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## **In re: Amendments to the Florida Rules of Civil Procedure**

WE WILL NOW CALL THE NEXT CASE, WHICH IS IN RE AMENDMENTS OF THE FLORIDA RULES OF CIVIL PROCEDURE. AND AS WE ARE GETTING READY, I WANT TO ADDRESS, AGAIN, THE STUDENTS IN THE AUDIENCE, BECAUSE THIS MIGHT NOT BE WHAT YOU IMAGINED A NORMAL ORAL ARGUMENT WAS, BUT THE RULES THAT WE ARE DISCUSSING ARE RULES OF PROFESSIONAL CONDUCT, WHICH, IF YOU DECIDE TO GO TO LAW SCHOOL, WOULD GOVERN YOUR OBLIGATIONS TO YOUR CLIENTS, SO THEY ARE VERY, VERY IMPORTANT, AND WE HAVE GOT PAGES OF THEM GUIDING HOW LAWYERS ARE TO OPERATE UNDER ETHICAL GUIDELINES. SO I HOPE THAT THAT CLARIFIES THAT THIS IS NOT YOUR NORMAL ORAL ARGUMENT, BUT IT IS VERY CRITICAL TO THE PROFESSION AND TO SOCIETY. WITH THAT, LET'S SEE WHO WE HAVE HERE FOR, MR. CLARKE YOU ARE GOING TO BE HEARING FOR THE RULES OF CIVIL PROCEDURE COMMITTEE. AND ARE YOU DIVIDING YOUR TIME UP OR HOW ARE WE DOING THIS? WE HAVE GOT ONE COMMENTATOR, I GUESS, MR. JUDGE ARTIGLIERE, SO WHY DON'T YOU INTRODUCE YOURSELF AND THE RULES. I THINK THESE ARE RULES WE ARE A LITTLE MORE FAMILIAR WITH.

THANK YOU, YOUR HONOR. MY NAME IS ROB CLARKE WITH THE LAW FIRM OF AUSLEY AND McMULLEN IN TALLAHASSEE. WE ARE HERE TO ADDRESS CHANGES TO THE RULES OF CIVIL PROCEDURE AND ALSO A COUPLE OF FORMS WHICH I WILL TALK ABOUT IN JUST ONE MINUTE. I AM JOINED TODAY BY RICHARD L. EVINSTEIN OF KRAMER, LEVINSTEIN AND STEWART, AND MR. MACKENZIE, WITH HOLLAND & KNIGHT IN JACKSONVILLE. MR. MACKENZIE WAS CHAIR IN 2002-2003, WHEN MOST OF THESE RULES WERE ADOPTED BY THE COMMITTEE. MR. LEVINSTEIN TACKLED RULE 1.214, WITH REGARD TO PROSECUTE. I UNDERSTAND HE DEALT WITH IT FOR FOUR OF THE SIX YEARS THAT HE WAS ON THE COMMITTEE. WITH THE COURT'S INDULGENCE, I WOULD LIKE TO DEFER TO MR. LEVINSTEIN AND ALSO MR. MACKENZIE AS RELATES TO CERTAIN ISSUES THAT I AM SURE THE COURT HAS SOME QUESTIONS ABOUT. I HAVE A COUPLE OF INTRODUCTORY COMMENTS AND THEN I WILL OPEN UP FOR QUESTIONS RELATING TO SPECIFIC RULES. FIRST OF ALL, A COUPLE OF THINGS I WOULD LIKE TO POINT OUT TO THE COURT. WE DO HAVE 72 MEMBERS OF THE CIVIL RULES PROCEDURE COMMITTEE, MADE UP OF LAWYERS WHO ARE PLAINTIFF-ORIENTED AND LAWYERS WHO ARE DEFENSE-ORIENTED. IN ADDITION, WE HAVE --- DEFENSE ORIENTED.

CHIEF JUSTICE: I COMMEND YOU FOR COMING UP WITH THE CHANGES. THAT IS PROBABLY THE FIRST TIME.

THERE WAS DISCUSSION THIS MORNING THAT WE HAVE SOME PROGRESS TO PRESENT TO THE COURT UNDER GUIDANCE WE RECEIVED FROM THE COURT, SO WE DO HAVE SOME SUBSTANTIVE CHANGES. AS FAR AS THE MAKE UP OF THE COMMITTEE, WE HAVE DIVERSE AREAS OF PRACTICE AND 30 PERCENT MADE UP OF JUDGES, EITHER APPELLATE OR TRIAL COURT JUDGES, AND THEY ARE SOME OF OUR MOST ENERGETIC MEMBERS, I CAN ASSURE YOU. TODAY WE HAVE FOUR RULE CHANGES THAT IS WE HAVE BEFORE THE COURT AND TWO CHANGES TO SOME FORMS. SOME OF THE RULE CHANGES ARE RATHER STRAIGHTFORWARD, SOME RATHER CONTROVERSIAL AND OTHERS HAVE BEEN SOMEWHAT EXTENSIVELY DEBATED, SO, JUDGE, WITH THAT, I WOULD LIKE TO STOP. I HAVE MR. LEVINSTEIN TO TALK ABOUT 1.420 AND MR. MCKINCE TO TALK ABOUT A COUPLE OF OTHER RULES -- MACKENZIE, TO TALK ABOUT A COUPLE OF OTHER RULES.

CHIEF JUSTICE: I DO HAVE A QUESTION ON ONE SUBJECT. I REMEMBER THAT SOMETIME BACK, THERE WAS AN ATTEMPT TO LIMIT WHAT WAS PUT IN COURT FILES, BECAUSE EVERYTHING WAS BEING THROWN IN COURT FILES, AND NOW IT LOOKS LIKE WE ARE BACK TO WHERE WHEN

SOMEONE FILES A MOTION FOR SUMMARY JUDGMENT , THE SA FEST THING I S GOING TO BE TO JUST FILE EVERYTHING A GAIN, AND I DON'T KN OW. MAYBE THAT IS JUST WHERE WE HAVE TO GET TO .

THE CHANGE IN THE RULES IS ACTUALLY WHAT PRECIPITATED WHERE WE A RETODAY WITH THE PROPOSAL , AND I WOULD LIKE MR . MacKENZIE TO ADDRESS THAT , I F I MAY .

IF IT PLEAS E THE COURT , MY NAME IS DONNY MacKENZIE, AND I WAS THE CHAIR WHEN THIS RULE FOUND ITS NEMESIS , AND ROBERT GAINS , W HO WAS ON THIS COMMITTEE FOR 24 YE ARS , WROTE A LETTER AS H IS FI NAL LETTER AS HE WAS LEAVING THECOMMITTEE, AND SAID THAT RULE 1.510 , IT A EARED FROM A LAWT UDE ITENT THAT HE HAD -- FROM A LAW ST UDE NT THAT HE HAD BEEN TEACHING, THAT THE RULE WAS OUT DATED , T HAT BECAUSE OF THE FACT THAT W E NO LONGER FILE DISC OVERY IN , AS A MA TTER OF COUR SE, THAT RULE 1. 510 , WHEN IT REFERENCED AFFIDAVITS AND OTHER THINGS , IT DIDN'T , IT WAS WRITTEN IN A TIME WHEN EVERYBODY UNDERSTOOD T HAT YOU WOULD NORMALLY FILE YOUR DISCOVERY.THIS WAS, THEN , TAKEN TO A SUBCOMMITTEE, AND FOR TWO YEARS , THE SUBCOMMITTEE ESSENTIALLY DID VERY LITTLE TO IT, AND ACTU ALLY SUGGESTED THAT NO ACTION BE TAKEN , AND I WAS QU ITE AMAZED, BECAUSE ALM OS T UNANIMOUSLY, IN THE COMMITTEE, WHEN THE SUBCOMMITTEE REPORTED BACK , THE COMMITTEE SAID , NO , WE WANT TO CHANGE THIS RULE , AND THE REASON WHY THEY WANTED TO CHANGE THE RULE WAS THEY WANTED TO CREA TE A UNIFORM RULE AND SIMILAR TO WHAT THIS COURT DID IN OCTOBER OF 20 03 , THE LAST TIME I WAS HERE WITH RESPECT TO RULE 1.190 , AMENDING FOR LEAVE TO AMEND FOR PU NITIVE DAMAGES, THE COMMIT TEE AND THE SUBC OMMITTEE STR ONGLY FELT THAT YOU, WE NE EDED T O CREATE A NUCHL RULE , ONE , SO THAT IT WOULD BE UNIFOR M, AND, TWO, THAT IT WOULD TAKE AWAY THE SURP RISE OF WHAT WAS ENCOUNTE RED IN THE PUNITIVE D AMAGES PROFFER S.

