNEYS WHO ARE ACT UALLY REPRESENTING THE DEFENDANT?

IT IS A WHOLES ALE RULE , LOOKS LIKE TO ME. I AM SO RRY, MA'AM. I AM OUT OF T IME. THANK

YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU. LAST AEARANCE , MS. MILLER.

MAY IT PLEASE THE COURT. I AM ASSISTANT UN ITED STATES ATTORNEY CARO LINE HE CK MILLER. AND SPEA KING FOR THE UNITED STATES ATTORNEYS FOR THE THREE DISTRICTS OF FLORIDA , WE ASK YOU ON BEHALF OF THE PEOPLE OF THE UNITED STATES , NOT TO AP PROVE A RULE WE ARE PARTICULARLY CONCERNED ABOUT 4-3.8 NEW PROV ISION E, A RULE THAT WILL HAVE THE EFFECT OF MAKING INACCESSIBLE TO LAW ENFORCEMENT, LAWFUL , RELEVANT, NONPRIVILEGED EVIDENCE.

CHIEF JUSTICE: HOW MANY STATES HAVE ADOPTED THIS MODEL RULE?

SO FAR , 19 STATES HAVE ADOPTED THAT PARTICULAR PROVISION . IT IS FA IRLY NEW. IT IS WORKING ITS W AYTHROUGH THE STACHLTS SOME OF THE STATES THAT HAVE NOT ADOPTED IT HAVE REJECTED IT. -- THROUGH THE STA TES.SOME OF THE STATES THAT HAVE NOT ADO PTED IT HAVE REJECTED IT. OTHERS HAVE IT UNDER CONSIDERATION.

CHIEF JUSTICE: HOW MANY STATES HAVE REJE CTED IT?

I COUL DN'T TELL YOU. THAT 19 HAVE ADOP TED IT A NDI CAN TELL FROM THE PRI NTOUT THAT SOME HAVE CONSIDERED AND REJECTED IT . MARYLAND WAS ONE THAT REJECTED IT AND MINNESOTA WAS ANOTHER ONE WHERE THE U.S. ATTORNEYS COMMENTED I N DETAIL TO THE SUPREME COURTAND THE RULE WAS REJECT ED. THIS RULE IS HIGHLY UNDESIRABLE FOR THREE REASONS. IT IS SUBSTANTIVELY BA D, BECAUSE IT INSIDE YOU LATES RELEVANT, NONPRIVILEGED EVIDENCE IN A WAY THAT NO OTHER TYPE OF RE LEVANT NONPRIVILEGED EVIDENCE I S INSULATED FROM LAW ENFORCEMENT.NUMBER TWO, IT IS UNENFORCEABLE.THIS IS NOT A RULE THAT T HEFLORIDA BAR IS IN CAPABLE OF ENFORCING WITHOUT BECO MING EMBROILED IN ISSU ES THAT WILL PIERCE CRIMINAL INVESTIGATIONS IN A WAY THAT IS UNFEAS IBLE , AND THAT T HIS COURT HAS REJECTED IN OTHER BAR RULE MATTERS. NOT RELATING TO THIS TYPE O F RULE, BUT JUSTICE WELLS FOR INSTANCE, COMMENTED WITH REGARD TO ADVERTISING RULES , THAT THE RULES MUST BE ENFORCED OR THEY SHOULD NOT BE E NACTED . THEY SHOULD NOT BE THERE JUST T O SH IELD SCRUPULOUS PRACTITIONERS AND IN A PREVIOUS CASE INVOLVING EMPLOYMENT DISCRI MINATION RULES, THIS COURT REJECTED A REGIMEN OF MAKING E X PLOIT -- EMPLOYMENT DISCRIMINATION RULES UNRE LATED TO ETHI CS DISCR IMINATION RULES BECAUSE OF UNENFORCE ABILITY, AND THOSE CASES ARE CITED IN M Y COMMENT. THE THIRD REASON , YOUR HONOR, IS THIS IS NOT RE ALLY AN ETHICS RULE.THIS IS AN EF FORT TO REBALANCE ANSWER SUBSTANTIVE CRIMINAL LAW IN THE ON GOING DEBATE BETW EEN PROSECUTORSAND THE DEFE NSE. NOW, THAT DE BATE , Y OUR HONORS, IS A H O NORABLE DEBATE, AND A LEGITIMATE DEBATE, BUT IT I S PROP ERLY ADDRESSED IN OUR LEGISLATURES, THROUGH OUR SUBSTANTIVE CRIMINAL LAW, AND IN OUR COURTS AS THEY ADJUDICATE ON A CASE-BY-CASE BASIS , CASE LAW CONCERNIN G THE LAW OF PRIVIL EGE AND THE LAW OF THE SI XTH AMENDMENT. IT IS NOT PROPERLY DONE THROUGH THE VEHI CLE OF A BAR RULE THAT SEEKS TO SUBSTANTIVELY MODULATE THE PRACTICE OF CRIMINAL LAW A NDGRAND JURY PRACTICE , THROUGH A CONDUCT RULE FOR PROSECUTORS .

