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## **In re: Amendment to the Rules Regulating The Florida Bar**

PLEASE RISE . PLEASE BE SEATED .

THE PARTIES ARE READY OR THE BAR IS READY. I CALL THE CASE OF IN RE AMENDMENT TO RULES REGULATING THE FLORIDA BAR. IF YOU WOULD ANNOUNCE YOUR APPEARANCE AND I HAVE A COMMENT TO MAKE.

MAY IT PLEASE THE COURT , MY NAME IS HENRY COX HERE ON BEHALF OF THE FLORIDA BAR.

AND THE COMMENT WAS THAT WE WONDERED WHETHER THE FLORIDA BAR WANTED TO GO TO THE THREE-YEAR RULE CYCLE FOR ITS BAR RULES .

YOUR HONOR, WE WERE PAYING CLOSE ATTENTION . MAY IT PLEASE THE COURT , WITH RESPECT TO THE BAR 'S POSITION, I'M HERE BECAUSE OF THE ANNUAL FILING OF CONSOLIDATED AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR, WHICH WE BELIEVE ARE PROPERLY BEFORE THE COURT. THERE WAS A PROPOSAL OR SET OF PROPOSALS I BELIEVE THE COURT HAD HEARD ARGUMENT ON YESTERDAY REFERRED TO AS THE ABA ETHICS 2000 PACKAGE FOR THE COURT'S BENEFIT , THESE PROPOSALS ARE INDEPENDENT OF AND DO NOT CONFLICT WITH ANY OF THOSE PROPOSALS . WE BELIEVE , AND I THINK WE'RE CORRECT, THAT THESE PROPOSALS THIS MORNING ARE EDITORIAL AND ADMINISTRATIVE AND SIMPLY NON CONTROVERSIAL. THEY HAVE BEEN DEVELOPED FROM A PERIOD OF APRIL OF 2003 THROUGH JANUARY OF 2005. WE HAVE NOT ELECTED TO ALL OT TIME FOR INDIVIDUALS WITH RESPECT TO SUBJECT MATTER TO COME BEFORE THE COURT AND MAKE THOSE ARGUMENTS. THERE WAS ONE COMMENT OR ONE COMMENT REPRESENTED HERE TODAY , MR. WEISS WHICH I WILL COME TO IN A MOMENT BUT THE SUBJECT MATTERS OF THE SE PROPOSALS BREAK DOWN INTO ESSENTIALLY A HANDFUL OF CATEGORIES. THE FLORIDA BAR MEMBERSHIP CLASSIFICATIONS, INVENTORY ATTORNEYS , DISCIPLINARY PROCEDURES OF THE BAR , RULES OF PROFESSIONAL CONDUCT , LEGAL SPECIALIZATION AND EDUCATION, AND THE UNLICENSED PRACTICE OF LAW. ALL OF WHICH ARE LAID OUT IN DETAIL IN THE BAR 'S PETITION. WITH ME TODAY, SEATED TO MY IMMEDIATE LEFT, IS MR. GREGORY PARKER WHO IS ON THE BOARD OF GOVERNORS FOR THE FLORIDA BAR AND CHAIRMAN OF THE DISCIPLINARY PROCEDURES COMMITTEE WHO IS PREPARED TO ADDRESS ISSUES OF THE FIRST TWO CATEGORIES I MENTIONED OR THE THIRD AND FOURTH, THE DISCIPLINARY PROCEDURES AND PROFESSIONAL CONDUCT AND ALSO MR. TONY BOGGS, DIRECTOR OF LAWYER REGULATION FOR THE FLORIDA BAR AND SEATED BEHIND THEM IS THE HONORABLE RALPH ARTIGLIERE , CIRCUIT JUDGE OF THE 10TH CIRCUIT WHO CHAIRS A PROGRAM FOR THE FLORIDA BAR. LORI HOLCOMB , ELIZABETH TARBERT AND PAUL HILL WHO IS GENERAL COUNSEL FOR THE FLORIDA BAR. MR. WEISS HAD FILED COMMENTS WITH RESPECT TO TWO ISSUES. ONE WAS THE RECOMMENDED CHANGE BY THE BAR OF THE LANGUAGE, DISCIPLINARY RESIGNATION TO DISBARMENT ON CONSENT AND ALSO WITH RESPECT TO NOTICES OF DETERMINATION OF GUILT. THAT LATTER ISSUE IS ONE THAT'S BEEN UNDER CLOSE SCRUTINY BY THE SPECIAL COMMISSION ON LAWYER REGULATION, IN PART BECAUSE WHAT THE COMMISSION UNDERTOOK AND IN PART BECAUSE OF WHAT THIS COURT SENT BACK TO THE BAR TO UNDERTAKE FURTHER STUDY OF. FOR EXAMPLE, THE REFERENCE TO HOW OR WHAT ACTION SHOULD TAKE PLACE IMMEDIATELY UPON DETERMINATION OF GUILTY PLEAS , TRIAL VERDICTS OF GUILT OF LAWYERS, ETC ET CETERA . WE HAD PUT IN OUR RESPONSE , A RECOMMENDATION OR A SUGGESTION TO THE COURT THAT BECAUSE OF THAT PROCESS , AND BECAUSE OF THE INTENT T

O FILE SEP ARATE P ACKAGE O F PROPOSALS PRIOR TO JULY 1ST THAT THAT I SS UE B E DEF ER ED. MR. WEISS INFORME D M E T HIS MORNING THAT HE HAD NOT RECEIVED THE BAR'S RESPONSE AND WAS NOT AWARE T HA T THAT SECOND ISSUE WE HAD RECOMMENDED BE DEFERED.

WHAT ARE YOU TALKING ABOUT , 3 -7.2 ?

Y ES, Y OU R H ONOR.

SO THAT'S BEING DEF ER ED?