COULD I ASK A QUES TION. WE COLONE L HAVE A COMMISSION THAT IS STUDY -- WE COLONEL HAVE -- WE CURRENT LY HAVE A COMMISSION THAT IS STUDYING WHAT SHOULD BE IN A C OURTFILE. HAS YOUR COMMITTEE BEEN IN COORDINATION WITH THEM, BECAUSE WE DON'T KNOW IF THIS IS A PUBLIC INF ORMATIONPROBLEM THAT WE HAVE, A DISCLOSURE OF INFORMATION, THAT KIND EVER THING, AND I JUST WONDER WHERE WE ARE GOING WITH THIS RULE AND WHETHER WE MAY GET IN TO A CONFLICT BETWEEN THE ACTIVITY OF THIS PROP OSAL AND WHAT MAY COME OUT OF THAT KMISMINGTS.

THE ANSWER TO Y OUR QUESTION, JUSTICE, IS , N O, WE HAVEN'T TALK ED TO THAT OTHER SUBCO MMITTEE , B UT, AGAIN, I THINK , THE INTENT BY THIS RULE IS FAI RLY CLEAR. WE DO NOT WANT T O ABROGATE OR AF FECT THE RULES REGARDING FILING. WE DON'T, WE ARE NOT ADVOCATING YOU FILE THINGS JUST FOR THE S AKE OF FILING. WHAT WE ARE ADVO CATING IS THAT, SIMILAR TO THE PUNITIVE DA MAGES PROFFERS , THAT WE DON'T WANT TO HAVE ANOTHER BEVERLY SITUATION. WE DON'T WANT TO HAVE A SITUATION WHERE LITIGANTS ARE SAYI NG I DIDN'T HAVE THIS DISCOVERY. WE NEED A CONTINUANCE OF THIS HEARING. IT IS A QUESTION OF DUE PROCESS.IT IS A QUESTION OF LET'S MAKE CLEAR THAT , IF YOU , BECAUSE THE RULE SAYS THE MATTERS UPON WHICH THE MOTION TO BE ARGUED , SHOULD BE SUBSTANTIALLY STATED AND ARTICULATED .

LET ME SEE IF I CAN UNDERSTAND THE PURPOSE OF ADVOCATING THIS CHANGE , BECAUSE WHEN I I N ITIALLY EXAMINED, THIS MY REACTI ONWAS THAT THIS WASN'T AN ATTEMPT TO B RING CLA RITY T O JUST EXACTLY WHAT WOULD BE BEFORE THE COURT TO CON SIDER IN DECI DING THE IS SUES RAISED IN A MOTION F ORSUMMARY JUDGMENT . SO THAT THERE WOULD BE VERY SPECIFIC UNDERSTANDING OF JUST EXACTLY WHAT THE C OURTWOULD HAVE BEFO RE IT , WHETHER IT WAS DEPOSITI ONS , WHETHER THERE WERE INTERROGATORIES AND ANSW ERS TO INTERROGATORIES , YOU K NO W , THE FULL GAMUT OF THE KI NDS OF DISCOVERY OR OTHER MATERIALS THAT M IGHTPROPERLY BE BEFORE A COURT AND, OF COURSE , I THINK THE, THERE IS A RE FERENCE HERE T O EVIDENCE THAT WOULD BE ADMISSIBLE , PROP ERLY ADMISSIBLE AT

TRIAL, BUT IS THAT A FAIR STATEMENT , WHAT THE --

YES, SIR.

-- THE PURPOSE WAS HERE , SO THAT THERE WOULD BE NO SANDBAGGING OR SURPRISE OR WHATEVER WHAT , THAT THERE WOULD BE EXPRESS CLARITY , AS TO WHAT THE COURT COULD PROPERLY CONSIDER IN DETERMINING THE ISSUES RAISED IN A MOTION FOR SUMMARY JUDGMENT .

ABSOLUTELY , AND IT DOESN'T AFFECT THE RIGHT TO A CONTINUANCE , IF YOU HAVEN'T HAD A CHANCE TO TAKE THE DISCOVERY. IT DOESN'T, THERE WAS A COMMENT BY MR. TRAWICK , IF YOU HAVEN'T HAD THE TRITE TO TAKE DISCOVERY -- THE RIGHT TO TAKE DISCOVERY , IT THIS RULE IS NOT GOING TO PRECLUDE YOU. YOU STILL HAVE A RIGHT TO SAY I HAVEN'T HAD ENOUGH TIME, YOUR HONOR. MAY I TAKE SOME MORE -- MAY I TAKE SOME MORE DISCOVERY. IT IS SIMPLY A RULE TO AVOID THE BEVERLY SITUATION IN THE PUNITIVE DAMAGES PROFFERS , THAT SIMPLY SAYS IF YOU ARE GOING TO RELY ON SOMETHING AND YOU HAVEN'T TONE SHOW N IT TO YOUR OPPONENT - - AND YOU HAVEN'T SHOW N IT TO YOUR OPPONENT, YOU NEED TO SHOW IT TO YOUR OPPONENT. IF YOU ARE THE MOVANT, YOU NEED TO SHOW IT WITHIN 20 DAYS AND IF YOU ARE THE OPPONENT, YOU NEED TO SHOW IT WITHIN FIVE. WE STARTED OUT WITH SAYING THE RULES ARE OUTDATED AND WE NEED A UNIFORM RULE , AND IT PROGRESSED INTO AN ISSUE OF FAIRNESS AND DUE PROCESS. I WONDERS IF WE CAN TALK ABOUT RULE 1.420. TIME IS FLYING BY HERE.

YES, SIR. THANK YOU .

GOOD MORNING, YOUR HONOR.

I HAVE A SPECIFIC QUESTION.

MY NAME IS RICHARD L. EVINSTEIN I SERVED ON THE PROCEDURAL RULES COMMITTEE FOR SIX YEARS FROM 1998 TO 2004, WHEN I WAS TERM LIMITED OFF. THE RULE COMMITTEE, WHEN I WAS IN PLACE , I BEGAN BY SERVING FOUR OF MY SIX YEARS AS ITS CHAIR. I KNOW JUSTICE LEWIS WAS IN ATTENDANCE AT SOME OF THOSE MEETINGS, AND THAT IS THE BACKGROUND FROM WHICH I COME WITH REGARD TO THIS RULE , AND IT WAS FINALLY PASSED , OVER A YEAR AFTER I LEFT THE COMMITTEE .

I HAVE GOT TWO QUESTIONS. ONE , IS THE INTENT OF THE RULE TO AVOID THIS COURT'S CASE LAW ON THE PROGRESSING THE CASE TO WARD TRIAL , AS FAR AS FILING WHAT EVER IS FILED, AND SECONDLY , DID THE COMMITTEE CONSIDER THE FEDERAL DISTRICT COURT LOCAL RULES, IN RESPECT TO THE PROSECUTION OF CASES, IN THAT I NOTE THAT BOTH THE NORTHERN DISTRICT AND THE SOUTHERN DISTRICT, HAVE A 90- DAY PROVISION , AND IF THE COURT, IF THE COMMITTEE CONSIDERED IT, WHAT WAS THE REASON NOT TO GO IN THAT DIRECTION?

THE OBJECTIVE AND THE GOAL OF OUR WORK ON THE RULE , WAS TO PROTECT PARTY LITIGANTS. THERE HAS BEEN MUCH WRITTEN IN THE RESPONSES WITH RESPECT TO COUNSEL BENEFITTING FROM THIS CHANGE THAT WE ARE PROPOSING. THE RULE WAS ADOPTED , AMENDED AND THE DISCUSSIONS OVER THE YEARS TOOK PLACE , BECAUSE OF ANECDOTAL AND CASE LAW DECISIONS THAT WERE CONSIDERED TO BE HARSH AND DRACONIAN BY MANY MEMBERS, BOTH JUDICIAL MEMBERS AND BAR MEMBERS OF THE COMMITTEE.

