

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

In re: Amendments to Florida Rules of Civil Procedure

SC07-173

ALL RISE.

HEAR YE HEAR YE HEAR YE.

SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSES TO PLEA,
DRAW NEAR AND GIVE ATTENTION,
AND YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

>> GOOD MORNING.

>> GOOD MORNING.

>> GOOD MORNING.

>> LADIES AND GENTLEMEN,
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS,
WELCOME TO THE ORAL ARGUMENT
CALENDAR, THE FLORIDA SUPREME
COURT FOR WEDNESDAY, JUNE 6th,
FIRST MATTER FOR CONSIDERATION
ARE PROPOSED AMENDMENTS TO THE
RULES OF CIVIL PROCEDURE,
MR. PARK, READY TO PROCEED.

>> MR. CHIEF JUSTICE, JUSTICES,
GOOD MORNING.

ON BEHALF OF THE CIVIL
PROCEDURE RULES COMMITTEE, I AS
THE CURRENT CHAIR THANK YOU FOR
ALLOWING US TO MAKE A
PRESENTATION ALONG WITH THE
BOARD OF GOVERNORS AND THE BAR,
WE A THANKFUL FOR THAT AND THE
GOOD NEWS IS YOU WON'T HAVE TO
HEAR FROM US AGAIN FOR THE REC
CYCLE REPORT UNTIL 2010.

WITHOUT FURTHER ADO THE CHANGES
WE ARE SUGGESTING AT THIS POINT
IN TIME ARE FAIRLY SIMPLE, SOME
OF THEM ARE GLITCHES WE ARE
ATTEMPTING TO CLEAN UP AND SOME
ARE FORMS, ONE OF THIS FIRST
CATEGORIES THAT ARE INCLUDED,
IS A BROAD CONTEXT, ARE CHANGES
THAT WERE MADE WITH RESPECT TO
WHAT PRESIDENT MILES McGRAIN

ASKED US TO DO REGARDING THE LEGAL NEEDS OF CHILDREN AND SOME OF THE FORMS AND CHANGES WERE MADE WITH RESPECT TO THAT. AND MOST OF THOSE ARE FAIRLY SIMPLE AND NOT CONTROVERSIAL, A COUPLE OF THEM ARE.

I THINK WE HAVE SOME COMMENT WITH RESPECT TO WHY WAS IT NECESSARY TO HAVE PARENTS, YOU KNOW, ATTENDING DEPOSITIONS AND MEDICAL EXAMINATIONS WHEN WE THOUGHT THAT IS KIND OF IMPORTANT AS AN INTIMIDATING ATMOSPHERE AND THOUGHT IT WAS IMPORTANT FOR PROTECTING THE NEEDS OF CHILDREN.

>> THE -- THAT SEEMS ALL ENTIRELY REASONABLE BUT HOW ABOUT GETTING RIGHT TO THE ISSUE ABOUT ACTUALLY SETTING OUT A RULE THAT COMMENTS ON THE EVIDENTIARY REQUIREMENTS OR NOT REQUIREMENTS AT A HEARING ON ATTORNEYS FEES.

>> UN1.526 YOUR HONOR.

>> RIGHT.

THE --

>> LOOKING AT THE RULES, THIS APPEARS TO BE FIRST OF ALL, IN ADDITION TO THE SPECIFIC ISSUE INVOLVED HERE, AT LEAST BY MY OBSERVATION A HIGHLY UNUSUAL PRACTICE OF COMMENTING SPECIFICALLY ON THE EVIDENTIARY REQUIREMENTS, THAT IS, THAT YOU DON'T NEED, FOR INSTANCE, PARTICULAR TYPE OF EVIDENCE AT A HEARING.

SO I'M A LITTLE CONCERNED THAT WE WOULD START MOVEMENT IN A RULE SITUATION AS OPPOSED TO HAVING A COURT LIKE THE 4th DISTRICT FOR INSTANCE OR WHATEVER, SAY, WELL, AS FAR AS WE'RE CONCERNED, YOU NO LONGER HAVE TO HAVE EXPERT TESTIMONY OTHER THAN THE -- PERHAPS, THE LAWYER, THAT IT INVOLVED IN -- THAT IS INVOLVE IN THE MATTER TESTIFY AT A HEARING LIKE THIS AND THEN SEE HOW IT GOES. YOU KNOW, BUT PUTTING IT INTO A RULE SEEMS TO BE A HIGHLY

UNUSUAL WAY TO APPROACH THIS.
THAT IS MY IMPRESSION.
SO YOU NEED TO HELP ME AT LEAST
WITH HOW WE CAN JUSTIFY DOING
THIS IN A RULE.