YES, YOUR HONOR. SO I JUST SAY THAT BECAUSE I WANT TO EXTEND BOTH M Y PERSONAL APOLOGIES TO MR. WEISS AND ALSO APOLOGIES TO THE FLORIDA B AR T HA T H E DIDN'T RE CEIVE THAT, BECAUSE I UNDERSTAND FROM M R. WEI SS THAT THAT WAS THE MAI N THRUST OF HIS REASON FOR BEING HERE THIS M ORNI NG . IN ANY EVENT I DEF ER T O WHATEVER THE COURT WOULD PREFER ON THE ONE R EM AINI NG C OMMENT THAT'S BEEN F ILED ON THE CONVERSION OF DISCIPLINARY RES IGNA TI ON T O D ISBARMENT UPON CONSENT . MR. PARKER IS HERE TO ADDRESS IT OR IF THE COURT WOULD PREFER TO HEAR FRO M MR. WEISS.

OTHER THAN THAT ISSUE, WHETHER THE J US TICE S HAV E QUESTIONS ON ANY OF THE OTHER R UL ES A ND THE N W E C AN HEAR FROM MR. WEISS A ND T HEN HEAR THE RESPONSE. ANYBODY - - A NY Q UE STIO NS ?

I HAVE O NE O N T HE 3 .3 - - 3-7.4 REGARDING DEL ETIN G THE REQUIREMENT THAT THE CHAIRMAN OF THE GRI EVAN CE COMMITTEE ACTUALLY SIGN T HE D OCUMENT.

I CAN D EFER - - I COU LD ANSWER THAT M YS ELF. THIS I S M R. - - M R. P ARKE R TRAVELED ALL OF THE WAY HERE.

GREETINGS FROM THE 3RD J UDICIAL CIRCUIT.

ALL OF THE WAY F RO M PERRY.

ALL OF THE WAY F ROM PERRY.

DID YOU FLY O R D RIVE ?

I DRO VE. ACTUALLY I CAME F RO M JACKSONVILLE, SO T HI S MORNING . YOU HAD A Q UE STION?

I THINK THE CONCERN IS WHETHER THA T T HE - - W HE THER ELIMINATE !!ING T HE R EQ UI RE MENTOF IT BEING S IG NE D B Y T HE AUTHORIZING PERSON.

I THINK A NY C ON CE RNS WOULD BE ELIMINATE D B Y T HE FACT THAT THERE WOULD B E PROPER DOCUMENTATION THR OUGH EITHER C OR RESPONDENCE , F AX , EMA ILS. I K NOW I N THE THI RD J UDIC IA L CIRCUIT WE ARE THE LARGEST AND WITH A GRIEVAN CE COMMITTEE MEETING AND ONCE THERE IS THE D EC ISIO N B Y THE LOCAL COMMITTEE TO ISSUE A COMPLAINT, THERE MIGHT BE SOME D IF FICULTIES IN ACTUALLY TRACKING D OW N SOMEONE, THE PONY E XP RESS MIGHT NOT RUN T HAT DAY AND IT WOULD BE , I T HI NK , CERTAINLY AROPRIATE TO ALLOW FOR A FAX O R A N E MAIL CON FIRMATION BY THE CHAIR O F THE COMMITTEE TO A RO VE T HE C OMPLAINT, RATHER THAN REQUIRING A SIGNATURE.

LET ME A SK , I W OU LD STA RT WITH 3 -5.1 , A ND O N T HE R UL E HAVING TO DO W IT H DISCIPLINARY DIS BARM ENT O N CONSENT AS O OSED T O RESIGNATION . NOW , P RE SE NTLY ALL RES IGNATIONS D O N OT P REVE NT THE PERSON FROM R EA LY IN G FOR F IV E Y EARS W HERE D ISBA R MEA NT DOES. IS THA T INT ENDE D T O B E A CHANGE HERE?

I DON'T BELIEVE THERE IS ANY CHANGE .

IF IT IS A DISBARMENT ON CONSENT?

THAT'S CORRECT.

THAT WOULD BE A FIVE YEARS BEFORE THE PERSON COULD REPLY , CORRECT?

THAT'S CORRECT. THE RULES, WHICH REFER TO DISCIPLINARY RESIGNATION ALL MAKE COMMENT AS WELL AS THE COURT'S RULINGS IN CASES WHERE THERE IS AN ACCEPTANCE OF A DISCIPLINARY RESIGNATION , ALWAYS QUOTE AND POINT OUT THAT IT IS THE FUNCTIONAL EQUIVALENT OF A DISBARMENT OR AN AMOUNT TO A DISBARMENT.

WE'VE BEEN DOING THAT FOR THE LAST COUPLE OF YEARS, I UNDERSTAND, BUT WE'VE NEVER CROSSED THIS BRIDGE AS TO WHETHER IN EVERY INSTANCE OF A DISCIPLINARY RESIGNATION WE ARE GOING TO NOT ALLOW THE PERSON TO REPLY FOR FIVE YEARS, BUT IS IT THE BAR'S UNDERSTANDING THAT THIS WOULD CROSS THAT BRIDGE?

THAT'S CORRECT.

IS THAT CORRECT , MR. COX ? OKAY. LET ME ASK IN RESPECT TO 3-7.6.

JUST SO I JUST WANT TO MAKE SURE BECAUSE I DIDN'T KNOW IF JUSTICE BELL WAS JUST DEALING WITH THAT ONE RULE AND THEN I THOUGHT WE WOULD HAVE MR. WEISS AND THEN HAVE HIM COME BACK UP. DID YOU WANT TO FOLLOW UP JUST ON THIS ISSUE? WHAT HIS RESPONSE WAS ABOUT THE SIGNATURE THAT THERE WOULD BE SOME WRITTEN CONFIRMATION?

MY ONLY CONCERN IS THAT THE COMMISSIONS OR COMMITTEES HAVE COCHAIRS. IT JUST SEEMS UNUSUAL IN EVERY PROCESS OR PROCEDURE I'VE EVER BEEN IN IN A PROFIT CORPORATION OR WHATEVER, AND EXCEPT MY REAL ESTATE LAWYER BACKGROUND BUT I LIKE STUFF IN WRITING OR WHEN PETITIONS ARE FILED , ANYTHING WE FILE IN COURT IS ALWAYS TYPICALLY SIGNED OR VERIFIED BY SOMEONE IN AUTHORITY . AND THAT JUST SEEMS IN THIS DAY AND AGE I JUST DON'T SEE WHY THAT IS SUCH OF A PROBLEM AND IT IS SOMEWHAT OF A PROTECTION TO MAKE SURE THAT IT IS , INDEED , THE -- SO WHO IS GOING TO BE DRAFTING THE DOCUMENTS THAT YOU ARE GOING TO BE RECEIVING BUT NOT SIGNED BY THE CHAIRMAN?