WHEN YOU SAY PROTECT LITIGANTS , THAT IS LITIGANTS THAT ARE BRINGING THE CASES ASPOSED TO THE LITIGANTS THAT ARE BEING SUED.

THAT'S CORRECT. PEOPLE WHO WERE BRINGING CASES, ALTHOUGH PARTIES DEFENDANT HAVE THE SAME OPPORTUNITIES TO MOVE CASE TO A CONCLUSION , SHOULD THEY CHOOSE TO, BY

FILING MOTION TO SAY DISMISS, MOTIONS FOR SUMMARY JUDGMENT, AND NOTICING CASES FOR TRIAL, THAT ARE AT ISSUE. WE WERE CONCERNED WITH SOME OF THE RESULTS THAT WERE RELATED TO US OVER THE YEARS, BY MEMBERS OF THE COMMITTEE, JUDGES, ATTORNEYS ALIKE. NONMEMBERS OF THE COMMITTEE WHO SUBMITTED COMMENTS AND LETTERS TO US OVER THE YEARS, ABOUT THE OPERATION OF THIS RULE.

WHAT WAS THE VOTE ON THIS?

THE COMMITTEE VOTE, I WILL TELL THAT YOU IN MOMENT, WAS 35-TO-7, AND THE BAR, FLORIDA BAR BOARD OF GOVERNORS APPROVED IT BY 3-TO-0 VOTE

CHIEF JUSTICE: GOING BACK TO WHAT JUSTICE WELLS'S QUESTION IS, WE HAVE HAD CASE AFTER CASE INVOLVING THIS, AND IN FACT WE HAVE A CASE PENDING RIGHT NOW, ABOUT ISSUES ABOUT WHAT IS RECORD ACTIVITY, AND I THINK THAT THE, YOU WANT TO STRIKE A BALANCE BETWEEN BEING FAIR TO THE LITIGANTS AND, ALSO, MAKING SURE THAT THE CASE IS MOVED ALONG. UNDER, SO, BACK TO JUSTICE WELLS'S QUESTION, IS THAT, IN TRYING TO BALANCE THAT, YOU KNOW, COULD IT JUST BE THAT, WITH THIS, THAT YOU HAVE GOT THE TEN-MONTH THING AND THEN ALL OF A SUD DEN THE LITIGANT FILES AN OTHER PLEADING, YOU KNOW, A REQUEST FOR ADMISSIONS, AND THEN ANOTHER TEN MONTHS GOES BY AND IT JUST KEEPS ON GOING.

BUT THE PRACTICAL APPLICATION OF THE PRESENT RULE IS THAT SOMEBODY REALIZES THAT ELEVEN MONTHS AND 25 DAYS HAS PASSED SINCE THE LAST RECORD ACTIVITY, THEY CAN DO THAT VERY SAME THING, BY PROVIDING A NOTICE, NUMBER ONE, YOU ARE PUT HAD GONE THAT PLAINTIFF'S ATTORNEY ON NOTICE THAT, IF NOTHING IS DONE WITHIN THE NEXT 60 DAYS, THE CASE SHALL BE DISMISSED. IF NOTHING IS DONE WITHIN THAT 60-DAY PERIOD, WE ASSUME THAT THE COURTS OF THIS STATE WILL ADOPT A MUCH HIGHER STANDARD THAN EVEN PRESENTLY EXISTS AS TO SHOWING GOOD CAUSE, BECAUSE IT WOULD SEEM THAT, A BSENT SOME EXIGENT EMERGENCY CIRCUMSTANCE, SHOWING GOOD CAUSE UNDER THOSE CIRCUMSTANCES, WOULD BE VIRTUALLY IMPOSSIBLE AND THE CASE WOULD, THEN, BE DISPOSED OF.

CHIEF JUSTICE: DID YOUR COMMITTEE AT ALL LOOK AT THE ISSUE ABOUT, FIRST, WHAT HASTO APPEAR ON THE FACE OF THE RECORD, THAT NO ACTIVITY BY FILING PLEADINGS, ORDER OF COURT OR OTHERWISE, AND LOOKING AT OUR DECISIONS ON THAT, ABOUT WHAT THAT EVEN MEANS?

WE ORIGINALLY, THERE ARE ORIGINALLY SUGGESTIONS THE RULE CHANGES, TO DEFINE WHAT RECORD ACTIVITY MEANT. THE MAJORITY OF THE COMMITTEE ON THE SENTIMENT OF THE COMMITTEE, WAS THAT THAT WAS A SUBSTANTIVE LAW CHANGE AND THAT WAS NOT WITHIN OUR PURVIEW. -- WITHIN OUR PURVIEW. THERE WERE DISCUSSION ANSWER WE DECIDED THAT WAS NOT IN OUR JURISDICTION OR PURVIEW, SO WE DIDN'T ADDRESS THAT IN GREAT DETAIL.

CHIEF JUSTICE: IF WE WANTED TO BE SIGNIFICANT AND FAIR TO THE PARTIES AND MOVE THINGS ALONG, IS TO BE MORE SPECIFIC WITH WHAT WE MEAN BY PLEADINGS, ORDER OF COURT OR OTHERWISE, ISN'T THAT WHERE WE WANT TO LOOK SO THAT WE DON'T HAVE THE CHURNING OF THIS CASE YEAR AFTER YEAR, WHETHER IT BE 11 MONTHS OR TEN MONTHS.

THAT WOULD BE A GOOD START DOVETAILING WITH THE PARTY LITIGANTS, INCLUDING CLAIMANTS, AND WE DO NOT BELIEVE FROM A COMMITTEE STANDPOINT THAT, SUBSTANTIVELY AND PRACTICALLY SPEAKING, THIS WILL CHANGE VERY MANY THINGS AS FROM HOW THEY EXIST NOW, BECAUSE IN MANY CASES, WHEN ATTORNEYS DO REALIZE THAT THERE IS THE ELEVEN-MONTH PERIOD APPROACHING, THEY FILE A NOTICE OF A DEPOSITION OR REQUEST FOR ADMISSIONS OR SOMETHING ELSE TO KEEP THE CASE ALIVE.

IT, REALLY, THOUGH, DOES REMOVE SOME DEGREE OF DISCRETION FROM THE TRIAL JUDGE. THE TRIAL JUDGE IS CONFRONTED WITH TIME STANDARDS BY THIS COURT.

YES.

AND THEN THE PLAINTIFF CAN JUST POP A NEUTRAL TYPE OF PLEADING IN AND KEEP THESE CASES GOING, SOMETIMES FOR SEVEN OR EIGHT YEARS. ISN'T THAT A PROBLEM?

IT IS A PROBLEM BUT THAT IS UNDER THE EXISTING RULE, THAT IS WHAT OCCURS. WE PERCEIVE THAT IS, UNDER THIS RULE, IF THERE IS A NOTIFICATION GIVEN TO THE PARTY PLAINTIFF --

THE FEDERAL DISTRICT COURT RULES. ANOTHER FEDERAL DISTRICT COURT RULES UNDER THE 90-DAY RULE, I MUST BE HONEST. WE DID NOT SPEND A LOT OF TIME ON THAT PARTICULAR RULE. PRACTICALLY SPEAKING, THOUGH, BECAUSE OF THE MOTION PRACTICE IN FEDERAL COURT, RARELY HAVE I EVER SEEN OR HEARD AFFORDER BEING ENTERED FOR A 90-DAY LOCK PROSECUTION IN A FEDERAL DISTRICT COURT. AT LEAST I AM FAMILIAR WITH THE SOUTHERN DISTRICT OF FLORIDA. I DON'T THINK I HAVE EVER SEEN AN ORDER DISMISSING A CASE IN A 90-DAY SETTING FOR LACK OF PROSECUTION.

THAT IS BECAUSE THERE IS ACTIVE CASE MANAGEMENT BY THE COURT.

THAT IS TRUE.