>> WELL, TO BEGIN WITH, IT GOES
BACK -- AND I THINK JUDGE GROSS
OUT OF THE 4th DISTRICT HAD
COMMENTS WITH RESPECT TO THE
ISLAND HOPPER CASE AND I'M NOT
SURE IF THE COURT IS FAMILIAR
WITH THAT LINE OF QUESTIONS AND
WE MENTIONED WITH RESPECT TO
THE ARTICLE IN THE FLORIDA BAR
AND I THINK THAT ROBERT HOUSER
HAD WRITTEN THIS ARTICLE KIND
OF BASED ON THE ISLAND HOPPER'S
CASE AND WHAT CAME OUT OF THAT
AND THE REALIZATION OUT OF THAT
WAS, ALL KIND OF CAME UP OUT OF
SMOKE, IF YOU WILL WITH THE
LYLE CASE IN 1964, IN WHICH
THAT PRONOUNCEMENT WAS MADE --
>>, YOU KNOW, WE HAVE A PRETTY
GOOD VIEW OF ALL OF THE
BACKGROUND SO I DON'T THINK YOU
REALLY NEED TO EXPLAIN ALL OF
THAT.

IT IS JUST THAT, YOU KNOW, WE
HAVE GONE FROM A GROUP OF
LAWYERS SITTING AROUND AND
TALKING ABOUT THIS AND, YOU
KNOW, READING THAT CASE OR
SOMETHING AND SAYING WHY DON'T
WE GO DIRECTLY TO THE SUPREME
COURT AND GET 'EM TO WRITE A
RULE ABOUT THIS AND THERE IS
WHERE I AM HAVING THE
DIFFICULTY.

THIS DOES NOT APPEAR TO ME TO
BE THE APPROPRIATE TOPIC OF A
RULE.

YOU KNOW, WE HAVE POTENTIALLY
ALL KINDS OF THINGS OUT THERE
OCCURRING.

SOMETIMES IN THESE CLASS-ACTION
LAWSUITS, FOR INSTANCE,
OBVIOUSLY WE HAVE ATTORNEYS
FEES AWARDS THAT -- AND THE
PUBLIC PERCEPTION ARE ENORMOUS,
NOT JUST IN THE PUBLIC
PERCEPTION AND ALL OF OUR
PERCEPTIONS.

WE HAVE SMALL CLAIMS COURT

CASES WHERE THE ATTORNEYS FEES AWARDS ARE ENORMOUS, YOU KNOW, COMPARED TO THE PIP CLAIM, YOU KNOW, THAT MAY HAVE BEEN INVOLVED OR SOMETHING LIKE THAT. AND SO I'M WONDERING IN A -- YOU KNOW, REALLY WHETHER THE WAY HAS YET BEEN PREPARED FOR US TO DO SOMETHING AS DRAMATIC AS THIS IN A RULE AS OPPOSED TO, YOU KNOW, LETTING THIS THING PERCOLATE, 4th DISTRICT OR THOSE JUDGES HAVE A MAJORITY TO RULE THAT, YOU KNOW, WE DON'T -- WE'RE GOING TO RULE DON'T HAVE TO DO THAT ANYMORE AND SOMEBODY GOES TO A HEARING AND SAYS, JUDGE, I'M HERE TO TESTIFY ABOUT MY HOURS AND THE FEES THAT I CHARGE AND THAT IS ALL I'M GOING TO DO. AND THAT IS -- YOU KNOW, WE HAVE A TRIAL JUDGE TAKE A GRIP ON THAT, GOES UP TO THE DISTRICT COURT OF APPEAL. THAT IS THE WAY WE LET THESE EVIDENTIARY THINGS PERCOLATE, IT SEEMS TO ME, BEFORE WE GET INVOLVED IN WRITING A RULE. >> YOU KNOW, HELP ME WITH THIS. NOT -- YOU HAVE DESCRIBED VERY ACCURATELY AND WITH THE ARTICLE AND THE CASE AND THE HISTORY OF THIS COMING OUT OF THE DCDCA DECISION BUT WHY WE WOULD DO THIS SORT OF PREEMPT TORLY IN A RULE WHEN THERE COULD BE OWE MANY CONSIDERATIONS THAT -- YOU KNOW, WHEN IT IS -- LITIGATED IN AN ADVERSARIAL WAY, THAT WE -- YOU KNOW, EVERYBODY IN SELF-INTEREST IS GOING TO GO INTO ALL THE CORNERS AND THE COBWEBS AND PULL EVERYTHING OUT, BUT DOING THIS BY RULE, I'M REALLY WORRIED. SO THAT IS -- YOU KNOW, -- >> WELL, THE FIRST THING I NOTICED, YOUR HONOR, IS THE LYLE CASE WAS BASED ON JUSTICE TERRELL'S DECISION, 1935 DECISION AND HE SAID IT WAS NOT NECESSARY TO HAVE AN EXPERT OPINION.