WELL, THE BAR COUNSEL WOULD BE DRAFTING THOSE. THE BAR COUNSELS REPRESENTING THE VARIOUS CIRCUIT GRIEVANCE COMMITTEES.

WHEN YOU MENTIONED FACTS, I MEAN IF SOMEONE SIGNS IT AND FAXES IT , THEY CAN FOLLOW UP BY SENDING -- SO I MEAN COULDN'T THAT BE DONE UNDER THE CURRENT RULE ?

THAT'S TRUE . IT IS NOT ANTICIPATED THAT THE PROCESS IS SEEKING TO AVOID SIGNATURES AT THIS POINT IN TIME. IT IS JUST SETTING UP FOR THOSE OCCASIONS WHEN THERE MAY BE SOMEONE TRAVELING OUT OF COUNTRY OR SOMETHING, THEY CAN EMAIL GIVE SOME KIND OF A ROVALT THAT IS SHORT OF AN ACTUAL PHYSICAL SIGNATURE.

I GUESS MY CONCERN IS THAT CHECK AND BALANCE BETWEEN THE INDEPENDENT GRIEVANCE COMMITTEE AND BAR COUNSEL THAT THERE BE ACTUALLY THE BAR COUNSELS PREPARING IT ON BEHALF OF THE COMMITTEE, YOU WOULD THINK SOME MEMBER OF THE COMMITTEE WOULD ACKNOWLEDGE IN WRITING, AND IT SEEMS BY THE BY THIS DELETION YOU MAY SAY THAT'S WHAT YOU ARE GOING TO DO BUT IT IS NOT NECESSARILY REQUIRED, IS IT?

I WOULD A GREE , B U T T H E I N P R A C T I C E I W O U L D - - H A V I N G B E E N O N A G R I E V A N C E C O M M I T T E E A N D V I C E C H A I R E D O N E T H A T W O U L D C E R T A I N L Y B E W H A T E V E R Y O N E W O U L D T R Y T O D O B U T T H I S A L L O W S F O R U N U S U A L C I R C U M S T A N C E T H A T M I G H T O C C U R F O R T H E R E T O B E A W A Y T O C O M M E N C E T H E P R O C E S S , T H E C O M P L A I N T P R O C E S S W I T H O U T S E E K I N G T H E A C T U A L S I G N A T U R E .

O K A Y . W H A T I W A N T T O D O H E R E I S L E T M E J U S T S O W E H A V E T H I S . L E T ' S J U S T S O W E K N O W A N D T H E B A R K N O W S , J U S T I D I D N ' T W A N T T O S T O P J U S T I C E W E L L S , J U S T I F Y O U C O U L D J U S T T E L L U S A N D T H E N T H E B A R T H E O T H E R R U L E S T H A T Y O U H A V E A C O N C E R N W I T H A N D J U S T I C E Q U I N C E .

W H A T I W A N T E D T O F O L L O W U P O N , O N T H E P R E V I O U S R U L E , 3-5.1, S I N C E W E A R E C H A N G I N G I T T O F I V E - Y E A R B E F O R E Y O U C A N R E A L Y A S O O S E D T O T H E T H R E E Y E A R S T H A T W A S I N T H E P R E V I O U S R U L E , W A S T H A T R E A L L Y D I S C U S S E D ? B E C A U S E I A L W A Y S A S S U M E D T H A T I T H A D T H E T H R E E - Y E A R P R O V I S I O N B E C A U S E I T M I G H T F A C I L I T A T E P E O P L E A C T U A L L Y A G R E E I N G T O T H E D I S C I P L I N A R Y R E S I G N A T I O N A S O O S E D T O T H E B A R H A V I N G T O G O T H R O U G H T H E W H O L E P R O C E D U R E O F A D I S B A R M E N T . S O W A S T H A T C O N S I D E R E D W H E T H E R Y O U D E C I D E D T O C H A N G E T H E R U L E T O D I S B A R R M E N T O N C O N S E N T A N D M A K E I T A F I V E - Y E A R P E R I O D ?

W H Y D O N ' T W E J U S T L E T M R . B O G G S , W H Y D O N ' T Y O U J U S T C O M E U P A N D R E S P O N D T O I T ?

W E D I D , I N F A C T , D I S C U S S T H A T A N D W E D I R E C T L Y C O N S I D E R E D I T . W E W E R E M A K I N G T H I S M O R E T H A N T A N T A M O U N T T O D I S B A R M E N T B U T T H E S A M E A S D I S B A R M E N T B U T A L L O W I N G I T T O B E B Y C O N S E N T S O I T W O U L D R E L A T E T O S O M E O N E W H O W A N T E D T O B E A B L E T O S A Y I Q U I T O N M Y O W N O R O F M Y O W N V O L I T I O N .

S O T H E D E C I S I O N W A S T H A T T H E B A R W A S N O T - - B E C A U S E T H E S E A R E U S U A L L Y T H E M O R E E G R E G I O U S S I T U A T I O N S , T H E B A R W A S N O T I N T E R E S T E D I N T H E R E T H E Y C O U L D V O L U N T A R I L Y D O A T H R E E - Y E A R S U S P E N S I O N B U T T H E R E W O U L D N ' T B E S O M E T H I N G W H E R E Y O U C O U L D B E D I S B A R R E D A N D C O U L D R E A L Y I N T H R E E Y E A R S ?

O U R I N T E N T W A S T O M A K E T H I S M O R E T H A N T A N T A M O U N T T O B U T T O M I R R O R D I S B A R M E N T .

I S I T I M P O S S I B L E U N D E R Y O U R E X I S T I N G S Y S T E M A S W E D O N O W , T H A T I N A P A R T I C U L A R C A S E I T C O U L D B E N E G O T I A T E D F O R L E S S T H A N T H E F I V E Y E A R S ? W O U L D T H A T N O W B E I M P O S S I B L E ?

D I S B A R M E N T W O U L D N O T B E A B L E T O B E F O R L E S S T H A N F I V E Y E A R S B E C A U S E T H E R U L E S A Y S I T I S F O R A M I N I M U M O F F I V E Y E A R S O R A L O N G E R P E R I O D O F T I M E .