HERE WE ESTABLISHED A PARTICULAR SYSTEM ESSENTIALLY TO REMIND A PLAINTIFF'S LAWYER TO FILE SOMETHING. IF YOU ARE GOING TO ESTABLISH THAT KIND OF SYSTEM TO TRY TO KEEP THE CASE GOING ALONG, WHY NOT DO IT EARLIER THAN TEN MONTHS? WHY NOT SIX MONTHS, SO THAT WE CAN GET THE CASE MOVING ALONG?

WE DEBATED THE TIME FRAME. IT WAS ANYWHERE FROM A THREE OR FOUR-MONTH PERIOD TO THE 12-MONTH PERIOD THAT EXISTS.

CHIEF JUSTICE: HAVE YOU EVER CONSIDERED AFTER THE FIRST YEAR, IN OTHER WORDS, TEN MONTHS AFTER THE FIRST YEAR BUT THEN MOVING IT TO IF IT GETS TO TWO YEARS, THREE YEARS THAT, MAYBE IT NEEDS TO BE A SHORTER TERM.

FOR A SECOND GO AROUND AFTER THE FIRST TIME?

CHIEF JUSTICE: RIGHT.

THAT, WE CONSIDERED EVEN A PROVISION THAT THERE WOULD ONLY BE ONE OF THESE NOTICES GIVEN AND AFTER THE FIRST NOTICE, IF TEN OR TWELVE MONTHS WENT BY OR WHATEVER THE CASE MAY BE, THAT THE CASE WOULD BE DISMISSED WITHOUT ANY NECESSITY OR POSSIBILITY OF A SHOWING -- OF A SHOWING OF GOOD CAUSE AS WELL.

LET ME PLAY DEVIL'S ADVOCATE A LITTLE BIT HERE. BECAUSE IT WOULD BE EARLY THAT THE TWO MAIN POLICY CONSIDERATIONS THAT WE WOULD BE, ONE, THE POLICY CONSIDERATION THAT ORDINARILY CASES BE DECIDED ON THEIR MERITS. AS OPPOSED TO SOME PROCEDURAL TRAP. THE SECOND CONSIDERATION, THOUGH, IS EQUALLY AN IMPORTANT ONE, AND I AM SURE THAT IS WHY THE JUDGE IS HERE TODAY, AND THAT IS SORT OF THE DEAD WOOD POLICY.

YES, SIR.

SO THIS CHANGE SEEMS TO SUBSTANTIALLY FAVOR THE DECIDING CASES ON THE MERITS, AND IN LIMITING, THOSE INSTANCES WHERE CASES MAY BE DISMISSED UNDER THE RULES. LET ME ASK YOU, THEN, AS A, PERHAPS ON BEHALF OF THE JUDGE THERE, THAT FACES THE DEAD WOOD

PROBLEM ALL THE TIME , IS HOW MUCH DID YOU ALL DEBATE AND TALK ABOUT THE , QUOTE , DEAD WOOD ISSUE, AND HOW EFFECTIVE THIS RULE WOULD, THEN , BE, AS MODIFIED IN ADDRESSING OF THAT ISSUE , WHETHER IT WOULD HELP IT OR AGGRAVATE IT OR , SO COULD YOU, I REALIZE , AND CLEARLY , THERE IS VERY , VERY IMPORTANT POLICY BEHIND HAVING CASES , LITIGANTS' CASES DECIDED ON THE MERITS IN THE COURTS. I DON'T THINK THERE IS ANY DOUBT ABOUT THAT. BUT LET'S LOOK AT THE DEAD WOOD ISSUE AND WOULD YOU TELL ME HOW , WHAT DISCUSSIONS THE COMMITTEE OR THE SUBCOMMITTEE HAD , ABOUT THAT ISSUE , THAT IS BECAUSE WE ALL KNOW THAT MANY TIMES , IT IS THOSE CASES THAT ARE JUST THERE , AND THEY SOMETIMES PREVENT THE MERITORIOUS CASES FROM BEING REGULARLY SOLVED IN A TIMELY MANNER ON A JUDGE'S DOCKET, SO HELP US WITH THAT.

I WILL DO MY BEST , YOUR HONOR. THIS WAS AN ATTEMPT TO BALANCE THE INTERESTS BETWEEN THE POLICY OF CASES BEING DECIDED ON THEIR MERITS AND CASES LANGUISHING IN THE COURTS AND BEING DEAD WOOD, AS YOUR HONOR INDICATED. WE WANTED TO ABOLISH THE GOTCHA PORTION OF THIS RULE , AS WE DO WITH ALL OF THE RULES THAT WE LOOK AT. WE TRY TO FIND A FAIR BALANCE WHEN THERE IS AN ISSUE BROUGHT TO OUR ATTENTION , TO PROTECT THE SYSTEM, PROTECT THE PARTIES , LITIGANTS TO THE CASE, AND MAKE THE SYSTEM MORE EFFICIENT WITH REGARD TO THESE RULES. WE UNDERSTAND THAT THE COURTS ARE UNDER TIME PRESSURES AND TIME CONSTRAINTS WITH REGARD TO DEAD WOOD CASES. HOWEVER, THE WAY THAT WE VIEWED THIS ENTIRE SITUATION , WAS THAT , SO LONG AS THERE WAS AN OPPORTUNITY AFTER ELEVEN MONTHS AND 28 OR 29 OR WHATEVER MANY DAYS OR UP TO THAT POINT , TO FILE A PLEADING AND OBTAIN A NEW LIFE TO THE CASE , THAT THIS RULE, AT TEN MONTHS OR ANY OTHER TIME, GIVING A NOTICE , WOULD BALANCE THAT INTEREST AGAINST THE DEAD WOOD CASES THAT WOULD POSSIBLY LOGJAM THE COURTS .

COULD WE ASK THE QUESTION ABOUT THIS.

YES, SIR .

AS LONG AS I HAVE BEEN A MEMBER OF THE FLORIDA BAR, THIS CONCEPT OF LET'S GET RID OF THE CASE, HAS BEEN THE MECHANISM TO GET RID OF THIS DEAD WOOD. HAVE YOU CONSIDERED , I DON'T BELIEVE THAT THERE IS A PLAINTIFF ANYWHERE THAT WANTS THEIR CASE JUST SITTING THERE. I DON'T BELIEVE THAT THEY HIRE A LAWYER TO HAVE IT SET. HAVE WE EVER DISCUSSED SOME TYPE OF NOTIFICATION , SOME TYPE OF REQUIREMENT THAT THE CLIENT INVOLVEMENT BE CONSIDERED . COME BEFORE THE COURT AT THE HEARING OR SOMETHING , THAT WOULD CAUSE THE CLIENT TO KNOW THIS LAWYER IS NOT MOVING THIS CASE.

WE DID DISCUSS POTENTIALLY FORWARDING THIS NOTICE OR A COPY OF THIS NOTICE TO THE CLIENT AS WELL AS THE ATTORNEY , AND IT WAS NOT RECEIVED VERY WELL IN TERMS OF DIRECT CONTACT TO THE CLIENT. THERE WAS CONCERN ON THE PART OF LAWYERS WITH DIRECT CONTACT BETWEEN THE COURTS AND THE CLIENT. I PERSONALLY THINK THAT WOULD BE POSSIBLY ADVISABLE, BECAUSE THE CLIENT WOULD, THEN, BE BROUGHT INTO THE PROCESS. WE ARE , ALSO , CONCERNED WITH PRO SE LITIGANTS AS WELL , WHO MIGHT NOT BE AWARE OF A RULE LIKE THIS , AND AFTER TWELVE MONTHS , THEY WOULD RECEIVE NOTICE THAT THE CASE WAS GOING TO BE DISMISSED. THIS WAY THEY GET THE TEN-MONTH NOTICE AND THEY ARE PUT ON NOTICE OF WHAT HAPPENS.

CAN I ASK ABOUT ONE RULE BEFORE YOU SIT DOWN. THAT IS RULE 1.380 -A- 4, WHICH TALKS ABOUT NOT GETTING FEES AND COSTS IF YOU DON'T DO THE CERTIFICATION THAT YOU ATTEMPTED TO LITIGATE OR ATTEMPTED TO GET YOUR DISCOVERY , AND WHAT IS THE PURPOSE OF THAT? I MEAN, WHY ARE WE , WE SAY YOU ARE SUED TO PUT THIS IN THERE AND NOW YOU ARE GOING TO IMPOSE AN ADDITIONAL SANCTION, REQUIREMENT , THAT IF YOU DON'T DO IT , WE ARE NOT GOING TO GIVE YOU FEES. WHY ?

