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In re: Amendments to Florida Rules of Civil Procedure – Management of Cases Involving Complex Litigation

SC08-1141

CASE 2

IN RE: AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE –
MANAGEMENT OF CASES INVOLVING COMPLEX LITIGATION

>> THE NEXT CASE ON THE
COURT'S DOCKET, IS AMENDMENTS
TO FLORIDA RULES OF CIVIL
PROCEDURE, MANAGEMENT OF CASES
INVOLVING COMPLEX LITIGATION.

>> MAY IT PLEASE THE COURT.
ACTUALLY, WOULD YOU LIKE ME TO
WAIT FOR A MOMENT?

OKAY.

I AM TOM BATEMAN.

TODAY I'M A SENIOR JUDGE, AND
WAS CHAIR OF THE TASK FORCE ON
MANAGEMENT OF LITIGATION
INVOLVING COMPLEX CASES.

I WOULD LIKE TO START BY,
SAYING A QUOTE.

YOU MAY, OR MAY NOT HAVE HEARD
THIS.

I KNOW JUSTICE QUINCE HEARD IT.
THIS WAS MADE ON JANUARY THE
16th OF 2009 IN MIAMI AT THE
FLORIDA BAR MID-YEAR. THE
DATE THAT WAS A CONFERENCE ON
THE BUDGET CRISIS WAS GOING ON.
I WAS SITTING THERE AND I HEARD
EUGENE PETTIS, WHO I HAPPEN TO
KNOW FROM ANOTHER TASK, ANOTHER
WORK GROUP THAT HE WAS INVOLVED
IN AND I WROTE IT DOWN.

HE WAS SPEAKING BECAUSE I
THOUGHT IT WAS PROFOUND IT
APPLIES TO WHAT WE'RE TALKING
ABOUT TODAY.

THIS IS A QUOTE FROM BOARD OF
GOVERNORS MEMBER EUGENE PETTIS.
JUSTICE DELAYED IS NO LONGER
JUSTICE DENIED.

IT IS WHAT IS EXPECTED.

CLOSE QUOTE.

NOW I SAY THAT BECAUSE, THIS,
AND JUST A VERY SHORT HISTORY
BECAUSE THE HISTORY FOR THE
TASK FORCE ACTUALLY STARTED

WITH JUSTICE PARIENTE WHEN SHE WAS CHIEF JUSTICE AND CREATED THE WORK GROUP ON JURY PANEL SIZES.

AND DURING THE PROCESS OF GOING THROUGH THAT WORK EFFORT, IT BECAME VERY CLEAR, I BELIEVE TO JUSTICE LEWIS, WHO WAS THE LIASON AT THE TIME AND THEN SUBSEQUENT CHIEF JUSTICE, SAID IT WASN'T JURY PANEL SIZES THAT WAS THE PROBLEM.

IT WAS THE MANAGEMENT OF THE CASES THAT WAS CAUSING THE PROBLEM WITH NOT ENOUGH JURORS IN THOSE, AND THOSE ISSUES THAT WERE BEING, WERE CAUSING TRIALS TO BE DELAYED.

COULD NOT GET JURORS.

OR WHEN THEY DID HAVE JURORS, THEY DIDN'T HAVE ENOUGH AND COULDN'T GET THE CASE RESOLVED.

SO, JUSTICE LEWIS CREATED THE TASK FORCE TO LOOK AT SEVERAL, SEVERAL MATTERS.

THE CHARGE WAS TO RECOMMEND A DEFINITION OF CASE TYPES OR CHARACTERISTICS AND FACTORS, THAT SHOULD BE CONSIDERED IN DETERMINING IF A CASE, WHETHER A CASE SHOULD BE DEFINED AS A COMPLEX CASE FOR COMPLEX LITIGATION PURPOSES.

THEN TO, SECOND CHARGE REVIEW THE EXISTING RULES TO DETERMINE WHETHER NEW RULES, SYSTEMS OR PROCESSES SHOULD BE CREATED, OR AMENDED TO ENHANCE THE EFFECTIVE CASE MANAGEMENT OF COMPLEX LITIGATION.