W E S E E T H A T T I M E G O I N G U P T O S E V E N A N D L O N G E R .

Y E S , S I R .

B U T B E F O R E D I D W E N O T H A V E T H E O O R T U N I T Y , T H E F L E X I B I L I T Y F O R T H A T P L E A D I N G K I N D O F P R O C E S S T O D O A D I S C I P L I N A R Y R E S I G N A T I O N B U T B E F O R A S H O R T E R P E R I O D O R W A S T H A T A L W A Y S A U T O M A T I C T H R E E Y E A R S ?

T H R E E Y E A R S W A S T H E M I N I M U M Y E A R S .

T H E R E I S S T I L L N O T H I N G T O P R E V E N T T H E L A W Y E R A N D T H E B A R F R O M S T I P U L A T I N G B E F O R E A R E F E R E E T O A T H R E E - Y E A R S U S P E N S I O N A S T H E P R I M A R Y D I S C I P L I N E I M P O S E D ; I S T H A T C O R R E C T ?

THAT I S CORRECT. I WOULD SAY TO YOU , THOUGH , YOUR HONOR, THAT I N T H E C A S E S W H E R E D I S B A R M E N T W A S A P R O P R I A T E , W E W O U L D M O R E T H A N L I K E L Y N O T B E W I L L I N G T O D O T H A T , B U T W E W O U L D B E A B L E T O N E G O T I A T E T H E T H R E E - Y E A R S U S P E N S I O N I N A P R O P R I A T E C A S E S , Y E S , S I R .

ARE THERE ANY OTHER R U L E S T H A T .

I HAVE A Q U E S T I O N O N R U L E 3-7.10. WHICH IS THE R E I N S T A T E M E N T A N D R E A D M I S S I O N P R O C E D U R E S , A N D T H E N E W S U B D I V I S I O N 5 E V I D E N C E O F T R E A T M E N T O R C O U N S E L I N G F O R D E P E N D E N C Y F O R O T H E R M E D I C A L R E A S O N S . A R E Y O U P R E P A R E D T O A D D R E S S T H A T ?

YES.

M Y Q U E S T I O N I S : I T S E E M S L I K E T H E R U L E I S D E S I G N E D S O T H A T W H E N S O M E O N E I S S U S P E N D E D A N D A S P A R T O F T H E R E H A B I L I T A T I O N N E E D S T O U N D E R G O M E D I C A L O R P S Y C H O L O G I C A L T R E A T M E N T , T H A T T H A T P E R S O N W A I V E S A N Y C O N F I D E N T I A L I T Y I N T H A T T R E A T M E N T , B U T T H E R E M A Y B E C I R C U M S T A N C E S W H E R E A L A W Y E R W H O I S S U S P E N D E D F O R A N O T H E R R E A S O N A N D H A S N O P A R T O F T H E R E H A B I L I T A T I O N R E Q U I R E M E N T T O A T T E N D C O U N S E L I N G O R S O M E T H I N G E L S E , D O E S , I N D E E D , H A V E A P R O B L E M I N T H A T R E G A R D A N D W A N T S T O O B T A I N C O U N S E L I N G A N D I T S E E M S T H A T I T W O U L D C H I L L L A W Y E R S F R O M O B T A I N I N G C O U N S E L I N G I N T H A T C I R C U M S T A N C E B E C A U S E T H E N H E W A I V E S A N Y C O N F I D E N T I A L I T Y I N T H O S E R E C O R D S .

R E C O G N I Z I N G T H A T M A Y B E T H E C A S E , I T H I N K T H E P O L I C Y A R G U M E N T O N T H E P A R T O F T H E B A R I S T H A T I F I T I S P E R T I N E N T T O A D M I S S I O N I T I S P E R T I N E N T T O R E A D M I S S I O N , A N D T H A T T H E R E - - W E W O U L D N O T W A N T T O B E F O R E C L O S E D I N T H A T S I T U A T I O N W H E R E T H E I N D I V I D U A L S E E K I N G R E A D M I S S I O N D E V E L O P E D - - D E V E L O P E D T H A T C A U S E D T H E C O N C E R N S I N R E G A R D T O T H E I R M E N T A L H E A L T H O R A L C O H O L I S M O R D R U G D E P E N D E N C Y , T H A T W E W O U L D B E F O R E C L O S E D F R O M O B T A I N I N G I N F O R M A T I O N I N T H A T R E G A R D W H I C H W E T H I N K W E O U G H T T O B E A B L E T O F O R T H E G O O D O F T H E P U B L I C .

I S T H A T I N F O R M A T I O N R E Q U I R E D O N I N I T I A L A D M I S S I O N O R T H A T W A I V E R ?

I B E L I E V E S O .

A R E T H E R E O T H E R M E D I C A L R E A S O N S ? I S T H A T P A R T ? I M E A N , I S T H A T N E W L A N G U A G E O R I S T H A T P A R T O F T H E E X I S T I N G L A N G U A G E W H E N Y O U A D M I T ? I T S E E M S T O M E T H A T ' S P R E T T Y B R O A D .

M R . B O G G S I S W H I S P E R I N G T H A T I T I S C O N S I S T E N T W I T H T H E A D M I S S I O N S T A N D A R D S .

S O A N Y M E D I C A L R E A S O N I S H A S T O B E - -

A L W A Y S H A S T O B E R E L E V A N T T O T H E P R A C T I C E . I T C A N ' T J U S T B E F O R A N Y M E D I C A L R E A S O N . I T H A S T O T I E I N T O T H O S E F A C T O R S T H A T A R E R E L E V A N T A N D A F F E C T T H E I R A B I L I T Y T O P R A C T I C E .

I F I U N D E R S T A N D W H A T Y O U A R E S A Y I N G , S O M E O N E W H O I S S E E K I N G T O B E A D M I T T E D T O T H E P R A C T I C E O F L A W H A S T O W A I V E C O N F I D E N T I A L I T Y A N D A N Y M E D I C A L R E C O R D S T H A T M A Y H A V E A N A F F E C T O N T H E A B I L I T Y T O P R A C T I C E L A W ?

T H A T ' S M Y U N D E R S T A N D I N G , T H A T ' S C O R R E C T .