WHAT WE FOUND OVER TIME IS THAT AS FAR AS THE EXPERT IS CONCERNED, IT -- THE -- IN MANY CASES, AT LEAST, IN FACT ALL THE CASES I'M INVOLVED WITH, THE COURT ITSELF, THAT IS, THE JUDGE TRYING THE CASE, PROBABLY HAS AS MUCH, IF NOT MORE KNOWLEDGE AND EXPERTISE ON THESE MATTERS THAN ANYBODY TESTIFYING ABOUT IT.

>> WHAT -- WHAT IF THE JUDGE TERANNES FERD -- YOU KNOW, THAT HAS BEEN A PROSECUTOR, A CRIMINAL DEFENSE LAWYER, AND NOW THEY ARE TRANSFERRED IN TO THE PROBATE DIVISION OR THE FAMILY LAW DIVISION OR GENERAL CIVIL DIVISION AND GOODNESS, COME INTO A HEARING LIKE THIS AND THEY SAY, HELP, YOU KNOW -- I AM BEING PAID A SALARY, YOU KNOW, IN THE STATE ATTORNEY'S OFFICE.

I DON'T EVEN KNOW WHAT YOU MEAN, YOU KNOW, WHEN YOU TALK ABOUT HOW THESE FEES ARE GAUGED AND WHETHER WE CAN HAVE A MULTIPLIER.

>> WELL, AND --

>> MAY I ASK THE QUESTION, IN WHAT OTHER PART OF THE CIVIL RULES DO WE HAVE A RULE ABOUT WHAT EVIDENCE CAN BE INDUCED TO PROVE SOMETHING?

>> I HADN'T REALLY THOUGHT ABOUT IT IN THAT SENSE.

I MEAN, WHAT WE GO ABOUT AS FAR AS THE RULES ARE CONCERNED IS HOW WE GO ABOUT PROVING THINGS.

I KNOW THAT AS FAR AS THE COMP STATUTE IS CONCERNED, THE COURT REFERRED TO THAT AS A RULE.

I MEAN, IT IS A RULE, SO FROM THE STANDPOINT OF A RULE HAVING IMPACT HERE AND THE COURT HERE HOLDING IN THAT 87 CASE, THAT, YOU KNOW, IT WAS PERFECTLY APPROPRIATE FOR THE DEPUTY COMMISSIONERS TO MAKE THAT CONSIDERATION WITHOUT EXPERT OPINION, AND WHAT REALLY HAPPENS IN THESE THINGS IS THAT IF IT DOES -- NUMBER ONE, IT

SAYS IT IS NOT REQUIRED.
IF THE COURT -- THE JUDGE FEELS
LIKE IT IS NECESSARY TO HAVE IT
DONE THEY CAN CERTAINLY DO THAT
AND IF THE PARTIES FEEL --
>> IF THE PARTY -- IF I AS THE
ATTORNEY WANT TO BRING IN
SOMEONE ELSE TO DO THIS, WOULD
I BE ALLOWED TO UNDER THIS
RULE.

>> YES, MANAGEMENT.
IT'S STRICTLY PERMISSIVE, IF
YOU WILL THINK PARTIES CAN
BRING IT IN.
THE PROBLEM IS WE HAVE SEEN IT
OVER --

>> IF WE ARE TRYING TO TAKE THE
RULES TO OVERRIDE CASE LAW, IS
THAT WHAT -- WHAT THIS IS
REALLY DESIGNED TO DO.