AND THEN TO CONSIDER CASE MANAGEMENT ELEMENTS, PROCEDURES, AND BEST PRACTICES IN OTHER STATES AND LOCAL PROCEDURES TO SEE IF THERE WAS SOME RECOMMENDATION THE TASK FORCE SHOULD MAKE.

WE CREATED THREE SUBCOMMITTEES TO DO THE TASK FORCE WORK.

YOU HAVE THE REPORT.

I'M NOT GOING TO REGURGITATE ALL OF THAT.

I WOULD LIKE TO POINT OUT THAT

WE STUDIED ALL OF THE STATES,
THEIR BUSINESS COURTS AND
COMPLEX LITIGATION COURTS.
WE HAD MEMBERS FROM THE
CALIFORNIA COURT SYSTEM, THE
ARIZONA COURT SYSTEM, THE NEW
YORK THE NEW YORK LAWYER WHO
HEADED UP THE TASK FORCE THAT
CREATED THE COMPLEX LITIGATION
AND BUSINESS COURT IN NEW YORK
STATE.

WE HAD THEM COME AND GIVE US
SOME, SOME OF THEIR WISDOM.

>> JUDGE BATEMAN, COULD YOU
JUST EXPLAIN TO THE COURT, OF
COURSE I'M AWARE OF IT BUT IN
THIS INSTANCE, AS A PUBLIC
FORUM HERE, IN TERMS OF TRYING
TO DETERMINE HOW MANY CASE IN
THE COURT SYSTEM WERE PENDING
IN THE CIVIL DIVISION MORE THAN
TWO YEARS, AND, SO THAT WE
COULD UNDERSTAND THE OF THE
PROBLEM AND ALSO, THE TYPE OF
CASE, WAS YOUR COMMITTEE ABLE
TO GET THAT INFORMATION?

>> OKAY.

WHAT, TO GET TO THAT POINT, TO
DETERMINE WHETHER THERE ARE
COMPLEX CASES OUT THERE, WE
ACTUALLY AUDITED, CONSOLIDATED
INFORMATION FROM ALL OF THE
COURT ADMINISTRATORS AND THE
CLERKS THROUGHOUT THE STATE
GATHERED ALL OF THE CASE
MANAGEMENT ORDERS THAT THE
INDIVIDUAL COURTS HAVE
GENERATED THROUGHOUT THE STATE
AND WE WENT THROUGH THE SUPREME
COURT REPORTING SYSTEM
REQUIREMENTS ON THE DIFFERENT
TYPES OF CASES THAT ARE
REPORTED.

ONE OF THE PROBLEMS THAT WE RAN
INTO IS THERE IS NO DEFINITION
OF WHAT A COMPLEX LITIGATION OR
COMPLEX CASES.

AND WE FOUND THERE
WAS NO CRITERIA IN
OUR RULES AND IF WE TOOK THE
CRITERIA WE'RE SUGGEST SUGGEST
OUGHT TO BE PLACED IN THE RULE
AND TRY TO THOSE CASES WE WOULD
HAVE TO GO INTO EVERY SINGLE

DIFFERENT TYPE OF CASE THAT IS REPORTED, MALPRACTICE, NEGLIGENCE, AUTOMOBILE INJURIES, AND IN FACT THE BIGGEST CATEGORY UNDER THIS SUPREME COURT REPORTING SYSTEM IS OTHER.

AND UNDER THE OTHER CATEGORY ARE ABOUT 15 OTHER CATEGORIES, DIFFERENT CATEGORIES.

WRITS OF CERTIORARI, APPEALS, ALL DIFFERENT KINDS OF THINGS. AND THERE IS NO WAY TO FIGURE OUT HOW MANY COMPLEX CASES, IF WE WERE CONSIDER A CASE COMPLEX, HOW TO FIGURE OUT THAT THOSE THAT THEY EXIST IN OUR COURT SYSTEM.