THE INTENT OF THAT RULE , AND, A G AIN, THE GENESI S OF THE RULE CAME ABOUT WHEN , I N 2002, WE R E VIEWED THE FEDERAL RULES WITH THE FLORIDA RULES, TO SEE IF WE COULD, PERHAPS, G AIN SOME INSIGHT FROM THEM , AND A-4 SPECIFICALLY , THE INTENT IS THAT YOU WOULD NOT B E ENTITLED TO EXPENSES , UNLESS YOU MADE A GOOD FAITH EFFORT TO RE SOLVE YOUR MOTION BEFORE FILING IT. THAT, I THINK THAT ANS WERS YOUR QUESTION.

SO WE HAVE TO , YOU HAVE TO DO THE CERTIFICATE , AND ARE WE CREATING SOME OTHER LITIGATION HERE ?

NO. AND I SAW MR . BE TTER MAN'S AND MR. -- MR. BE RMAN AND'S AND MR. TRA WICK 'S COMM ENTS , AND WITH ALL DUE RESPECT T O THEM, WE THOUGHT THAT , IF A LAWYER CERTIFIES THAT HE HAS DONE SOMETHING, A THAT IN FACT HE HAS DONE THAT.

CHIEF JUSTICE: I KNOW T HEFIFTEENTH CIRCUIT HAS AL WAYS HAD A LOCAL RULE REQUIRINGTHAT AND THE FEDE RAL COU RTS --

THIS RULE FOLL OWS RULE 37, AND FROM AN INFORMAL SUR VEY, WE THINK MOST LOCAL CIRCUI TS HAVE THIS RULE IN PLACE. WE ARE SIMPLY WANTING T O PUT IT IN THE F LORIDA RULES , AND THE PURPOSE OF THE RULE IS TO MAKE PEO PLE PIC K UP THE TELEPHONE AND TRY TO WORK OUT THEIR DISCOVERY DIS PUTES , AND IF YOU DO NOT PICK UP THE TELEPHONE AND WORK OUT YOUR DISCOVERY DISPUTES, YOU ARE NOT GOING TO BE ENTI TLED TO BE AW ARD E X PENSES .

NOW, THE REAL ITY IS THAT LAWYERS A LOT OF TIMES, DON'T PIC K UP THE TELEPHONE. THEY SIMPLY FAX A LETTER AND SAY THIS IS YOUR WARNINGTHAT I AM GOING TO FILE A MOTION, IF YOU DON'T RESO LVE THIS ISSUE.

THAT IS WHY WE PUT IN THERULE, GOOD FAITH EFFORT . AND , A G AIN, IT IS ALL PREDICATED ON GOOD FAIT H, B UT, ALSO, AND I THINK , JUSTICE, YOU WERE, BECAU SE THERE WAS SOME COMMENTS ABOUT ARE YOU CERTIF YING O R WHETHER , ARE YOU ACTUALLY MAKING THE EFFORT. WITH ALL DUE RESPECT, IF YOU CERTIFY SOME THING AS A FLORIDA LAWYER, YOU DID IT. YOU KNOW, WE COULD CHANGE THE RULE TO SAY THAT YOU ARE NOT ENTITLED TO EXPENSES UNLESS YOU IN GOOD FAITH, MAKE THE EFFORT , BUT WE THOUGHT IT WAS CLEANER TO SAY CERTIFY T IF YOU SAY YOU DID IT, YOU DID IT. AND THAT IS WHAT WE ARETRYING TO PLOM O AT. CIVIL -- PRO MOTE , CIVILITY AND PEOPLE WORKING THESE ISSUES OUT.

CHIEF JUSTICE: OKAY. THANK YOU FOR YOUR COMMENTS. THANK YOU VERY MUCH FOR BEING HERE . YOU ARE REPRES ENTING THE WHOLE TENTH CIRC UIT. WHAT I THOUGHT WAS INTERESTING, WAS THERE ANY ATTEMPT TO, LET ME HAVE YOU STATE YOUR AEAR ANCE FIRST.

I AM R ALPH ARTIGLIERE AND I AM A CIR CUIT JUDGE A NDHERE TO REPRESENT ALL OF THE JUDGES OF THE CIRC UIT.

CHIEF JUSTICE: HAVE Y OUMADE AN ATTEMPT TO SEE I F THE CIRCUIT CONFERENCE WAS INTERESTED IN THIS ISSUE , AS FAR AS SO RT OF INTE RESTING OF ALL OF THE 20 CIRCUI TS.

LET ME TELL YOU A LITTLE BIT ABOUT. THAT I AM VERY PL EASED BECAUSE I WANT TO TELL YOU WHAT OUR F O CUS I S ON THIS AND TO HAVE THIS OORTU NITY , BUT I BECAME INVO LVED ON MARCH 1 , BECAUSE THERE WAS A NOTICE IN THE BAR NEW S OF THIS YEAR.I HAD NO IDEA THEY WERE CHANGING THIS RULE . I SAW IT. I AM THE ADMINISTRA TIVE CIVIL JUDGE, SO I PRESENTEDTO MY CIVIL JUDGES. THEY SAID THIS IS A PROBLE M, A REAL PROB LEM FOR US. LET'S DISCUSS IT WITH THE FAMILIAR JUDGES. WE DID THAT. MY CHIEF HAD ME PRE SENT IT TO ALL OF OUR JUDGES IN O UR CIRCUIT , AND WE DECIDE DED THAT IT WAS AROPRIATE , THIS ISN'T RA LPH ARTIGLIERE. IT THIS IS ALL OF THE JUDGES. MATTER OF FACT THEY PARTICIPATED IN PREPARING THE BREECHLT ARRIVE ONE H ASSEEN IT AND MY COM ING HERE TODAY WAS BECAUSE THEY SAW THE RESPONSE THAT THEY GOT FROM THE COMMITTEE AND FELT THAT WE NEEDED TO BE

HERE TO EXPRESS OUR VIEW. WHEN I GOT THEIR RESPONSE AND THEY SAID THAT IT SEEMS LIKE ONLY THE JUDGES OF THE TENTH CIRCUIT ARE CONCERNED ABOUT THIS, I WAS VERY NONPLUSSED. THAT THEY WOULD PUT THAT IN THE BRIEF, THAT IT WOULD, THAT IT SEEMS LIKE WE ARE THE ONLY OBJECTS THAT ARE -- THE ONLY ONES THAT ARE CONCERNED ABOUT IT, SO WHEN I WAS IN GAINESVILLE TEACHING AT THE -- IN GAINESVILLE TEACHING AT THE ADVANCED TRIAL ADVOCACY COURTS, I ASKED THEM ABOUT IT AND TWO WEEKS AGO I ASKED SOME JUDGES THERE, AND I DIDN'T THINK WAS MY JOB TO GO AROUND AND POLL JUDGES AROUND THE STATE --

CHIEF JUSTICE: WHY DON'T YOU PRESENT YOUR POSITION ON THAT TODAY.

THE FACT OF THE MATTER IS THE REASON IS, THEY DON'T KNOW THAT THIS IS BEING CHANGED. THAT IS THE PROBLEM, AND SO, THAT WAS WHAT WAS EXPRESSED TO ME, SO THIS RULE --

HASN'T THIS CHANGED, THOUGH, AND BEEN PUBLISHED IN THE FLORIDA BAR NEWS?

EVERYTHING HAS BEEN APPROPRIATELY DONE. JUSTICE ANSTEAD, I SET ON YOUR COMMITTEE FOR STANDARD JURY INSTRUCTIONS AND I KNOW A LOT OF WORK THAT HAS GONE INTO THAT I KNOW THE SECOND-GUESSING THAT THEY FEEL COMES WHEN SOMEBODY COMES IN AT THE LAST MINUTE, BUT I DIDN'T KNOW ABOUT THIS UNTIL I READ IT IN "THE FLORIDA BAR JOURNAL".

CHIEF JUSTICE: I ASSUME THERE WERE JUDGES ON THIS COMMITTEE FOR SEVERAL YEARS.