A N D T H A T ' S W I T H O U T A N Y E V I D E N C E T H A T T H E R E M A Y B E A N Y A C C U S A T I O N F I L E D ?

MR. BOGGS?

MR. BOGGS, AGAIN, I WILL TAG TEAM WITH HIM ON THAT.

THAT'S FINE, YES.

OR IS THAT THROUGH THE BAR KPA -- EXAMINE R PROCESS.

IF THERE ARE ISSUES THAT ARISE THAT GIVE INFORMATION TO THE BOARD OF BAR EXAMINERS THAT THERE MAY BE A FITNESS TO PRACTICE ISSUE THEY DO ENGAGE IN SOME KIND OF DISCOVERY ON THAT LIMITED BASIS. THAT'S WHERE CONDITIONAL ADMISSION COMES FROM. IF IT IS RELEVANT TO THE ISSUE OF REINSTATEMENT AND REHABILITATION IT SHOULD BE ALLOWABLE, BUT IT SHOULD BE RESERVED, CONFIDENTIALITY SHOULD BE RESERVED AND THAT PART OF THE RECORD BE SEALED AND THAT'S THE REFERENCE TO THE OTHER PROVISION IN THE RULE. IT IS NOT THAT WE WOULD PUBLIC SOMEONE'S MEDICAL HISTORY, BUT IF IT WAS RELEVANT THIS COURT SHALL CONSIDER IT AND THE MEDICAL TESTIMONY SHALL BE PRESERVED FROM A PRIVATE PER SPECI VE.

SOMEONE WHO IS SUSPENDED AND THE BAR HAD NO EVIDENCE AND DID NOT ACCUSE THE ATTORNEY OF HAVING ANY KIND OF SUBSTANCE ABUSE PROBLEM, BUT THERE WERE SOME OTHER ETHICAL ISSUES, AND IS SUSPENDED, AND THE ATTORNEY THEREAFTER REALIZES HE DOES HAVE A SUBSTANCE ABUSE PROBLEM, THAT HE BE ENCOURAGED TO SEEK ASSISTANCE WITHOUT THEN OPENING UP HIS RECORDS TO PUBLIC VIEW.

BUT, AGAIN, IF IT IS RELEVANT TO THE ISSUE OF THAT LAWYER'S FITNESS TO RESUME THE PRACTICE OF LAW IT SHOULD BE APPROPRIATE FOR THIS COURT TO ULTIMATELY CONSIDER IT WITH REASONABLE PROTECTIONS SO IT IS NOT PUBLISHED PUBLICLY, AND THAT'S WHY, AGAIN, WE ASK THAT ANY CONFIDENTIALITY OF THOSE RECORDS BE PRESERVED WHETHER IT BE PART OF THE RECORD THAT THIS COURT COULD AND SHOULD REVIEW BECAUSE THE PURPOSE BEHIND THE REINSTATEMENT PROCEEDING IS FOR THE PROTECTION OF THE PUBLIC.

I WOULD GO TO 3.3 - 3-7.6 AND THAT PROVISION IN WHICH THE PROPOSAL IS TO DELETE THE REQUIREMENT THAT THE REFEREE SERVE A COPY OF THE RECORD ON THE BAR, ALONG WITH THE REFEREE'S REPORT, AND THE BAR COUNSEL MAKE A COPY AVAILABLE TO OTHER PARTIES, THAT PROVISION, BUT WHAT'S ENVISIONED HERE AS TO WHO IS GOING TO MAKE THIS RECORD AVAILABLE? OUR CLERK'S OFFICE OR WHO IS GOING TO MAKE IT AVAILABLE?

BOTH PLACES, I WOULD ASSUME THAT THE CLERK OF THE COURT AND ALSO THE BAR, BUT THIS -- THE INTENT OF THIS PARTICULAR RULE IS TO JUST RELIEVE THE RESPONSIBILITY FROM THE REFEREE. AND SO

BUT SHOULDN'T WE MAKE SURE THE NIT IS THE BAR'S RESPONSIBILITY AS OPPOSED TO OUR CLERK'S RESPONSIBILITY.

YES, WE DO, AND THAT'S -- I AGREE THE BAR HAS THAT RESPONSIBILITY. BUT IT IS SIMILAR TO AN AEAAL WHERE WE WOULD SEEK TO, YOU KNOW, YOU HAVE TO MAKE DIRECTIONS AND SO FORTH TO GET THOSE VARIOUS DOCUMENTS, THE TRANSCRIPTS AND SO FORTH ROUTED AROUND. WE JUST DON'T WANT TO SADDLE THE REFEREE WITH THIS PARTICULAR RESPONSIBILITY.

IS THE BAR RESPONSIBLE FOR AN INDEX TO THE RECORD SO THAT THE RESPONDENT'S COUNSEL KNOWS, CAN ASCERTAIN WHAT'S IN THE RECORD AND MAKE SURE THAT EVERYTHING THAT SHOULD BE IN THERE IS IN THERE?

WELL, I DON'T THINK THAT'S THE BAR'S RESPONSIBILITY. I BELIEVE THAT WOULD BE THE COURT

THERE IS NOTHING IN THE RULE CURRENTLY THAT TALKS ABOUT RESPONSIBILITY BY ANY PARTY, BUT THE REFEREE INDEXES IT TO THE EXTENT IT IS INDEXED AND THE CLERK SAYS IT IS VERY Seldom THAT IT REALLY IS.

THAT'S A WHOLE OTHER STORY ABOUT THE WAY THAT BAR RECORDS COME UP, AND ONE DAY WHEN WE -- IF WE CAN GET RID OF SOME OF THIS PAPER, YOU KNOW, THAT THIS MAY BE EXACTLY THE AREA WHERE ELECTRONIC FILING MAY ACTUALLY BE OF ASSISTANCE TO EVERYBODY.

AS A PRACTICAL MATTER HERE, THE BAR ALREADY HAS A COPY OF EVERYTHING THAT'S IN THE RECORD OR SHOULD, SO THERE IS NO NEED FOR THE REFEREE TO MAKE ANOTHER COPY AND WE ALSO HAVE A RESPONSIBILITY TO RESPOND TO PUBLIC RECORDS INQUIRIES, WHICH WE WILL CONTINUE TO HAVE EVEN IF THIS RULE IS AMENDED.