THE ONLY WAY TO DO THAT, GIVE AN A AUDITOR, COURT ADMINISTRATOR A STAFF PERSON PROBABLY, A SET OF CRITERIA AND GO AND LOOK AT EACH INDIVIDUAL FILE TO DETERMINE WHETHER THAT CASE WOULD QUALIFY AS A COMPLEX CASE. THERE IS JUST NO WAY TO DO THAT.

THERE ARE THOUSANDS OF CASES PENDING.

>> LET'S JUST, I KNOW YOU HAVE LIMITED TIME.

THE RULE SEEMS TO HAVE GENERATED UNANIMOUS OPPOSITION FROM THE RULES, THE CIVIL RULES COMMITTEE.

UNANIMOUS OPPOSITION.

THERE'S, THEY HAVE, VARYING TYPES OF LAWYERS, JUDGES ON THERE.

GIVE US YOUR BEST SHOT AS TO WHAT WITH THAT UNANIMOUS OPPOSITION, WHY WE SHOULD PUT INTO THE RULES OF CIVIL PROCEDURE THIS PARTICULAR RULE REGARDING COMPLEX LITIGATION.

>> HERE IS MY SHORT ANSWER TO THAT THE CENTRAL THESIS IN ALL THE CASE MANAGEMENT LITERATURE IN THE UNITED STATES IS THAT JUDGES, NOT LAWYERS, SHOULD BE RESPONSIBLE FOR THE MANAGEMENT AND MOVEMENT OF CASES THROUGH THE SYSTEM.

THE CIVIL RULES COMMITTEE,
BALKS AT BECAUSE THEY FEEL
UNANIMOUSLY THAT LAWYERS OUGHT
TO BE CONTROLLING THE PROCESS.
THAT'S WHAT IT COMES DOWN TO.
THAT IS THE BOTTOM LINE ANSWER.
I APPEARED AT THE CIVIL RULES
COMMITTEE, AND SPOKE WITH THEM,
AND THEY WERE A LITTLE UPSET
THAT THEY WEREN'T BROUGHT INTO
THE PROCESS AS WELL.

>> WELL, ONE OF MY CONCERNS
ABOUT THIS IN THIS DAY OF AND
AGE OF LIMITED RESOURCES,
ESPECIALLY LIMITED JUDICIAL
RESOURCES IS, WHAT IF ANY
ADDITIONAL RESOURCES WOULD A
TRIAL JUDGE NEED IN ORDER TO
EFFECTIVELY COMPLY WITH RULE
1.201?

>> YOU KNOW, CHIEF JUSTICE, I
AM PROBABLY NOT THE RIGHT
PERSON TO ASK THAT QUESTION.
I'M GOING TO ANSWER.
YOU KNOW I HAVE BEEN HERE
BEFORE MANY TIMES.
I TALKED TO YOU ABOUT THE WAY I
DO CASE MANAGEMENT.
I BRING THE LAWYERS INTO MY
CHAMBERS IMMEDIATELY UPON THE
CASE READY TO PROCEED.

>> WHEN YOU SAY YOU BRING THE
LAWYERS IN BUT YOU ALSO BRING
IN THE PRO SE LITIGANT?

>> SURE, SURE.

>> IF ONE OF THESE CASES --

>> IF ONE OF THEM WAS PRO SE.
THE TYPES OF CASES WE'RE
TALKING ABOUT GENERALLY ARE NOT
GOING TO BE PRO SE.

WELL, IN FACT NO CORPORATE
ENTITY IS GOING TO BE PRO SE.
THEY HAVE TO HAVE A LAWYER.
SO FOR THE, VAST MAJORITY CASES
ARE GOING TO BE THE TWO
LAWYERS.

AND I SIT THEM DOWN WITH A
LAPTOP COMPUTER AND WE PICK A
TRIAL DATE.

>> AT WHAT POINT ARE YOU
TALKING ABOUT?

>> AFTER THE ANSWER HAS BEEN
FILED OR IF I CAN GET THEM IN
EARLIER I WOULD DO IT EARLIER.

>> WHAT YOU'RE SAYING YOU DO,
AS A TRIAL JUDGE.