ORDINARILY WHEN WE HAVE REPRESENTATION BY SEVERAL MEMBERS OF THE CRIMINAL BAR AND CIVIL BAR, THAT THEY ALSO TAKE THAT AS A RESPONSIBILITY AS, SORT OF ALSO BEING IN A REPRESENTATIVE CAPACITY. IN OTHER WORDS, HOW WOULD THIS AFFECT THE COURTS OF APPEAL, FOR FOR INSTANCE, IF IT IS AN APPELLATE PROBLEM THERE.

I SET ON YOUR JURY COMMITTEE AND I DON'T, HOWEVER, CONTACT ANY OTHER JUDGES.

DID YOU MEET WITH JUDGES OF THE COMMITTEE, TO ASK THEM ABOUT HOW THIS DEBATE WENT ON THE COMMITTEE?

NO, SIR, I DID NOT. I WAS ASKED BY MR. CLARKE TO TALK TO MR. LEVINSTEIN, AND IT SAID IN THERE THAT THEY HAD ADDRESSED MY CONCERNS, BUT THIS IS AFTER --

CHIEF JUSTICE: LET'S GET TO THE CONTENT RATHER THAN THE PROCEDURE HERE.

THIS IS IMPORTANT, BECAUSE OUR FOCUS IS NOT JUST A WORK LOAD ISSUE, ALTHOUGH THAT CERTAINLY IS A CONCERN FOR US. BECAUSE WE ARE CONCERNED ABOUT THE EFFECT ON US AND THE CLERKS, AND WE HAVE EXPRESSED THAT TO YOU, THAT THIS IS NOT, THEY SAY ALL THAT HAS TO BE DONE IS YOU GET THE CLERK TO SEND OUT A NOTICE AT A DIFFERENT TIME. I HAVE SAT WITH ALL THREE OF OUR CLERKS, AND I HAVE GONE THROUGH ALL OF THIS, AND I DON'T KNOW HOW MANY CLERKS THEY TALK TO AFTER AMENDMENT 5, BUT THERE IS A DIFFERENT LANDSCAPE AT THIS POINT THAN THERE WAS, PERHAPS, WHEN THEY WERE TALKING TO CLERKS AND SAID THAT THIS WAS NOT AN ISSUE, BUT THIS REQUIRES A DIFFERENT LEVEL OF NOTICE AT A DIFFERENT TIME, AND THEREFORE AS THEY PRESCRIBED IT HERE, ONCE YOU GIVE THAT 60-DAY NOTICE, THEN YOU HAVE TO GO THROUGH THE SAME PROCESS AGAIN, AT THE END OF THE 60 DAYS.

IT DOESN'T IMPOSE UPON THE JUDGE AN OBLIGATION TO DO IT. IT SAYS THE JUDGE MAY DO IT.

NO, BUT THAT IS THE ONLY WAY THE RULE IS GOING TO BE EFFECTIVE CHOICE

CHIEF JUSTICE: THE ONLY WAY THE OOSING SI DE IS GOING TO GET A DISMISSAL IS IF THE OOSING SIDE GIVES NOTICE.

WHAT THIS DOES, IT DOESN'T MATTER, IT SHIFTS THE OOSING SIDE TO THE 60-DAY NOTICE AND IF IT IS NOT DONE AT 10 MONTHS, 12 MONTHS, 15 MONTHS OR TWO YEARS, THEN THAT CASE WILL SET THERE AND THEY HAVE 60 DAYS FROM THE TIME THAT YOU GIVE THE NOTICE, TO - -

CHIEF JUSTICE: IF SOMEBODY DOESN'T FILE IT AT TWELVE MONTHS, THEN SETS THERE. I KNOW, AND MANY TIMES WE HAVE TALKED ANECDOTALLY, DON'T YOU NOT HAVE, YOU SET STATUS CONFERENCES. IN YOUR CIRCUIT, DO YOU DO SOMETHING TO TRY TO MOVE THE CASE ALONG?

LET ME EXPLAIN TO YOU EXACTLY, I HAVE LESS CASES ON MY DOCKET NOW THAN I DID TEN MONTHS AGO, AND THAT IS, I HAVE HAD MORE FILINGS BUT I HAVE GOT LESS CASES. THE WAY THAT I DO THAT, THOUGH, IS NOT TO LOOK AT ALL OF MY CASES EVERY MONTH. I DON'T HAVE TIME TO DO THAT. THAT I WOULD HAVE TO SET ASIDE A DAY AND-A-HALF, IN ORDER TO LOOK AT ALL OF THOSE CASES, BECAUSE THAT IS HOW MUCH TIME IT TAKES. I HAVE RIGHT NOW, 956 CASES ON MY DOCKET, SO WHAT I DO IS, WHEN A TRIAL GOES AWAY AND I HAVE TIME, I MAKE MYSELF AVAILABLE TO THE OTHER JUDGES. I HAVE TRIED CIVIL CASES, CRIMINAL CASES, I HAVE SET IN LANDLORD TENANT TWO WEEKSAGO. I MAKE MYSELF AVAILABLE TO THEM. FAILING THAT NEED, THEN I HAVE TIME AVAILABLE, AND I CAN GO THROUGH, AND THE ONLY WAY TO EFFECTIVELY CLEAR YOUR DOCKET IS NOT TO ASK THE CLERK TO SEND YOU A LIST OF CASES WHERE THERE HAS BEEN NO ACTIVITY, BECAUSE THAT DOESN'T GIVE YOU THE DISTINCTION OF WHERE THERE HAS BEEN ACTIVITY TO MOVE A CASE ALONG. TOUGH TO GO THROUGH EVERYONE OF THESE FILES, AND I WAS TAUGHT BY JUDGE AL COTT WHEN I BECAME A JUDGE IN 2002, THE -- IN 2002, THE ONLY EFFECTIVE WAY TO CLEAR YOUR DOCKET IS TO SIT DOWN AND GO THROUGH EACH CASE AND I CAN DO THAT EVERY MONTH, BUT THAT MEANS I DON'T HAVE A DAY AND-A-HALF WORTH OF HEARINGS THAT MONTH.

IS THERE A RECORDING PROCESS IN THE TENTH CIRCUIT CLERK'S OFFICE, AS TO CASES WHICH ARE WITHIN OR WITHOUT THE TIME STANDARDS? ANOTHER ONLY THING WE CAN GET FROM THE CLERK, THE ONLY THING ELECTRONICALLY THEY CAN TELL US IS WHETHER THERE HAS BEEN NO ACTIVITY IN A FILE. THAT HE CAN'T TELL US IF IT WAS -- THEY CAN'T TELL US IF IT WAS FILED BY THE DEFENSE, IF IT WAS FILED BY -- THAT IS IN POLK AND HIGHLANDS?

IN POLK AND HIGHLANDS, IT IS WORSE. THEY HAVE NO IDEA HOW TO COMPLY WITH THIS, BUT IN HIGHLANDS, I WENT THROUGH, I SAT IN HIGHLANDS FOR A YEAR, AND I JUST WENT THROUGH EVERY ONE OF THE HARD FILE COPIES MISS, IN ORDER TO HANDLE IT -- COPIES, MISS, IN ORDER TO -- MYSELF, IN ORDER TO HANDLE IT. WHAT I DO IS START WITH THE OLDEST CASES FIRST AND GET THE FILES OR LOOK AT THEM ON THE SCREEN, SOME OF THEM I HAVE TO GET THE FILE BECAUSE THEY ARE NOT EVEN ON THE SCREEN YET, AND I GO THROUGH THOSE. I HAVE A COURT PERSONNEL NOT A CLERK PERSONNEL, AND SOMEBODY THAT I KNOW CAN MAKE A DISTINCTION AS TO WHAT MOVES THE CASE ALONG, AND I WORK ON IT.

WHAT PERCENTAGE OF THESE CASES THAT YOU WORKED THROUGH, COULD YOU TELL US APPROXIMATELY, WOULD HAVE NO ACTIVITY. FOR THAT PERIOD OF TIME.

THE LAST TIME I WENT THROUGH, 950 CASES APPROXIMATELY, 59 IS SET HEARINGS ON. IN OTHER WORDS, THEY HAD A SITUATION WHERE THERE WAS NO ACTIVITY MOVING THE CASE ALONG. 25 WERE DISMISSED.