YOU WANTED TO CLARIFY THAT IT IS AGAIN, I THINK WE WERE JUST CONCERNED.

THIS DOES NOT CHANGE OUR RESPONSIBILITY TO RESPOND TO PUBLIC RECORD INQUIRIES, INCLUDING INQUIRIES FROM RESPONDENT'S COUNSEL WHEN THEY SAY CAN YOU PROVIDE ME WITH A COPY OF THE RECORD.

SO IT IS STILL THE BAR RESPONSIBILITY TO MAKE AVAILABLE A COPY TO THE OTHER PARTY?

THAT'S CORRECT, AND IF WE ARE THE DEALING PARTY, A SEPARATE RULE REQUIRES US TO SERVE COPIES OF THE TRANSCRIPTS THAT ARE NOT PART OF THE RECORD, ON THE LOSING PARTY.

SO WHY DO WE DELETE THAT LAST SENTENCE THAT SAYS BAR COUNSEL WILL MAKE A COPY OF THE RECORD AS FURNISHED AVAILABLE TO OTHER PARTIES AVAILABLE ON REQUEST AND PAYMENT FOR ACTUAL COSTS OR REPRODUCTION?

IT IS REDUNDANT.

O KAY.

ANY OTHER -- CAN WE HEAR FROM MR. WEISS IN A MINUTE?

ARE WE GOING TO BE O KAY IF WE DELETE 3-7.12 BEFORE WE GET THE REVISION OF 3.3-7.2?

YES, SIR, BECAUSE IN 12 YOU ARE JUST DELETING DISCIPLINARY RESIGNATION. IF YOU IMPOSE THE DISBARMENT ON CONSENT CHANGE YOU CAN DELETE THAT LANGUAGE.

SO IT DOESN'T MAKE ANY DIFFERENCE?

NO, SIR.

O 7.2?

NO, SIR.

LET ME SEE IF THERE IS ONE MORE.

WHY DON'T WE HEAR FROM THE OTHER SIDE WHILE I LOOK?

I'VE BEEN THINKING THIS WEEK ABOUT OUR WAY THAT WE , AGAIN, WE HEAR THESE CASES AND WHETHER WE COULD DO A BETTER JOB IF WE HAD SOMETHING A LITTLE MORE INTERACTIVE AND INFORMAL , ESPECIALLY ON SOME OF THESE TECHNICAL CONCERNS , SO MAYBE WE CAN DISCUSS THAT. MR. WEISS?

I PREPARED A LIST OF QUESTIONS TO ASK MR. COX AND THEY DON'T HAVE ANYTHING TO DO WITH THE RULES .

AND HE IS NOT UNDER OATH. THAT'S THE PROBLEM .

I WAS TELLING TONY AND PAUL HILL WHEN I FIRST WALKED UP HERE AND FEEL LIKE THE SPARTAN FROM THE ROMPOLI. I DID LEARN THIS MORNING THAT 3-7.2 IS OFF THE TABLE CHB LT THAT'S THE FELONY CONVICTION RULE. THAT'S THE MAIN REASON WHY I WAS HERE.

AND WE HOPE THAT , YOU KNOW, BECAUSE THE COURT HAS BEEN CONCERNED AS TO HOW THE PROCESS GOES IN THESE EMERGENCY SUSPENSIONS AND WHAT THE EFFECT IS OF FILING SOMETHING THAT WHEN THOSE - - THAT PACKAGE IS TOGETHER , WE , YOU KNOW , LOOK FORWARD TO YOUR INPUT.

WELL , TONY AND I WERE TALKING ABOUT THIS INFORMALLY A FEW MINUTES AGO , AND MY CONCERNS ABOUT THE FELONY SUSPENSION RULE BE ALLEVIATED IF THERE IS A REQUIREMENT FOR THE BAR TO FILE FORMAL PROCEEDINGS THEREAFTER AND THAT'S MY BIGGEST CONCERN.

I WOULD BE ONE THAT WOULD BE VERY RECEPTIVE TO THAT IDEA, BECAUSE I THINK THAT'S WHERE THE PROBLEM COMES IN. SO NOW ON THIS - - YOUR MAIN OTHER THING THEN IS THE DISBARMENT ON CONSENT?

YES.

OF COURSE YOU REPRESENT A LOT OF

I WILL TAKE ABOUT TEN SECONDS. I THINK THAT THE PUBLIC AND PRESS IS CONFUSED BY DISCIPLINARY RESIGNATION THEY ARE GOING TO BE CONFUSED BY DISBARMENT ON CONSENT AND IT IS PRETTY MUCH THAT SIMPLE.

BUT LET ME - - YOU HAVE SAID THAT THERE IS A STIGMA THAT YOUR CLIENT MIGHT AGREE TO A DISCIPLINARY RESIGNATION NOT THE DISBARMENT ON CONSENT SO OBVIOUSLY IN THEIR MIND IT IS SAYING SOMETHING MORE THAN A DISCIPLINARY RESIGNATION?

ABSOLUTELY. I COULD NOT FIND THE CASE AND THIS COURT HAS ACKNOWLEDGED THAT THE DIFFERENCE IS THE ALTERNATIVE . THAT IS NOT A WORD I USE ALL OF THE TIME. AND I WOULD BELIEVE THAN CANDID WITH THIS COURT IF I SAID THIS IS AN ISSUE THAT'S IN FRONT OF ME ALL OF THE TIME. WE'RE LOOKING AT ONCE EVERY OTHER YEAR OR SO. THIS IS A POLICY DECISION ON WHETHER WE ELIMINATE THE THREE-YEAR OPTION . BEFORE THE LAWYERS HAVE THE OPTION FOR A DISCIPLINARY RESIGNATION FOR THREE YEARS THE DISBARMENT FOR CONSENT WILL UP THAT TO FIVE YEARS . THAT'S A POLICY DECISION. THERE IS NO ARGUMENT ON MY PART THERE .

BECAUSE WHEN I FIRST SAW THESE, YOU KNOW, THE ONES THAT USUALLY WHERE WE WERE GETTING THEM ARE REALLY SOMETIMES THE WORST OF THE WORST, AND SO FOR THE MOST SORT OF HAVE SOMETHING THAT DOES, I THINK, IN THE PUBLIC'S EYE, DOES SOUND DISCIPLINARY RESIGNATION TO ME IS WE HAVE HAD TO SAY IT IS TANTAMOUNT TO DISBARMENT.