CHIEF JUSTICE: THE ISSUE HERE, IS WHETHER THE , UNDER WHAT CIRCUMSTANCE S SHOULD THE STATE OR THE GOVERNMENT BE ABLE TO SUBPOENA A LAWYER TO PRESENT EVIDENCE ABOUT A CLIENT THAT IS , AND SO CLEARLY , WAS THER E, ARE YOU SAYING THAT THIS ISN'T A DIFFICULT SI TUATION W HEREYOU HAVE GOT, MAYBE , PROSECUTORS THAT ARE SUBJECTING DEFENSE LAWYERS TO BEING CA LLED BE FORE A GRAND JURY? IS THAT NOT, I MEAN , IS THAT SOMETHING --

IT CERTA INLY IS A DIFFICULT SITUATION, YOUR HONOR , AND I DON'T QUARREL WITH THAT.THAT IS WHY WE HAVE A WHOLE JURISPRUDENCE OF PRIVILEGE LAW AND OF SIXTH AMEND ME NTLAW,

AND I WOULD SUBMIT TO THE COURT THAT THAT IS THE AROPRIATE FORUM FOR THOSE DIFFICULTIES TO BE ADDRESSED. THERE IS NOT A HISTORY OF ABUSES HERE THAT ANYONE I S CITING, AND JU STICE LE WIS , IN YOUR QUE STION ABOUT , W ELL , ISN'T THIS REALLY ONLY MEANT TO C URB ABUSES , THE PROBLEMIS THIS WILL HAVE A TREMENDOUS CH ILLING EF FECT, BECAUSE I CAN ASSURE YOU I SERVE AS A PROFESSIONAL RESPONSIBILITY OFFICER, ALSO , FOR THE U.S. ATTORNEYS OFFICE IN MIAMI I E VERYATTORNEYS OFFICE HAS THIS. ATTORNEYS COM E TO MY OFFICE EVERYDAY WITH ET HICS PROBLEMS. WE FO LLOW THESE RULES, AND THE IMPACT WILL BE THATTHERE WILL BE A TREMENDOUS CHILLING THAT NOBODY WILL EVER SEE, O F EVIDEN CE THAT WE DO NOT SEEK BECAUSE W E FEEL THAT IT WILL BE RU NNING AFOUL OF THIS RULE, SO T HEPROBLEM IS NOT WOULDN'T IT BE GO OD TO JUST CURE ABUS ES. THE PROBLEM IS THAT WE ARE CHILLING LAW EN FORCEMENT AND SEQUESTER ING LAWFUL, NONPRIVILEGED EVIDENCE FROM AROPRIATE PROCESS .