>> WELL, IN THIS SENSE I
SUPPOSE THAT IS TRUE.
EXCEPT WHEN THE WHEN THE
SUPREME COURT LOOKED AT THIS
UNDER JUDGE TERRELL'S DECISION
IT WASN'T NECESSARY TO HAVE AN
EXPERT OPINION AND THEN THE
LYLE DECISION CAME ALONG AND
THAT SEEMED TO SETTLE YOU SAY A
PROGENY FROM THAT.

>> THAT IS A DISTRICT COURT OF
APPEALS OPINION, THOUGH, THERE
IS NO REASON I LAWYER CAN'T SAY,
HEAR IS WHAT JUSTICE TERRELL
SAID OF THE FLORIDA SUPREME
COURT AND THAT'S GOOD ENOUGH
FOR ME AND LET'S GO THAT WAY.

>> I SUPPOSE THAT'S --
UNFORTUNATELY THAT HAS NOT
HAPPENED AS FAR AS THE CASE LAW
THAT HAS COME DOWN AND REALLY
WE LOOKED AT IT AS A COST-SAVING
MECHANISM MORE THAN ANYTHING
ELSE, AND IN MOST CASES ANYBODY
CAN BRING IN EXPERTS AND
DOESN'T TAKE THAT ABILITY AWAY

--

>> HOWEVER, HOWEVER, MY CONCERN
IS, YOU ARE REALLY DOING AWAY
WITH A NEED FOR A HEARING.
I MEAN -- LOOKS AT IT --
GETS THE FILE, LOOKS AT IT AND
DEFINES WHAT HE BELIEVES IS
GOING ON IN THE COMMUNITY AS

FAR AS ATTORNEYS FEES ARE CONCERNED, AND HE SETS A DATE. NOW MY PROBLEM WITH THAT IN THE MODERN WORLD IS THAT PROBABLY THESE ATTORNEYS FEES AMOUNTS NEED TO BE CONTESTED. NOT LESS, AND SO WHAT WE ARE DOING, IT SEEMS TO ME IS SETTING UP A PROCEDURE, IN WHICH YOU ARE GOING TO HAVE FEWER CONTESTS ABOUT THE AMOUNT OF FEES AND THE FEWER ABILITIES TO DO IT.

SO I HAVE A PROBLEM.

>> FROM OUR PERSPECTIVE WE DIDN'T LOOK AT IT IN THAT FASHION, WE LOOKED AT IT IN WHETHER OR NOT IT WAS REQUIRED, IT IS CERTAINLY PERMISSIVE AND FROM THE STANDPOINT OF WHAT EVIDENCE GOES ON, THE PARTIES ARE FREE TO DO THAT AND PROVE IT UP ANY WAY THEY WISH, UNDER COMPETENT SUBSTANTIAL EVIDENCE YOU WOULD STILL HAVE TO HAVE THE ATTORNEY TESTIFY ABOUT HIS TIME AND WHAT THE VALUE OF HIS SERVICES WERE.

I DON'T THINK YOU CAN GET AROUND THAT.

>> THIS DOES NOT -- CONTEMPLATES STILL HAVING A HEARING?

>> YES, MANAGEMENT.

>> THAT DOESN'T A-- YES, MA'AM.

>> IT DOESN'T APPLY TO IN MY FEELING THE BIGGEST ABUSE IS THE FAMILY LAW CASES AND YOU ARE THERE FROM THE CIVIL RULES AND WAS ANY DISCUSSION MADE AS TO WHAT -- THE APPROACHES IN FAMILY CASES.

>> THE FAMILY LAW CASES, THERE IS A STATUTE IN PLACE WITH RESPECT TO THAT, THEY NO LONGER HAVE TO BRING IN EXPERT TESTIMONY FOR THAT.

>> I THINK THIS IS WHERE I WILL HAVE THE DIFFICULTY, WHICH IS I HAPPEN TO THINK IT IS A GOOD IDEA NOT TO REQUIRE PEOPLE TO BRING IN THEIR ATTORNEYS, BECAUSE IT BECOMES -- YOU KNOW, -- I MEAN, I THINK IN THE REAL

WORLD WE KNOW WHAT HAPPENS AS FAR AS THE -- FOR THE REASONABLENESS, BUT I DO THINK THE IDEA THAT YOU HAVE GOT, AGAIN IF YOU HAVE A STATUTE FOR THE FAMILY CASES, WE HAVE A CASE FOR WORKERS' COMP TO ACTUALLY CARVE THIS OUT AND PUT IT IN A RULE BECAUSE EVERYONE THINKS IT IS A GOOD IDEA MAY BE BAD PRECEDENT FOR WHAT WE USE OUR RULES OF PROCEDURE FOR AND THAT IS WHAT A LOT DWHOFTIONS ARE ABOUT, YOU DON'T -- SEEMS LIKE YOU STILL DON'T SEE THAT THAT IS A PROBLEM.