I UNDERSTAND THAT . AND THIS IS ONE AGAIN A POLICY DECISION. I UNDERSTAND COMPLETELY THAT DISCIPLINARY PROCEEDINGS ARE TO SOME EXTENT PUBLIC TRUST IN THE SYSTEM, AND I UNDERSTAND THAT COMPLETELY. IF YOU ALL ARE GOING TO DO THAT, DO AWAY WITH DISCIPLINARY RESIGNATION WHY EVEN BOTHER TO HAVE DISBARMENT ON CONSENT. JUST LEAVE IT, WE DON'T HAVE PUBLIC REPRI-MAND OR CONSENT , SUSPENSION ON CONSENT . WHY HAVE DISBARMENT ON CONSENT. JUST MAKE IT DISBARMENT.

IT REMAINS TO BE SEEN WHETHER IT WILL EVEN BE USED IF THERE IS NO GAIN TO BE RESPONDED FROM GOING TO A HEARING, EVIDENTIARY HEARING AND PUTTING THE BAR TO ITS PROOF.

ABSOLUTELY , JUSTICE CANTERO , AND I WILL BE HONEST WITH THIS COURT I PROBABLY NEGOTIATE OUT A SETTLEMENT ON THREE-QUARTERS OF MY CASES . AWHILE AGO I WAS BEING ASKED CAN YOU SETTLE NEGOTIATE IT THREE -YEAR SUSPENSION VERSUS DISBARMENT. THE DISTINCTION THERE IS NOT A LINE IN THE SAND. I MEAN, IT IS A MATTER OF THE COMPROMISE BETWEEN A ONE YEAR OR EVEN A 91- DAY SUSPENSION AND THREE YEARS IS A LOT EASIER TO REACH IN THAT COMPROMISE BETWEEN THREE YEARS AND DISBARMENT. THE DISCIPLINARY RESIGNATION IS A WAY FOR A LAWYER TO GET OUT AND FRANKLY SAVE FACE IN SOME INSTANCES AND IT IS THAT SIMPLE.

I JUST HAVE A RELATED QUESTION. WE DO 90 DAYS AND 91 , WE ARE TALKING ABOUT THE PUBLIC. 91 NEVER MEANS 91.

ABSOLUTELY.

WHAT'S YOUR EXPERIENCE AS TO WHAT 91 USUALLY MEANS ?

I HAD THAT CONVERSATION YESTERDAY WITH A CLIENT. I TELL CLIENTS IF YOU ARE SUSPENDED FOR 90 DAYS YOU ARE BACK IN BUSINESS ON THE 91ST DAY. IF YOU ARE SUSPENDED FOR 91 DAYS, IT IS A MINIMUM OF NINE MONTHS , POSSIBLY AS LONG AS A YEAR . SO 90 DAYS IS 90 DAYS. 91 DAYS IS NINE MONTHS TO A YEAR. I THINK THE FASTEST REINSTATEMENT I HAVE EVER HAD IN 30 YEARS ON EITHER SIDE OF THE FENCE WAS FIVE MONTHS .

THAT'S PRETTY MUCH WELL-KNOWN, IS IT NOT?

YES, SIR.

AND SO WE'RE SIMPLY DEALING, THE COURT IS WELL AWARE, OF COURSE?

CERTAINLY.

WHEN WE MAKE THAT 91.

AND FREQUENTLY IN A WAY IT CAN ADVANTAGE TO HAVE THAT LINE OF DEMARCATION THERE IS BECAUSE , YOU KNOW , FREQUENTLY THE BAR SAYS I DON'T REALLY CARE WHETHER IT IS 91 DAYS OR SIX MONTHS , YOU KNOW, WE WANT THAT PROOF OF REHABILITATION IN THE RE. SO I UNDERSTAND THAT LINE OF DEMARCATION .

YOUR CLIENT IS HAPPIER TO GET 91 THAN SIX MONTHS EVEN THOUGH THE PRACTICAL EFFECT?

HAY IS NEVER A WORD THAT'S RELEVANT HERE .

HAPPYER ?

LESS D IS SATISFIED IS THE WORD. THERE HAVE BEEN MANY AN OCCASION WHERE I HAVE URGED THE CLIENT TO TAKE 91 DAYS AND LET'S START WORKING ON THE POSITIVE AND GET RID OF THE NEGATIVE, BUT IN ANSWER TO YOUR DIRECT QUESTION, MA'AM, 91 DAYS SUSPENSION, IT WILL BE A VERY RARE OCCASION WHEN IT IS LESS THAN NINE MONTHS?

THANK YOU VERY MUCH FOR BEING HERE AND ALWAYS, YOU KNOW, SOMEONE OF YOUR STATURE TO BE IN BOTH SIDES IS ALWAYS VERY HELPFUL TO THE COURT.

THANK YOU VERY MUCH.

ALL RIGHT. I GUESS WE HAVE A FEW MINUTES FOR WHOEVER WANTS TO MR. PARKER, OR MR. COX, ALL RIGHT.

JUSTICE WELLS CAN ASK THOSE QUESTIONS.

I JUST WANT TO MAKE ONE OBSERVATION ABOUT THE DISTINCTION BETWEEN A RESIGNATION AND DISBARMENT ON CONSENT.

THERE ARE NOW OVER 76,000 MEMBERS OF THIS BAR AND IT DOESN'T TAKE A HANDFUL TO DO A TREMENDOUS DAMAGE TO THE REPUTATION.

YOU SAID A DISBARMENT ON CONSENT IS GOING TO BE USED IF THERE IS NO NET GAIN TO THE RESPONDENT FROM HAVING A DISBARMENT ON CONSENT NOW, OTHER THAN GOING -- OR GOING TO TRIAL TO THE HEARING?

WELL, TIME WILL TELL, BUT I HAD THOUGHT THAT WHEN THIS COURT EACH TIME SAID WHEN IT PUBLISHED THE DISCIPLINARY RESIGNATION THAT THIS WAS TANTAMOUNT TO DISBARMENT THAT IT WOULD ALSO CHILL ANYBODY'S WILLINGNESS OR INTEREST IN GOING THROUGH THE PROCESS.