BUT IT DO ESN'T SEEM THAT THE ARGUMENT FOLLOWS, BECAUSE WE HAVE SUBS TANTIVE LAW IN THE A REA.THAT STATEMENT COULD BE MADEWITH RE GARD TO INAROPRIATE ARGUMENTS OF COUNSEL , BEHAVIOR OF COUNSEL I N MANY DIFFERENT WAYS , SO I WILL NOT SURE THAT JUST BECAUSE -- SO I AM NOT SURE THAT , JUST BECAUSE WE HAVE SUBSTANTIVE LAW, A THAT IS THE BE ALL , EN D YOU WILL -- END ALL , AND ANSWER S THE QUESTION WITH REGARD T O MATERIALS THAT ARE NOT USED , AND THAT DOESN'T PROTECT T HELAWYER. IT PROTEC TS THE CLIENT.

I AGREE IT IS NOT THE BE ALL AND END ALL BUT IT IS ESSENTIALLY WO RTH KEEPING , BAY BECAUSE THIS IS A REGIMEN THAT AP PLIES IN A VERY LI MITED SETT ING. PROSECUTORS IN THE SETTING OF CRIMINAL CASES. THAT IS ALSO WHAT TELEGRAPHS TO US THAT THIS IS NOT A CONTENT NEUT RAL ETHICS RULE AND THAT IT REAL REALLY IS DRIVEN BY SOME OF THE ONGOING DEBATES AND TENSI ON THAT IS AL WAYS EX IST BET WEEN PROSECUTION AND DEFENSE SUBSTANTIVELY.

CHIEF JUSTICE: BUT IF IT WAS LIMITED TO GRAND JURY , IT WOULD CERTAINLY BE , IT WOULD HAVE TO BE , THE ONLY THE PROSECUTORS ARE CAL LING WITNESSES TO GRAND JURIES.

YES, BUT THE RULE FAILS SUBSTANTIVELY, BOTH FORGRAND JURY AND PROP OSED GRAND JURY, WHERE THE STANDARD IS ONLY SUB POENA FOR RELEVANCE AND NOT ESSENTIALALITY FOR THE SUCCESS OF THE CASE .

I HAD AS UCHLD THAT YOU WERE GOING TO SPEAK ABOUT 4-3.6, PRET RIAL PUBLICITY . I THOUGHT YOU HAD FILEDCOMMENTS ON. THAT YOU HAVE NO PROBLEMS WITH THAT?

WE DID , YOUR HONOR , AND ALTHOUGH WE CONSIDER THAT AN IMPORTANT POINT, W E CONSIDERED THIS ONE SO M UCH MORE CRITICAL THAT I WAS INTENDING TO RELY ON MY BRIEF FOR THALT. I CERTAINLY AM AVAILABLE T O ANSWER ANY QUESTION THAT THE COURT MIGHT HAVE IN THAT REGARD, BEC AUSE THAT IS A ONEROUS RULE FOR US AS WELL , THE PROPOSAL . THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUC H.ALL RIGHT. WE WILL HAVE REBUTTAL NOW , AND HOW DO YOU WANT , MS. TALBERT, ARE YOU GOING , I THINK THAT WHAT MIGHT BE BET BE ST IS FOR YOU T O -- WHAT MIGHT BE BEST IS FOR YOU TO RESP OND SPECIFICALLY TO RULES D AND E THAT WERE JUST BROUGHT UP AND THEN, MS. STONE, IF YOU WANT TO TALK ABOUT THE LA TERAL SCREENING ISSUES. I DON'T MEAN TO LIMIT YOU BUT I THINK, FROM WHAT YOU SAID, THAT WOULD BE A BETTER ALLOCATION.

THANK. I JUST WANT TO MAKE A COUPLE OF BRIEF PO INTS REGARDINGTHAT, AND , OF COURSE , I AM AVAILABLE TO ANSWER ANY QUESTIONS THAT YOU HAVE . AS JUSTICE LEWIS POINTED OUT , THERE ARE MANY SITUATIONS IN WHICH SOMETHING IS LEGA L BUT IT IS NOT ETHICA L. THE ETHICS RULES ARE DESIGNED TO GET AT WHAT A LAWYER CAN BE DISCIPLINED FOR NOT

NECESSARILY WHAT IS PERMISSIBLE BY THE LAW. ANOTHER EXAM PLE OF THAT IS THE LAWYERS , THE CLIENT 'S SIXTH AMENDMENT RIGHT TO AN ATTORNEY. THAT, LAW ENFORC EMENT CAN OFTEN TALK TO A PERSON, WHERE A LAWYER COULD NOT. RULE 4-4.2 PRECLUDES A LAWYER FROM COMMUNICATING WITH SOME ONE WHO IS REPRESENTED BY COUNSEL UNLESS THEY HAVE CONSENT OF THE COU NSEL.