--

>> -- NEW JUDGES IS TAKE MORE
CONTROL ESPECIALLY IN THE, WE
LIVE ESPECIALLY IN THE
POSTCONVICTION RELIEF AREA.
TAKE CONTROL OF THE CASE SO WE
DON'T HAVE THESE PROBLEMS.

>> ONE OF THE THINGS IN LOOKING
AT SUBSECTION A WHICH DEFINES
WHAT ACCOMPLICE LITIGATION IS,
IT SEEMS IF YOU LOOK AT THOSE
FACTORS, YOUR AVERAGE MEDICAL
MALPRACTICE CASE AND THE CIRCUIT
I COME FROM EACH CIRCUIT JUDGE
HAS ASSIGNED TO HIM OR HER A
MINIMUM OF 1200 CASES.

OUT OF THOSE 1200 CASES, I MEAN,
I COULD GUESSTIMATE AS TO HOW
MANY WILL BE CLASSIFIED AS
COMPLEX.

WOULD THAT NOT PRETTY MUCH TAKE
UP THE ENTIRE DOCKET, AND WHAT
ABOUT THE LITTLE GUY WITH THE
BREACH OF CONTRACT CASE AGAINST
A CAR DEALERSHIP?

IS HE OR SHE EVER GOING TO GET A
DAY IN COURT?

>> WELL, YOU KNOW, AND THAT IS
WHAT JUDGE WEBSTER SPOKE ABOUT
IN HIS MINORITY VIEW THAT THE
FACT OF THE MATTER IS AND FROM
HIS PERSPECTIVE IN THE MINORITY
VIEW WAS THAT THIS IS NOT A
SYSTEMIC PROBLEM, IT'S AN
INDIVIDUAL JUDGE PROBLEM, AND
INDIVIDUAL JUDGES OUGHT TO BE
DEALING WITH IT.

I KNOW THAT THE JUDGES IN YOUR
CIRCUIT FROM WHERE YOU CAME --
I'M SORRY, YOU'RE NOW HERE.
WELCOME TO TALLAHASSEE, BY THE
WAY.

I'VE TALKED TO THE JUDGES FROM
PALM BEACH AND DOWN THERE, AND
THEY EXPRESSED THIS CONCERN AS
WELL.

IN MY OWN MIND I FEEL LIKE IT'S
NOT GOING TO BE ANY MORE WORK
THAN WHAT A JUDGE SHOULD BE
DOING IN MANAGING THE CASE
ANYWAY.

I KNOW THERE ARE SOME JUDGES

THAT THINK -- AND THE CIVIL RULES COMMITTEE BELIEVES THAT IT'S GOING TO BE MORE WORK.

I DON'T SEE IT THAT WAY.

>> IT WOULD SEEM, THOUGH, ONCE YOU GET CONTROL OF THE CASE YOU WOULD NOT HAVE, THEN, THESE DISPUTES AND RUNNING BACK TO THE JUDGE AND THE DISCOVERY FIGHTS AND THE KINDS OF THINGS THAT AT TIMES OUR COLLEAGUES WHO HAVE BEEN TRIAL JUDGES, I'M SURE THAT THEIR WHOLE DAY HAS BEEN FILLED WITH THOSE KINDS OF THINGS.

DOES IT MAKE A DIFFERENCE IN THAT AREA?

>> AND THAT'S THE IDEA, AND THAT DOES MAKE A DIFFERENCE. EARLY CONTROL OF A CASE, ESPECIALLY SETTING THE TRIAL DATE AND THEN WORKING YOUR DISCOVERY AND YOUR DEADLINES AND WITNESS DEADLINES AND EVERYTHING FROM THE TRIAL DATE BACKWARDS, THE LAST THING I WOULD SAY TO THE LAWYERS AS THEY LEFT MY OFFICE, I SAID, HOPE I DON'T EVER SEE YOU AGAIN.