THAT IS, THAT WE BE DOING SOMETHING WE REALLY HAVE NEVER DONE BEFORE, IN THE CONTEXT OF THE RULES.

>> DO YOU SEE THAT FROM THE POINT OF VIEW OF THE COURTS --

>> TO BE QUITE FRANK WITH THE COURT I HAVEN'T LOOKED AT THE RULES TO FIGURE OUT WHERE EMS THAT HAS BEEN DONE WITH RESPECT TO HOW WE GO ABOUT PROVING UP WHATEVER MIGHT NEED TO BE PROVED UNDER A CERTAIN SET OF CIRCUMSTANCES, WE HAVE WAYS OF KEEPING EVIDENCE OUT, AND WHETHER OR NOT SOMETHING IS REQUIRED OR NOT AND HOW WE GO ABOUT PUTTING ON EVIDENCE.

>> MR. PARK, WITH OUR ASSISTANCE, YOU HAVE UTILIZED YOUR TIME, WE'D LIKE YOU TO SAVE A COUPLE OF MINUTES, AND LIKE YOUR THOUGHTS, AND YOU KNOW WHERE THE COURT IS COMING FROM AND GIVE YOUR BEST SHOT ON REBUTTAL.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, MARC GOLDMAN HERE TO ARGUE IN OPPOSITION TO THE PROPOSED RULE 1.526.

I'M NOT GOING TO SPEND A LOT OF TIME ON MY FIRST POINT WHICH IS THE JURISDICTION AND THE LACK OF AUTHORITY FOR THE RULES COMMITTEE.

IT SEEMS THAT YOU HAVE ALL KIND OF GLEANED WHERE I'M COMING

FROM ON THAT TO MENTION, THERE IS A CASE FROM THIS COURT IN 1987, THE CRITICAL EN TON, ORANGE BLOSSOM CASE THAT SAYS EXPERTS ARE REQUIRED.

SO IF IT WERE TO BE EXPERTS WERE NOT REQUIRED THIS IS NOT THE PROCESS TO BE USED.

THERE IS AN APPELLATE PROCEDURE AND YOU CAN'T TAKE A PROCEDURE RULE AND --

>> TAKE YOUR TIME AND TELL US WHY IT'S BAD.

>> THAT IS MY SECOND POINTED.

>> THE RULE AS WRITTEN IS INEE EFFECTIVE AND AMBIGUOUS AND DOESN'T SAY EXPERTS ARE NOT REQUIRED, ARE NOT ALLOWED, IT SAYS THEY ARE NOT REQUIRED UNLESS THE COURT ORDERS THEM TO BE REQUIRED.

IT IS ABSOLUTELY IMPRACTICAL TO THINK THAT A JUDGE EXCEPT IN RARE CASES WHEN A MOTION FOR FEES IS FILED AND HEARING DATE IS REQUESTED IS GOING TO GO, YES, I REMEMBER THAT CASE, WE NEED EXPERTS IN THAT CASE. SO WHAT YOU ARE DOING IS CREATING MORE HEARINGS AND MORE LITIGATIONS.

ONE OF TWO THINGS WILL HAPPEN. ONE, THE MOVING PART, WHEN HE FILES HIS MOTION FOR FEES, IS ALSO GOING TO FILE A MOTION TO REQUIRE EXPERTS.

WE'RE GOING TO HAVE ANOTHER HEARING ON THAT.

THEN WE'RE GOING TO HAVE A DIVERSETY OF RULINGS BY THE COURTS ON WHETHER THE COURT REQUIRED IT.

AND THEN WE'LL HAVE APPELLATE CASES ON THAT.

THE OTHER POTENTIAL IS, THE MOVING PARTY DOESN'T FILE THAT MOTION.

COMES INTO COURT WITH ITS EXPERT.