BUT AREN'T A LOT , JUST AS THE U.S. ATTORNEY STATED , AREN'T SO MANY OF THESE SITUATIONS , FA CT O SPECIFIC , IN WHICH THEY ARE GOING TO HAVE TO BE HA NDLED BY THE PRESIDING JUDGE ON THE GROUND, RAT HE R THAN T RYING TO DEAL WITH THIS AS A RULE YOU , WHICH IS GOING TO COVER THE WATERFRONT , WITHOUT TAKING INTO CONSIDER ATION SPECIFIC FACTS.

WELL , THE FLORIDA BAR H ASA GE NERAL PO LICY OF DEFERRING , MANY TIMES, IF THERE IS A PE NDING PROCEEDING, SUCH AS A CRIMINAL CASE O R A CIVIL CASE, TO LET THAT COURT MAKE ITS DECISION. FOR EXAMPLE ABOUT THE RELEVANCE OF THE EVIDENCE THAT IS BEING SOUGHT , I N WHICH CASE THE BAR WOULD USUALLY ONLY TAKE ACTIONAFTER THAT COURT HAS MA DE THE DETERMINATION. SO THE COURT WILL ACTUALLY BE IN THE POSITION TO MAKE THOSE SPE CIFIC FACTO SPECIFIC DETERMINATIONS, A FTER WHIC H THE BAR W OULDTAKE ACTION IF IT WERE AROPRIATE .

HOW ARE YOU GOING TO ENFORCE A STANDARD THAT PROHIBITS A PROSECUTOR FROM SUBPOENAING A LAWYER , UNL ESS IT IS ESSE NTIAL TO THE SUCCESSFUL PROSECUTION OR INVESTIGATION OF THE CASE, AND HOW ARE YOU GOING TO DETERMINE IN A PARTICULAR CASE, WHETHER SUBPOENAING THE LAWYER IS ESSENTIAL TO THE PROSECUTION OF THE CASE?

WELL, IF THE INFORMATION PROVIDED BY THE LAWYER DOES NOT LEAD TO SOME INFOR MATION THAT OR EVIDENCE THAT WOULD BE ADMISSIBLE OR IMPORTANT IN THE CASE , THEN IT WOULDNOT BE ESSENT IAL.

HOW DOES A PROSECUTOR KNOW, BE FORE THEY SUBPOENA THE LAWYER , WHAT THE LAWYER IS GOING TO TESTIFY TO?

YOU WOULDN'T KNOW , BUT YOU WOULD KNOW WHETHER ORNOT THE INFORMATION THAT YOU ARE SEEKING WOULD BE ESSENTIAL TO PRO VING YOUR CASE. IT IS NOT NECESSARIL Y THAT IT ACTUALLY PRODUCED SOMETHING BUT WHETHER OR N OTWHAT YOU ARE SEEKING WOULD BE IMPO RTANT IN PRESENTURING CASE.

YOUR PREVIOUS ANSWER SUGGESTED OTHERWISE. YOU S AID THAT, IF THE LAWYER BE ANSWERS, WOULD KN OW, WITH NO INFORMATIO N OR NO RELEVANT EVIDENCE , THEN ITWOULD NOT BE ESSE NTIAL , BUT IT SEEMS YOU CAN'T HAVE A POST HOC RESOLUTION OF WHAT THE PROSECUTOR DID .