I HOPE YOU GET IT RESOLVED, I HOPE YOU NEVER COME BACK. THE ONLY TIME I SAW THEM BACK WAS ON DISCOVERY DISPUTES, AND I IMMEDIATELY SAID YOU'RE GOING TO GO TO DISCOVERY AND RESOLVE THOSE.

A GOOD CASE MANAGEMENT ORDER MAKES THE DIFFERENCE TOO.

>> SO REALLY IN ANSWER, JUST GOING BACK AS YOU KNOW WE HAVE GRAVE CONCERNS ABOUT THE STATE OF THE BUDGET --

>> OF COURSE.

>> -- AND THE LOSS OF CASE MANAGERS.

IN A DIFFERENTIATED CASE MANAGEMENT SITUATION, THIS RULE DOES NOT CONTEMPLATE THAT THERE WOULD BE ADDITIONAL PERSONNEL INVOLVED IN ASSISTING THE JUDGE, IS THAT CORRECT?

>> THAT'S CORRECT.

>> THE IDEA, AGAIN, AND, I MEAN, OF COURSE ANYONE THAT'S LITIGATED IN FEDERAL COURT KNOWS

THIS IS BASICALLY THE WAY IT'S DONE WHICH IS THERE'S ACCOUNTABILITY EARLY ON, AND SO THAT -- AND WHAT ABOUT THERE'S SOME ISSUES HERE ABOUT IN THE RULE ITSELF ABOUT WHEN WITNESS LISTS HAVE TO BE FILED, ABOUT WHEN DISCOVERY HAS TO END, THERE WAS AN ISSUE ABOUT THIS WHOLE, THIS FINAL CASE MANAGEMENT ORDER BEING THREE MONTHS BEFORE THE TRIAL.

HOW DID THOSE, HOW LONG DID IT TAKE TO COME UP WITH THIS RULE, AND WHAT -- COULD YOU GIVE US SOME OF THE REASONS FOR THOSE TYPES OF DEADLINES WHICH HAVE, YOU KNOW, SOME PEOPLE SAY, WELL, THAT'S NOT REALISTIC.

IT'S THREE MONTHS BEFORE.

IN THREE MONTHS MORE THINGS WILL GO ON, AND HOW DOES IT STOP?

>> AGAIN, THAT'S THE WHOLE POINT WAS TO GET THE CASE RESOLVED AT A TIME EARLY ENOUGH SO IT WAS EITHER GOING TO GO TO TRIAL OR IT'S NOT.

YOU NEED TO BE ABLE TO GET THE NUMBER OF JURORS.

THERE WAS A CASE IN TAMPA LAST YEAR OR THE YEAR BEFORE WHERE THEY WENT THROUGH 500 -- ON A SIMPLE MALPRACTICE CASE.

IT WASN'T A SIMPLE CASE, I GUESS, THEY WENT THROUGH 500 JURORS IN A WEEK AND COULDN'T GET A JURY.

TO GET 500 JURORS THERE, YOU HAVE TO PLAN FOR THAT.

IF YOU HAVE A COMPLEX CASE THAT'S GOING TO LAST SIX WEEKS OR TWO MONTHS, YOU HAVE TO GET EXTRA JURORS.

THE CLERKS NEED THAT EXTRA TIME TO BE ABLE TO BRING THOSE JURORS IN.

>> IS THIS SIMILAR TO THE ORDERS THAT HAVE BEEN ENTERED IN THE VARIOUS DIVISIONS THAT HAVE BEEN SET UP AROUND THE STATE FOR EITHER COMPLEX LITIGATION --

>> IT IS SIMILAR, AND TO GET BACK TO YOUR QUESTION ON THE, ON THE -- THIS RULE TOOK 18 MONTHS

TO DEVELOP, AND IT WENT THROUGH MANY, MANY, MANY ITERATIONS OF IT.

AND THE ULTIMATE RULE CAME DOWN. REMEMBER, THESE ARE BOTH PLAINTIFFS' LAWYERS, DEFENSE LAWYERS, GENERAL COUNSEL FOR LARGE CORPORATIONS, AND MANY JUDGES THAT WERE ON HERE.