THE NONMOVING PARTY, MAY OR MAY NOT BRING AN EXPERT.

IN THE CASE WHERE THE NONMOVING PARTY DOESN'T BRING AN EXPERT, THE PREVAILING PARTY IS GOING

TO SEEK TO TAX THE COST OF HIS
EXPERT, AND THE NONMOVING PARTY
IS GOING TO GO, WAIT A SECOND,
JUDGE, YOU DIDN'T ENTER AN
ORDER REQUIRING THIS.

DON'T TAX IT.

THEN WE'RE GOING TO HAVE MORE
APPELLATE CASES ON THAT.

SO, IT IS MY POSITION THAT THE
PURPOSE BEING SOUGHT BY THE
RULES COMMITTEE IS GOOD.

NOT TO ELIMINATE EXPERTS.

BUT, IN GENERAL, IT IS NOT
BEFORE THE COURT TODAY BUT I'M
SURE YOU SAW MY THUMBNAIL
FOUNDATION FOR A RULE,
ENCOMPASSING THE PROCEDURE OF
ALL ATTORNEYS FEES, DISCOVERY,
EXPERTS AND TIMETABLES.

THIS IS SOMETHING THAT SHOULD
BE DONE TO HELP THE COURTS AND
THE LITIGANTS BUT THE RULE AS
WRITTEN, I DON'T BELIEVE YOU
HAVE JURISDICTION, IS IMPROPER
AND, B, WILL CAUSE MORE
PROBLEMS THAN IT SEEMS TO
ALLEVIATE.

>> LET ME ASK YOU A QUESTION
ABOUT THE JURISDICTION AND THE
PRO PRYTY OF US CONSIDERING AS
A RULE.

IT SEEMS TO ME ONE OF THE
COMPLICATIONS INVOLVED IS THAT
IN ORDER TO BRING UP A CASE
WHERE WE COULD RECONSIDER
WHETHER EXPERT TESTIMONY IS
REQUIRED, LAWYERS WILL HAVE TO
TAKE A BIG RISK WHICH IS, GO TO
A HEARING AND DON'T TAKE AN
EXPERT WHEN THE SUPREME COURT
LAW SAYS AN EXPERT IS REQUIRED.
THE TRIAL JUDGE IS GOING TO SAY,
NO, YOU NEED AN EXPERT, I'M
BOUND BY THE LAW AND THE
APPELLATE COURT WILL SAY THE
SAME THING AND MAY OR MAY NOT
CERTIFY A QUESTION TO THIS
COURT.

AND THERE WON'T BE REALLY ANY
-- SEEMS TO ME, ANY CONFLICT,
AND SO, THE CHANCES OF US
TAKING IT ARE SLIM AND THEN THE
CHANCES OF US TAKING IT AND
REVERSING A 1987 CASE ARE SLIM.

>> RIGHT.

>> AND SO, THAT IS WHY WE HAVEN'T REALLY HAD A CASE COME UP, BECAUSE LAWYERS AREN'T WILLING TO TAKE THE RISK OF EXPENDING ALL THESE ATTORNEYS FEES AND THEN GOING TO A HEARING WITHOUT AN EXPERT AND TAKING THE CHANCE THAT THEY ARE GOING TO GET ATTORNEYS FEES ANY WAY BECAUSE THEY'LL CHANGE THE LAW AND SEEMS TO BE WHY IT'S COMING UP IN THE VENUE.

>> IF I CAN COMMENT I AGREE WITH WHAT YOU ARE SAYING AND FIRST IT DOESN'T IN ANY WAY CHANGE THE FACT THE RULES COMMITTEE IS NOT EMPOWERED WITH THE AUTHORITY TO CHANGE SUBSTANTIVE LAW BUT TO GET TO THE HEART OF YOUR QUESTION, HOW COULD THIS BE ACHIEVED? AND YOU HIT THE NAIL ON THE HEAD.

THE GREAT LIKELIHOOD IS NO JUDGE IS GOING TO REVERSE EXISTING LAW.

SO IT WOULD HAVE TO COME UP AS A CERTIFIED QUESTION.

BUT IT DOESN'T HAVE TO BE THE MOVING PARTY'S ATTORNEY THAT COMES IN AND TAKES THE CHANCE OF OF, JUDGE, GIVE ME MY FEES, I DON'T HAVE AN EXPERT.