CHIEF JUSTICE: DID YOU DISTINGUISH, YOU SAID NO ACTIVITY. DID YOU ACTUALLY LOOK TO SEE IF IT WAS MEANINGFUL ACTIVITY?

OH, YEAH, I LOOK TO SEE WHETHER THE CASE IS BEING MOVED OR NOT, BECAUSE OTHERWISE, YOU HAVE TOLD US IN YOUR CASES, THAT WE NEED TO BE FAMILIAR WITH OUR DOCKETS, THAT

WE HAVE TO , WE ARE ENCOURAGED TO HAVE TAKE AN ACTIVE R OLE IN KEE PING OURSELVES INFORMED OF THE CASES ASSI GNED TO THEM , AND THAT THIS RULE IS AN EFFECTIVE WAY TO DO I T. WE FE EL IT IS, AND WE US E IT TO THAT F A SHION . 30 CASES WERE DISM ISSED , WITH A SPON SOR AEAR ANCE , AND ON E CASE WAS SUSPENDED FOR 30 DAYS , BECA USE T HEATTORNEYS AG REED THAT T HEY MIGHT BE ABLE TO MEDI ATE IT , AND THREE CASES WERE AWAITING ORDERS , AND THOSE THREE CASES , ONE OF THEM WAS DISMISSED, AND THE OTHER TWO WERE RESOLVED DUR ING THE TIME THAT I WAS DOING THAT . NOW , ANECDOTALLY , EVERYTHING THEY HAVE DONE IS ANEC DOTAL , WHAT WE HAVE DONE IS BASED ON WHAT OUR ACTUAL WORK IS , AND WHAT WE HAVE CITED IN OUR BRIEF, THE POL ICIES , T HEREASONS, AND SO FORTH , BUT LET ME JUST BASI CALLY TELL YOU , WHAT THEY ARE PROPOSINGCAN BE DONE UNDER THE CURRENT RULE. THEY SAY THERE ARE JUDGES OUT THERE THAT ARE CONCERNED ABOUT GOTCH A TACTICS. JUDGE MENENDEZ IN TA MPA SENDS OUT THIS NOTICE, A NDYOU CAN DO THAT UNDER T HECURRENT RULE. THERE IS NOTHING TO STOP YOU.

CHIEF JUSTICE: IN THECURRENT RULE, THAT IS AN INTERESTING FA CTOR , BECAUSE I KNOW THE JUDGES I N T HEFIFTEENTH CIRCUIT DO THAT . DON'T WE WANT UNIFORM? THERE IS GOTCHA IN DADE COUNTY, IN TAM PA , IN SOMEONE ELSE'S COURT BUT NOT IN JUDGE MENENDEZ'S COURT ? MAYBE THE IDEA TO BRING SOME UNIFORMITY TO T HIS NOTI ON THAT WE ARE GOING TO, MA YBE , ENCOURAGE JUDGE TO SAY ACTIVITY MANAGE THEIR CASES . IT DOESN'T SA Y YOU HAVE T O DO TRITE AT TEN MONTHS.DO YOU IT --

I -- TO IT RIGH T AT TEN MONTHS . YOU DO IT --

I GU ESS DIFFERENT CASES , DIFFERENT CIRCUIT S, I K NOW THAT IT WORKS AND I AM CONCERNED NOT JUST ABOUT THE PERSON WHO GETS THEIR CASE DISMISSED, BECAUSE THEY SAY ANECDOTALLY THEY HAVE PEOP LE THAT ARE TELLING THEM THERE ARE PROBLEMS WITH THIS, AND I UNDERSTAND THE POLI CY REASON FOR HEARING ON THE MERITS, BUT ALL OF T HESEPEOPLE HAVE HAD A JUDGE LOOK AT IT AND WOULD HAVE HAD TO ABUSE THEIR DISCRETION AND THEN AN AELLATE COURT , AND WHEN WE LOOK AT IT, WE DETERMINE WHE THER THEY DID TRY TO MOVE THE CASE .

CHIEF JUSTICE: WHEN YOUGET A CASE THAT YOU SAID HASRECORD ACTIVITY BUT Y OUDON'T THIN K IT IS MOVING ALONG, YOU CALL THAT , HAVE A CONFERENCE ON THAT CAS E.

YE S, I DO.

CHIEF JUSTICE: THAT IS NOT UNDER THIS CURRENT RULE. DO YOU THAT BECAUSE THAT IS GOOD CASE MANAGEMENT .

ABSOLUTELY.

CHIEF JUSTICE: AND I AM STILL TRYING TO SEE HOW THIS RULE WOULD IMPEDE WHAT YOU HAVE AS BEING GOO D CASE MANAGEMENT.

BECAUSE WE ARE GO ING TO HAVE TO SPEND OUR TIME SENDING OUT 60- DA Y NOTICES ON MANY MORE CASES THAT DON'T NEED A 60- DAY NOTICE . THEY ARE ALREADY GO NE. THERE IS NOTHING TO D IDTHAT. THEN WE ARE GOING TO -- TO DO. THAT THEN WE ARE GOING TO HAVE A PROCES S AT THE END OF THAT 6- DAY DAY DISMISSAL. NOW -- THE 60-DAY DISMISSAL. THE ONLY WAY TO DO THAT IS TO DO IT EVERY MONTH AND IF YOU DON'T DO IT EVERY MONTH , THEN CASES ARE GOING TO LANGUISH ON THE DOCK ET.

LE T ME ASK A QUESTION.THERE IS NOTHING THIS RULE THAT WOULD REQU IRE YOU TO CHANGE YOUR PRAC TICE. YES, THERE IS.

WHAT WOULD REQUIRE TO YOU CHANGE YOUR PRACTICE?

WE HAVE TO SEND A NOTICE .

YOU DON'T HAVE TO CHANGE YOUR CURRENT PRACTICE, THAT IS WHAT I AM SAYING , OF SETTING THESE CASES THAT ARE LANGUISHING, FOR A CASE MANAGEMENT CONFERENCE , DO YOU?

YOUR HONOR , IF I SET A HEARING ON ALL OF THESE CASES, I MEAN , WHEN WE DO OUR NOTICES , VERY FEW OF THEM ACTUALLY COME TO HEARING, AND THIS IS A REAL ISSUE FOR US. WHEN WE SET A HEARING, ATTORNEYS HAVE TO COME. PEOPLE HAVE TO PAY THEM TO COME TO THE HEARING, SO WE SHOULD ONLY HAVE TO DO THAT IF WE NEED TO DO IT. WE, ALSO , SET ASIDE TIME FOR OTHER PEOPLE, THAT OTHER PEOPLE WOULD BE USING. BUT I THINK THERE IS A MUCH MORE IMPORTANT, THIS IS A BALANCING ISSUE FOR YOU , AND THERE IS A MUCH MORE IMPORTANT ISSUE. THE CURRENT RULE DOES ENCOURAGE LAWYERS TO BE DILIGENT. AND WE CITED, IN OUR BRIEF , THE RULES REGULATING THE FLORIDA BAR, AND IT SAYS , PERHAPS NO PROFESSIONAL SHORTCOMING IS MORE WIDELY RESENTED THAN PROCRASTINATION. A CLIENT'S INTEREST CAN , OFTEN, BE ADVERSELY AFFECTED BY THE PASSAGE OF TIME OR THE CHANGE OF CONDITIONS. THAT IS BOTH CLIENTS. THAT IS THE CLAIMANT AND --

LET ME ASK YOU THIS QUESTION. YOU WERE A FINE , PRACTICING LAWYER FOR A NUMBER OF YEARS.

20 YEARS .

BEFORE YOUR TIME ON THE BENCH.

YES, SIR.

DO YOU BELIEVE THAT THE PARTY, THAT THERE IS A PLAINTIFF OUT THERE THAT WANTS THEIR CASE JUST SETTING THERE?

WELL , LET'S PUT IT THIS WAY , IT DEPENDS ON WHO THE PARTIES ARE. I THINK THAT THERE ARE RELAYERS WHO DON'T LIKE CERTAIN CASES, WHO DON'T LIKE CERTAIN CLIENTS --

I AM NOT TALKING ABOUT LAWYERS. I AM TALKING ABOUT THE PARTY.