AND THEY CAME UP WITH THESE TIMELINES BASED ON CASE MANAGEMENT ORDERS THAT WERE ALREADY IN EXISTENCE THAT WE STUDIED THROUGHOUT THE STATE AND TRIED TO MAKE A UNIFORM CASE --

>> MR. BATEMAN, ON THIS TASK FORCE HAD PUBLIC HEARINGS THROUGHOUT THE STATE OF FLORIDA. IS THAT A FAIR STATEMENT?

>> YES, SIR.

>> DID ANY MEMBERS OF THE RULES OF PROCEDURE GIVE YOU THEIR THOUGHTS OR CONCERNS ON THIS AREA?

>> NO, SIR.

>> NOT ONE TIME DID THEY APPEAR?

>> NO, AND IT WAS NOTICED IN THE BAR NEWS AND OTHER PLACES. THEY NEVER DID.

NOW, WE DID HAVE SOME CONTACT WITH LAWRENCE COLE WHO IS THE CHAIR OF THE E-DISCOVERY SUBCOMMITTEE FOR THE, FOR THE CIVIL RULES COMMITTEE.

HE CAME AND HAD A PRESENTATION, AND HE CAME AND SAT THROUGH A PRESENTATION ABOUT TECHNOLOGY ISSUES, BUT NOT INTO ANY OF THE OTHER ISSUES.

>> ONE OF THE THINGS IN MY EXPERIENCE AS A TRIAL JUDGE ESPECIALLY IN THE CIVIL DIVISION EACH CIRCUIT HAS TRIAL ORDERS THAT WE SEND OUT WITH THE SAME TYPE OF DEADLINES FOR SUBMITTING WITNESSES, EXPERTS AND SO ON. AND I CAME TO BELIEVE THAT THESE ORDERS WERE MORE OR LESS ASPIRATIONAL IN NATURE RATHER THAN ENFORCEABLE.

AND I HAD SITUATIONS WHERE VERY EXPERIENCED TRIAL LAWYERS, VERY SUCCESSFUL TRIAL LAWYERS, BIG MEDICAL MALPRACTICE CASE WILL

COME IN THE MORNING OF TRIAL
WHEN THEY KNOW I HAVE 300 JURORS
RESERVED, AND THAT MORNING WOULD
UNLOAD, LIKE, FIVE NEW EXPERTS,
AND THEN THEY'LL WANT ME TO
COLLECT A [INAUDIBLE] BALANCE
WHICH, OF COURSE, WE HAVE TO DO
AS TRIAL JUDGES.

AND, OF COURSE, THE OTHER SIDE
WANTS TO CONTINUE TO DO
DISCOVERY WHILE THESE WITNESSES
TESTIFY.

SO I DON'T SEE ANYTHING -- I
MEAN, THIS IS SIMILAR TO ONE OF
THOSE TRIAL ORDERS, THE SAME
TYPE OF SITUATIONS COULD COME UP
HERE WHERE THE LAWYERS WAIT
UNTIL THE LAST MINUTE TO GET
GOING ON THE CASE --

>> AND YOU HIT ON THE EXACT
REASON WHY ALL THESE THINGS HAVE
TO BE DONE SO FAR IN ADVANCE
BECAUSE THEN WHAT IT DOES IS IT
PUTS THE COURT IN THE POSITION
OF HAVING A LONG-SCHEDULED CASE,
MAYBE A LENGTHY TRIAL WITH NO
TRIAL AND NO BACKUPS TO BE ABLE
TO DO THAT.

I DO WANT TO POINT OUT, JUSTICE,
THAT THERE IS A RULE THAT
SAYS -- A CASE MANAGEMENT
RULE -- THAT SAYS THAT THE TRIAL
COURTS ARE SUPPOSED TO HAVE A
UNIFORM CASE MANAGEMENT ORDER.
THERE'S ONLY ONE OR TWO OF THE
CIRCUITS THAT HAVE A UNIFORM
CASE MANAGEMENT ORDER.