IT WOULD LOOK AT IT ATTHE TIME THAT THE PROSECUTOR WAS SEEKING THE EVIDENCE. SORRY. I MISSPOKE ON MY EARLIER ANSWER. THE BAR WOULD HAVE TO LOO K AT IT FROM THE PERSPECTIVE AT THE TIME THAT THE PROSECUTOR WERE SEEKING THE SUBPOENA , WAS THE INFORMATION BEING SO UGHT , ESSENTIAL TO PROVING T HEIRCASE.

BUT YOU WOULD HAVE TO AGREE THAT SO MU CH OF THAT IS JUST A JUDGEMENT CALL , A S THE MA TTER IS DEVE LOP ING IN THE CASE .

THAT IS TRUE OF M ANY ISSUES THAT RELATE TO THE RULES .

WH Y IS IT, WHY DO YOU NEED, THAT TERM IS, REALLY , VERY IM PORTANT THERE. WHY DO YOU, WHY WOULD A LAWYER GET , INFORMATION WOULD HAVE TO BE ESSEN TIAL , WHERE ANY OTHER WIT NESS , MAYBE IT WOULD LEAD TO , I T MIGHT LEAD TO SOME OTHER RELEVANT INFORMATION.

THE RA TIONAL --

WHY THE WO RD" ESSENTIAL"?

THE RATIONALE IS FOR THE PRESERVATION OF THE ATTORNEY/CLIENT RELATIONSHIP , AND THERE ARE MANY THING INS THE RULES THAT DO EXACTLY THAT, FOR EXAMPLE 4-4 .. 2 , THE ATTORNEY/CLIENT RELATIONSHIP PRESER VATION AND AV OID TAKING ADVANTAGEOF THE REPRESENTED CLIENT. THIS IS A SIMILAR SITUATION. PROSECUTORS WIELD AN EXTRAORDINARY AMOUN T OF POWER AND THERE ARE VERY F EW LIMITS ON THAT POWER AND ALTHOUGH WE HOPE A NDUNDERSTAND THAT THE V AST MAJORITY OF PROSECUTORS WIELD THEIR POWER AROPRIATELY, THERE ARE VERY FEW CHECKS ON THAT POWER . THEY CARRY A BIG ST ICK , AS TONY WOULD SAY.

DO WE HAVE ANY INFORMATION WITH REGARD TO BACKGROUND AND STANDARDSTHAT MAY HAVE BEEN U SED T O DISCUSS , AND CONSIDERED , RATHER THAN ESSENTIAL TO THE SUCCESSFUL COMPLETION , BAD FAITH STANDARDS, ANY OTHER KINDS? BECAUSE THAT IS REALLY W AUR TALKING ABOUT IN THIS AREA , THE ABUSIVE NESS , THE ORESSIVENESS AND USING I T FOR HE W LIS ITY -- FOR ILLICIT PURPOSES IS WHAT IT WOULD SEEM TO ME F YOU A RETRYING TO USE IT, WHY NOT SAY SO?

THANK T FRAN KLY WE CONSIDERED THE STAN DARDS -- FRANK:LY WE CONSIDERED STANDARDS THAT THE ABA PRESENTED AND THERE COULD BE OTHER SITUATIONS, FOR EXAMPLE THE RULE THAT REQUIRES YOUR MOTION S AND PRESENTATIONS NOT BE FRIVOLOUS, AND THERE IS ALSO A RULE THAT SAYS THAT YOU CAN'T TAKE ACTION DOLLARSONLY FOR THE PURPOSE OF HARASSMENT. OR TO EMBARRASS O R HUMILIATEA THIRD PAR TY. THOSE RULES WOULD ADDITIONALLY BE IN THE ORY, ALICABLE HERE.

BEFORE YOU SIT DOWN , I KNOW YOUR TIME IS U P. WOULD YOU RESPOND TO THE BUSINESS LAW SECTION'S PERSPECTIVE CLIENT ISSUE.

SU RE . I WOULD LIKE TO Y IELD TO MS. STONE TO DO THAT .