NO. THE PARTY WANTS THEIR CASE TO MOVE.

PARTY, UNLESS THERE IS SOME KIND OF LAWSUIT THAT ARE YOUR FILING --

THE PARTIES --

YOU BELIEVE THAT MOST PEOPLE WANT IT MOVING ALONG.

THEY ARE THE TRUE VICTIMS. THIS IS WHERE WE AGREE WITH THEM. THE PARTIES ARE THE VICTIM.

HAS YOUR COMMITTEE GIVEN ANY THOUGHT AS TO HOW TO APPROACH THAT, BECAUSE THAT IS WHAT YOU ARE LOOKING AT . DO WE NEED TO HAVE A DIFFERENT RULE REGULATING LAWYERS? DO WE NEED TO HAVE SOMETHING THIS RULE? WHAT ARE THE THOUGHTS OF YOUR JUDGES, SO THAT CLIENTS CAN'T TOLD, I AM SORE , THE JUDGE -- I AM SORRY , THE JUDGE WON'T HEAR MY CASE, BUT HE HAS THE TRUE FACTS.

WE ADDRESS THAT AND HAVE A VERY ACTIVE PROFESSION IS M COMMITTEE. THE FACT OF THE MATTER IS, THE DECISION HERE FOR A LAWYER IS EASY. -- THE DECISION HERE FOR A LAWYER IS EASY. YOU HAVE ONE YEAR. YOU SHOULD BE DOING THINGS AT ONE MONTH , TWO

MONTHS , FIVE MONTHS, NOT WAITING FOR THE LAST MINUTE TO DO IT. LAWYERS NEED TO BE MORE PROFESSIONAL, AND YOU DON'T DO THAT BY CHANGE THE RULE THAT GIVE S THEM NOTICE A ND HAS THE JUDGE AND THE OTHER ATTORNEY GIVE THEM NOTICE. YOU DO IT BY HO LDI NG THEIR FEET TO THE FI RE.

CHIEF JUSTICE: JUSTICEBELL.

HIT ON THAT POINT BECAUSE THAT WAS MY QUESTION. THIS SEEMS TO , REA LLY, BE A PROTECTION MECH ANISM THING , JUSTICE CANTERO MENTIONED IT , BECAUSE MY EXPERI ENCE IN THESE DISMISSALS, YOU MAY HAVE A HUND RED CASES SET AND TWO OR THREE ATTORNEYS MAY SHOW UP , AND IT IS OF TEN THE SAME ONES OVER AND OVER AND OVER AGAIN, AND THE PERSON THAT IS REALLY BEING PROTECTED HERE IS THE DILL TEARIOUS ATTORNEY.

THAT IS THE POSI TION THAT HAS BEEN TAKEN BY OTHERS , AND I CERTAINLY , AS A FOR MER ATTORNEY, I MEAN, I PRACTICED FOR 24 YEARS, BUT I DID MED MAL DEFE NSE. I HAD ONE CASE IN 24 YEARS, THAT CAME CL OSE TO BEING DISMISSED FOR FAIL URE TO PROSECUTE, SO THAT SHO WS YOU THAT , AND I HAD THOUSANDS OF CASES, THE LE VEL O F LAWYERS WHO I WAS WORKING AGAINST , WERE A FACTOR , AND THEIR INTEREST IN THOSE CASES , B UTWHEN YOU BEC OME A T RIALJUDGE AND YOU SEE ALL THOSE OTHER CASES THAT ARE OUT THERE , THE , THERE ARE LAWYERS THAT SET ON THESE CASES, AND FOR NO GO OD REASON, AND THEY COULD --

CHIEF JUSTICE: I AM GOING TO HAVE TO ASK JUST IF YOU CAN CONCLUDE.

BUT IF THERE IS A REASON , FOR EXAM PLE THE LAWYER HAS GONE TO IRA Q, HE HAS GOT A PERSONAL PROBLEM, YOU CAN GET A STAY. THE CURRENT RULE PROVI DES FOR THAT. BUT THE RULES - -

CHIEF JUSTICE: THANK Y OUVERY MUCH FOR BEING HERE . ARECIATE IT AND ARECIATE THAT YOU TOOK THE TIME AND INTEREST. THE TIME IS UP. I DIDN'T KNOW IF YOU , I WOULD LIK E TO JUST MAKE SURE THAT THERE WERE, WHAT , WHAT WAS DONE REGARDING CIRCUIT JUDGES AND VETING THIS WITH CIRCUIT JUDGES, IF YOU CAN JUST LET US KNOW , JUST V ERY BRIEFLY, AND THEN WE WILLTAKE A RE CESS.

INITIALLY , THERE WAS OOSITION FRO M THE COUNTY OF THE CONFERENCE OF COUN TY JUDGES, A STATE WIDE ORGANIZATION. JUDGE RONALD LAJONDRE WAS ON OUR COMMITTEE FOR A NU MBER OF YEARS. WE WORKED WITH THE JUDGE AND IRONED OUT THE QUESTIONS THAT HE HAD AND IRONED OUT THAT AND IT DISAEARED AND HAS NOT BEEN A PART OF THIS PROCEED ING.THE REA SON THAT WE INDI CATED ONLY THE TENTH CIRCUIT OOSIED, BECAUSE THAT WAS IT IS ONLY OO SITION THAT WAS FILED FROM THE - -

CHIEF JUSTICE: DID THE CIRCUIT CONFERENCE, WHAT CIRCUIT JUDGES HAVE BEEN INVOLVED IN THIS? DO YOU KNOW WHO THEY ARE ? I MEAN, MY CONCERN IS THIS , THAT OBVIOUSLY THIS AF FECTS JUDGES ACROSS THE STATE, AND THAT WE INC LUDE J UDGEMEMBERS, PRECISELY FOR T HEREASON THAT WE EX PECT THERE TO BE , THAT THEY REPRESENTTHE IN TERESTS NOT JUST OF THEMSELVES BUT ALL THE JUDGES .

I THINK THEY ARE G OINGTHROUGH THE RO STER , BUT ABOUT 30 PERC ENT OF OUR COMMITTEE OVER THE YEARS HAS BEEN MA DE UP OF JUD GES ACROSS THE STATE AND ON THE DISTRICT COURTS OF AP PEAL , TRIAL JUDGES BOTH COUNTY AND CIRCUIT COURT , AND THEY AS MR. CL ARKE AND HIS COMMITTEE INDICATED, HAVE BEEN PRE SENT MEMBERS.

HAS THERE BEEN ANY ONGOING EFFORT TO DEVELOP A CASE MANAGEMENT RULE IN THE CIVIL PROCEDURE RULES?

THERE HAS NOT BEEN . WE HAVE NOT BEEN ASKED TO DO. THAT IT IS NOT ON OUR AGENDA. SINCE

I WAS ON THE COMMITTEE , I DON'T KNOW WHAT H ASHAENED SINCE THEN T A LSO MIGHT BE THAT THAT IS A RULE OF JUDICIAL ADMINISTRATION RATHER THAN A RULE OF CIVIL PROCEDURE

THE CIVIL HAS A CASE MANAGEMENT RULE.

YE S AND A STRIC T ONE THAT MOVES THE CASES ALONG , A ND THAT WOULD BE ANOTHER OPTION FOR US TO LOOK INTO. HOWEVER, WE WERE CONCERNED WITH THE INTERE ST OF T HEPARTIES, NOT PRO TECTING T HERIGHTS OF LAWYERS , I F LAWYERS ARE PROT ECTED , A S A RESULT OF THE RULE CHANGE , SO BE THAT , BUT THAT SHOULD NOT BE ENO UGH TO OUTWEIGH THE NEED FOR THE CHAN GE.

CHIEF JUSTICE: T HANK YOU VERY MUCH. YOUR TIME IS EXPIRED. WE THANK YOU FOR BRINGING THIS TO THE COURT'S ATTENTION.WE WILL BE CONSIDERING, OF COURSE, A LL OF THE RULE CHANGES, AND WITH THAT , T HECOURT WILL TAKE ITS MORNING RECESS.

MARSHAL: PLEASE RISE.