I GUESS THE DIFFERENCE THERE WAS IT WAS A THREE YEAR VERSUS A FIVE YEAR.

BUT THERE ARE A GREAT MANY THAT ARE LONGER THAN THREE. SGLU ARE SAYING THAT THE FLORIDA BAR IS SORT OF MAKING A DECISION, THEY ARE WILLING TO GIVE UP DISCIPLINARY RESIGNATION, THAT IS DISBARMENT WITH GETTING BACK IN THREE YEARS, BECAUSE YOU ARE SEEING THAT THOSE ARE THE VERY SMALL PERCENTAGE THAT ARE THE MOST EGREGIOUS AND DON'T, WOULD JUST AS SOON PROSECUTE IF THEY ARE NOT GOING TO AGREE TO IT.

YES, AND IT IS ANECDOTAL BUT THE INSTANCES IN THE LAST FEW YEARS WHERE WE HAVE HAD LAWYERS WHO STEAL FROM A CLIENT AND THEN EXPLAIN TO THE PUBLIC THAT THE LAWYER RESIGNED. YOU DON'T HAVE THE OPPORTUNITY TO GO THROUGH THIS LENGTHY EXPLANATION THAT IT WAS A RESIGNATION AND THE SUPREME COURT TREATS IT AS TANTAMOUNT TO DISBARMENT. THE BAR JUST MADE A POLICY DECISION NOW, GIVEN THE CURRENT CIRCUMSTANCES THAT WE ARE WILLING TO RISK THE RESOURCES IF IT IS NECESSARY, IF PEOPLE DON'T ACCEPT DISBARMENT UPON CONSENT AND DO WHAT WE HAVE TO DO WITH THOSE LAWYERS WHOSE CONDUCT IS EGREGIOUS.

WHY IS MR. WEISS, SINCE YOU CAN HAVE A STIPULATION TO ANYTHING, WHY EVEN HAVE THAT CATEGORY? MR. BOGGS WAS SEEMING TO SAY THAT'S STILL A LITTLE SAVE FACE IF I COULD SAY DISBARMENT AND I CONSENTED TO IT THAT THAT IS SOMEHOW BETTER THAN A STIPULATED DISBARMENT.

BECAUSE HIS PREDICTION MAY NOT BE TRUE. WE MAY NOT PREDICT IT THE SAME WAY. ONE MAY BE RIGHT AND ONE MAY BE WRONG. I SUSPECT A NUMBER OF LAWYERS WILL AGREE TO DISBARMENT UPON CONSENT WHEN WE CAN STOLE THAT THEY STOLE A TREMENDOUS

AMOUNT OF MONEY OR COMMITTED CRIMES AND ARE GOING TO END THE PROCESS AND NOT GO THROUGH THE DISCIPLINARY PROCESS.

THIS WAS CLEARLY PART OF THE CONCERN OF THE COURT. THAT IS, TO SEE THE SEVERELY SERIOUS CASES, AND I THINK THAT'S WHAT GAVE RISE TO THE LANGUAGE THAT WE STARTED PROVIDING THERE. YOU NEVER KNOW EXACTLY WHO PAYS ATTENTION AND WHETHER THE PUBLIC, YOU KNOW, PERCEPTION, YOU KNOW, BUT YET FOR THE COURT TO SALLOW ONE OF THOSE THINGS SORT OF WITH THE ANALOGY OF THE EMPLOYEE, YOU KNOW, SOME PLACE UNDER FIRE AND ALL ANYBODY KNOWS IS THAT THAT PERSON RESIGNED AS OUSED TO WAS FIRED, YOU KNOW, FOR SERIOUS, YOU KNOW, MISCONDUCT, THAT - - THE PUBLIC MAY BE READING ON THE ONE HAND THERE ARE THE ALLEGATIONS OF STEALING A MILLION DOLLARS OR WHAT EVER, AND THEN THEY SEE ON THE OTHER HAND AND THE SIMPLE EXAMPLE, AT LEAST, THAT THE PERSON WAS SIMPLY ALLOWED TO RESIGN, AND NOT UNDERSTANDING THE ORIGINAL MOTIVATION THAT INSTEAD WAS TO PROTECT THE - - INDEED WAS TO PROTECT THE PUBLIC BY HAVING THAT LAWYER OUT OF THERE AS SOON AS POSSIBLE, INCLUDING, YOU KNOW, THE DISCIPLINARY RESIGNATION, SO THAT CLEARLY WAS PART OF OUR CONCERN, TOO, AND WE APPRECIATE THE BAR PLAYING IT OUT AND WE APPRECIATE HAVING THE INSIGHT FROM THE OTHER SIDE, YOU KNOW, AS WELL.

THAT LAST POINT AND I WILL CLOSE, GOES TO JUSTICE CANTE RO'S COMMENTS TO THE SPECIAL COMMISSION IN BOCA RATON, WHEN CERTAIN MATTERS COME TO THE COURT WHERE THEY ARE ARGUING FOR DISBARMENT, WHY DID THE BAR NOT SEEK EMERGENCY SUSPENSION IN THE FIRST PLACE AND THAT IS AN ISSUE BEING UNDERTAKEN, BECAUSE ON THE SURFACE THE TWO OUGHT TO GO HAND IN HAND. IF THAT CONDUCT WAS KNOWN BACK AT THE BEGINNING OF THE PROCESS, AND IT WARRANTS THAT ARGUMENT TO THIS COURT AT THE END OF THE PROCESS WERE WERE YOU AT THE FRONT END?

THANK YOU VERY MUCH, MR. COX. MEMBERS OF THE BAR, MR. COX, PARKER, MRS. HILL, HOLCOMB, ARTIGLIERE, MR. TARBERT AND MR. WEISS. THANK YOU FOR YOUR ATTENTION AND I KNOW WHAT KIND OF WORK GOES INTO THE SERULES AND AS YOU CAN SEE FROM THE COURT'S PROBING QUESTIONS WE HAD READ EVERY SINGLE ONE OF THESE RULES AND SO WE DO GIVE IT SERIOUS ATTENTION. THANK YOU VERY MUCH.