THE FACT OF THE MATTER IS THAT
EVERY TRIAL JUDGE, LIKE YOU
SAID, HAS ONE OF THESE ORDERS,
AND THEY'RE HONORED MORE IN THE
BREACH THAN THEY ARE, I THINK,
AND A LOT OF JUDGES ARE
AFRAID --

>> THANK YOU --

>> WITH THIS ADDRESS, WHAT
JUSTICE LABARGA IS ADDRESSING,
IS THAT SOMETHING ELSE THAT
NEEDS TO BE ADDRESSED, DO YOU
THINK?

>> WHETHER IT'S ADEQUATE OR NOT
IS, I THINK, A DECISION FOR YOU
ALL TO MAKE, BUT I THINK IT DOES
ADDRESS THOSE THINGS TO TRY TO

STOP FROM HAPPENING.

I'M WAY OVER.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT, I'M JENNIFER MANSFIELD, MEMBER OF THE FLORIDA BAR RULES COMMITTEE, AND WITH ME IS MARIANNE TRUSSELL.

>> IS THERE A REASON THAT THE MEMBERS OF THE RULES OF CIVIL PROCEDURE DID NOT ATTEND ANY OF THESE PROCEEDINGS THAT LASTED FOR TWO YEARS OR SEEK TO PARTICIPATE OR PROVIDE INPUT OR WHATEVER THE CONCERNS WERE?

>> I'M NOT AWARE OF THE TIMING AND LOCATION OF THE INDIVIDUAL PUBLIC COMMENT PERIODS THAT WERE ALLOWED --

>> THESE WERE ACTUAL PUBLIC HEARINGS WHERE PEOPLE COULD GO AND PARTICIPATE.

IT WAS NOT A JUST SEND SOMETHING IN IF YOU WANT TO COME AND ADDRESS THEM, THAT'S WHAT I'M TRYING TO UNDERSTAND.

>> I'M NOT AWARE OF THAT BEING ANNOUNCED --

>> DOES THE RULES COMMITTEE NOT READ THE FLORIDA BAR NEWS?

>> YOUR HONOR, I THINK IT WOULD DEPEND ON THE INDIVIDUAL MEMBERS OF THE COMMITTEE AND WHETHER OR NOT THEY NOTICED IT PERSONALLY AND WHETHER OR NOT IT WAS AVAILABLE FOR THEM TO ATTEND GIVEN THEIR SCHEDULES.

I THINK EACH INDIVIDUAL MEMBER WOULD HAVE TO ADDRESS THAT, YOUR HONOR.

>> THE THING THAT CONCERNS ME IS WE WORK AT CROSS PURPOSES BECAUSE THERE SHOULD HAVE BEEN -- INSTEAD OF WAITING UNTIL THE END, TWO YEARS' WORK, VERY BUSY PEOPLE GO INTO DOING THIS PUBLIC HEARINGS ACROSS THE STATE OF FLORIDA FOR TWO YEARS, AND THEN AT THE END WE HAVE A GROUP THAT COMES IN THAT HISTORICALLY -- MAYBE NOT NOW, BUT HISTORICALLY IN MY EXPERIENCE -- TAKES FIVE YEARS TO DECIDE THE NUMBER OF DAYS IT

TAKES TO FILE ATTORNEYS' FEES,
IT BECOMES SOMEWHAT FRUSTRATING.
IS THERE A REASON FOR THAT?

>> WELL, YOUR HONOR, THE RULES
HAVE THE PROCEDURE SET OUT FOR
HOW THE CIVIL PROCEDURE RULES
ARE TO BE AMENDED.

IT DOES HAVE PROCEDURES WHERE
IT'S DEEMED NECESSARY SUCH AS,
FOR EXAMPLE, WHERE LEGISLATURE
HAS MADE A LEGISLATIVE CHANGE.
HOWEVER, IT DOES HAVE A
PROCEDURE LAID OUT WITH A
CERTAIN TIMELINE WHEN THE
PROPOSED RULES AND RULE CHANGES
WOULD BE PRESENTED TO THE COURT.
OF COURSE, THAT CAN BE MODIFIED
ACCORDING TO THE COURT'S REQUEST
AND THE RULES OF JUDICIAL
ADMINISTRATION.