THE NONMOVING PARTY CAN SAY, WE ARE NOT BRINGING AN EXPERT, AND WE WOULD LIKE YOU, JUDGE, TO CERTIFY THE QUESTION.

AND IT WOULD HAVE TO GO THROUGH THE PROCESS, THEORETICALLY FROM CIRCUIT TO DCA AND HOPE DCA WOULD TAKE IT AND THEN AT SOME POINT GET TO YOU ALL.

THAT IS THE PROCEDURE THAT WOULD HAVE TO OCCUR.

BUT THAT DOESN'T CHANGE THE FACT THAT IT CAN'T BE DONE THIS WAY.

>> JUST ON THAT, I MEAN, BECAUSE THIS HAD TO DO WITH COSTS AN ATTORNEYS FEES, I MEAN, THERE ARE SEVERAL RULES THAT HAVE TO DO WITH COSTS AN ATTORNEYS FEES AND CORRECT ME

IF I'M WRONG, WHERE IS THE PART THAT TALKS ABOUT WHAT TYPE OF COSTS ARE TAXABLE, AND IS THAT IN THE RULE, OR WHAT DID WE DO WITH THAT.

>> I HAD A FOOTNOTE IN MY MEMORANDUM AND HAS ALWAYS BEEN MY OPINION COSTS ARE NOT WITH IN THE PURVIEW OF EXPERT TESTIMONY, THAT IS IN THE SOLE DISCRETION OF THE COURT AND TO ANSWER YOUR QUESTION, JUSTICE PA RAENT WE ARE GETTING ONTO -- JUSTICE WA RAENT, WE ARE GETTING ONTO THE UNIFORM TAXABLE GUIDELINES, AND THEY ARE BEAR.

-- BARE, THERE ARE SO MANY --

>> WE DEALT WITH THAT ISSUE RECENTLY AND AMEND THE TAX GUIDELINES A COUPLE OF YEARS AGO.

>> I DON'T THINK IT IS --

>> [LAUGHTER].

>> WE REALLY HAVE NOT COMPREHENSIVELY --

>> SO THE COSTS ARE -- REALLY DON'T AFFECT US, OUT THE IS CALLED EXPERT TESTIMONY ON COSTS AN ATTORNEYS FEES IT IS REALLY ATTORNEYS FEES.

>> JUST, I KNOW YOU ARE OUT OF YOUR TIME.

JUST -- CAN I ASK ONE QUESTION ON THIS?

>> IN THE REAL WORLD, THOUGH, MY PERCEPTION IS THAT, AGAIN, EVERYONE FEELS THEY'VE GOT TO GO AND FIND AN EXPERT AND EVERYONE IS DOING IT FOR EACH OTHER AS A FAVOR, AREN'T WE ALREADY CREATING A LAYER OF ACQUIRING OTHER ATTORNEYS TO COME IN TO SUPPORT THE FEES.

>> MY ANSWER TO THAT IS, NO, BECAUSE PARTIES REALLY WANT TO AVOID THAT.

AND THE GREAT PERCENTAGE OF CASES ARE NOT CONTENTIOUS IN TERMS OF THE ULTIMATE AMOUNT BUT ONLY IN PEOPLE BEING STUBBORN.

THEY CAN RESOLVE THESE THINGS. THEY CAN WAIVE EXPERTS.

I DON'T TESTIFY ON \$10,000
ATTORNEYS FEES CLAIMS, I'M
WASTING THE COURT'S TIME AND
THE OTHER SIDE'S MONEY WHEN I
DO THAT.

THESE THINGS SHOULD BE RESOLVED
AND IF WE HAVE THE PROCEDURAL
RULE I PROPOSE IT WITH REQUIRE
THE PARTIES TO GET THAT DONE
BEFORE WE GOT TO THE EXPERTS
AND TO HEARING.

>> THANK YOU, THANK YOU VERY
MUCH, MORE COMING UP.

>> HAS BEEN AN HONOR AND A
PLEASURE BEING HERE TODAY.

>> MAY IT PLEASE THE COURT,
VERY BRIEFLY.

>> LET YOU HAVE TIME TO TELL US
WHY WE NEED THE RULE.

>> GOSH, I THINK I GOT THROWN
UNDER THE BUS ALREADY!

>> SLAV LAUGH.

>> -- [LAUGHTER].