THIS IS NEAR AND DEAR TO MY HEART, HAVING BEEN THE VICTIM OF A DRIVE-BY CLIENT A COUPLE OF YEARS AGO , WHE RE MY LAW F IR M WAS DISCONFIDENCE, CLEARLY THERE WAS A BEA UTY - - KIS S QUALIFIED. CLEARLY THERE W AS A BEAUTY CON -- WAS DISQUALIFIED. CLEARLY THER E IS A BEAUTY CONTEST HERE AND WE DON'T HAVE GUI DANCE.I WOULD HAVE TO REMIND YOU THAT SCREENING HAS NOT BEEN A POLICY THAT THIS COURT HAS ACCEPTED, EXCEPT WITH RESPECT TO THE GOVERNMENT LAWYERS, AND THERE IS A POLICY REASON THERE.

WE A LSO SC REEN LAW CL ERKS , JUDGES, MEDIAT ORS .

OKA Y . THANK YOU.

SO WE HAVE EXP ANDED BEYOND GOVERNMENT LAWYERS.

IN THE CON TEXT OF WHEREYOU WERE REFE RRING TO PREVIOUSLY, LAWYERS MO VING BETWEEN FI RMS , ET CE TERA, THE POLICY HAS BEEN , OVE RALL , TO PROTECT THE CLIENT.

BUT MY CONCERN IS THAT WE , SINCE, TRADIT IONALLY , WE HAD IN FLORIDA , VERY YOU - - VERY FEW LAW FIRMS THAT WERE IN EVERY CITY IN THE STATE. NOW WE HAVE GOT LAW THAFER MSARE IN EVERY STATE -- LAW FIRMS THAT ARE IN EVERY STATE AND INTERNATIONAL, AND IT JUST SEEMS T O ME THAT THE RULES HAVE TO CONFORM TO WHAT IS IN REAL ITY, PRACT ICE .

AND I UN DERSTAND , WE UNDERSTAND WHAT YOU ARE REFERRING TO. WE PROVIDED AN A L TERNATE DIF-- ALTERNAT IVE, AND WE DID IT , AS I REMIND Y OUAGAIN EARLIER , WE TRIED TO STAY CONSISTENT WITH THE HISTORICAL PERS PECTIVE OF THE COURT AND W E DI DN'T THINK THAT SCREENING RULES WAS SOMETHING WE WANT TO INTRODUCE HERE, BUT WE D IDPROVIDE THAT THE CLIENT AND PERSPECTIVE ATTORNEY COULD PROVIDE, AT THE TIME THAT THEY WERE HAVING THE IN ITIAL CONSULTATION, THAT TH EY WOULD NOT BE PRECLUDED FROM REPRESENT AGO FUT UR E ADVERSEPARTY, SO THAT -- FROM REPRESENTING A FU TURE ADVERSE PARTY, SO THAT CAN BE TAKEN CARE OF THAT WAY. THERE IS A LIT TLE MORE BURDEN ON THE ATTORNEY BUT IT IS TO PROT ECT THE CLIENT AND NOT NECESSARILY TO MAKE IT EASY ON THE ATTORNEY . I WOULD LIKE TO ADDRESS JUSTICE WELL S'S POINT THAT THE REALITY IS THAT THE TRUTH IS ONES WHO H AVE CHOSEN TO MOVE INTO MULT IPLE CITIES AND MUL TIPLE JURISDICTIONS, THE PURPOSE OF THESE RULES IS TO PROTECTCLIENTS.HOWEVER, THE REALIT Y OF PRACTICE TO DAY IS A LSO IN THE INFORMATION AGE, IT IS EASIER THAN EVER BEFO RE TO OBTAIN INFORMATION AND IT IS HARDER THAN EVER BEFORE TO TRULY SCREEN SOMEBO DY, WHERE THEY DO NOT HAVE ACCESS TO INFORMATION THAT RELATES T O A PARTICULAR CLIENT FILE .

CHIEF JUSTICE: THANK YOU VERY MUCH . MS. STONE AND MS. TALBERT , AND, AL SO, AL L OF T H OSE THAT CAME HERE TODAY , WE THANK YOU FOR YOUR INT EREST IN THIS.