>> NUMBER ONE, HOW DO WE CHANGE
IT AND NUMBER 2, WITH RESPECT
TO WHAT HAPPENS NOW IT NEVER
GETS ANYWHERE BECAUSE IF YOU
FAIL TO PUT ON THE EXPERT AND
YOU PUT ON YOUR TESTIMONY, WITH
REGARD TO THE COMPETENT
EVIDENCE OF SOMEBODY TESTIFYING,
IT GOES TO THE APPELLATE COURT
BECAUSE DUNLT HAVE THE EXPERT,
APPELLATE COURT SENDS IT BACK
AND THEY PUT ON THEIR EXPERT.
IT -- NOTHING EVER GETS --

>> I'M SURPRISED AT THAT, BUS
IF YOU DON'T SATISFY YOUR
BURDEN IT IS MOOING THE CASE
LAW IS THAT --

MY UNDERSTANDING IS THE CASE
LAW IS YOU DON'T HAVE THE
EVIDENCE, YOU DON'T GET THREE
TRIALS TO HIT THAT.

>> THEY SEND IT BACK, EVERY
CASE I LOOKED AT IN WHICH
SOMEBODY FAILED TO PUT ON
EXPERT TESTIMONY THEY SENT BACK
FOR -- TO DETERMINE WHAT THE
PROPER FEE OUGHT TO BE AND PUT
ON THE EXPERT AT THAT POINT.
THAT IS WHAT THE CASES HOLD.

>> YOU MENTION THERE IS A
STATUTE NOW THAT SAYS IN FAMILY

LAW CASES,.

>> YES, MANAGEMENT.

>> THAT THERE IS NOT A REQUIREMENT OR YOU CAN'T PUT -- HOW DOES IT READ.

>> HARD PRESSED TO REMEMBER HOW IT SAYS -- DOES NOT REQUIRE TO PUT ON EXPERT TESTIMONY.

>> SINCE EVERYBODY AGREES THAT THE VOTE 30-0, BOARD VOTE, 35-0, SEEMS NOBODY LIKES THAT -- SEE THERE MAY BE PROBLEMS, WHY NOT HAVE IT DONE THROUGH THE STATUTES?

>> I'M NOT SURE AT WHAT -- WHAT VEHICLE WE USE IN ORDER TO PERHAPS CHAPTER 92.

I'M NOT SURE WHERE IT WOULD GO WITH RESPECT TO THAT.

>> WELL, IT WAS AN OFFER OF JUDGMENT CASE, YOU KNOW --

>> RIGHT.

>> ALREADY LEGISLATED IN THAT AREA.

SO IT IS JUST A THOUGHT.

I DON'T KNOW WHERE WE ARE GOING TO GO BUT I WONDERED IF THAT HAD BEEN CONSIDERED.

>> REALLY HADN'T BUT MIGHT BE THE ONLY WAY TO GO IF IT -- IF IT IS NOT APPROPRIATE TO HAVE IT AS A RULE AND PROCEDURE IN THE VAIN.

BUT, WHAT WE BROUGHT ALONG, AS FAR AS THESE COSTS AND HOW WE ARE DOING THIS, WE BROUGHT UP A COTTAGE INDUSTRY WITH PEOPLE TESTIFYING ABOUT THESE THINGS AND HOW THIS IS ALL DONE AND THIS WAS IN EFFECT TO TRY AND CHANGE IT TO REDUCE COSTS, TO HELP OUT WHAT OUR SYSTEM IS DOING.

>> MR. PARK, MR. GOLDMAN LET US THANK YOU ON BEHALF OF THE COURT.

YOU DO THIS GRATIS AND SO THE -- FOR THE GOOD OF THE SYSTEM AND THAT IS WHAT IT TAKES TO KEEP US WHERE WE SHOULD BE AND WE REALLY THANK YOU FOR THIS TIME YOU PUT INTO THESE AND WAS IT WAS NOT MEANT TO THROW ANYBODY UNDER THE BUS AND WE

ARE EXPLORING IT AND I KNOW YOU UNDERSTAND THAT AND IT WAS A CONCERN OF THE COURT AND THANKS FOR SHARING YOUR VIEWS AND HELPING US REACH A DECISION.

>> I DO, YOUR HONOR AND I WAS BEING FACETIOUS.

>> I KNOW YOU WERE.

>> THANK YOU.

>> OKAY.

>>