WE'D ALSO POINT OUT THAT THE
TASK FORCE DID NOT APPROACH OUR
COMMITTEE EITHER, SO I DON'T
THINK THERE'S ANYONE BLAMELESS
IN THIS SITUATION --

>> WELL, APPARENTLY THE PERSON
THAT IS RESPONSIBLE OR
INTERESTED IN THE E-DISCOVERY
PARTICIPATED.

>> THAT IS TRUE.

BUT WHAT'S KEY IN THIS SITUATION
IS THAT THE OPPOSITION OF THE
RULES COMMITTEE IS NOT A TURF
WAR IN THIS SITUATION.

>> LOOKS TO ME, I MUST TELL YOU
QUITE HONESTLY, THAT'S EXACTLY
HOW I PERCEIVE THIS.

>> WELL, AS A MEMBER OF THE
COMMITTEE AND AS A CHAIR OF THE
SUBCOMMITTEE THAT STUDIED THIS
THE FACT THAT IT WAS NOT BROUGHT
TO OUR COMMITTEE WAS NOT OF OUR
CONCERN.

OUR CONCERN WAS TO GET
INFORMATION AS QUICKLY AS
POSSIBLE TO BE ABLE TO COMMENT
ON THE MERITS OF THE PROPOSAL,
AND THERE WAS NO JEALOUSY OR
TURF WAR INVOLVED IN
CONSIDERATION OF THIS AT ALL.

>> LET'S LOOK AT THE MERITS.
THE IDEA OF A JUDGE TAKING
CONTROL OVER PARTICULAR KINDS OF
CASES EARLY ON, SETTING A TRIAL

DATE AND THEN COMING UP WITH A SERIES OF REQUIREMENTS, THIS IS WHAT YOU HAVE TO DO WITHIN THE NEXT 30 DAYS, THIS IS WHAT YOU HAVE TO DO IN THE NEXT 90 DAYS AND MONITORING IT PERIODICALLY, FOR EITHER JUDGES ON THEIR OWN DECIDE IT IS A CASE THAT REQUIRES THIS KIND OF DIFFERENTIATED INTENSE CASE MANAGEMENT, OR THE LAWYERS BRING THAT CASE TO THE JUDGES' ATTENTION.

THE JUDGE DESIGNATES IT AS A CONFLICTS CASE.

WE THEN START TO KNOW WITHIN THE STATE OF FLORIDA HOW MANY OF THESE THERE ARE, AND WE THEN START TO LOOK AT A WAY TO TAKE THOSE CASES.

AND RATHER THAN HAVING TO SET UP SEPARATE BUSINESS COURTS OR, YOU KNOW, WHERE JUDGES CAN USE THESE TOOLS TO HANDLE MORE DIFFICULT CASES.

WHAT -- EXPLAIN AGAIN OR EXPLAIN WHAT IS THE OPPOSITION TO THAT CONCEPT?

THERE MAY BE SOME PROBLEMS THAT NEED TWEAKING IN THE RULE, BUT AS FAR AS THE OVERALL CONCEPT OF A MANDATORY RULE OF CASE MANAGEMENT FOR CERTAIN TYPES OF CASES THAT DEMAND MORE JUDICIAL OVERSIGHT.

>> YOUR HONOR, THE RULES COMMITTEE DID NOT HAVE AN OPPOSITION TO HAVING JUDGES RUNNING CASES.

THE PROBLEM FROM THE RULES COMMITTEE POINT OF VIEW IS THAT THE JUDGES DON'T MANAGE THEIR CASES CURRENTLY.

AND THE PROPOSED RULE WOULD ONLY GOVERN WHAT CERTAIN CASES THAT WERE DEEMED COMPLEX.

IT CREATED A TWO-PART SYSTEM WHERE ONE PART ALLOWS PRACTITIONERS TO BE RUNNING CASES, THE OTHER PART DEMANDS THAT THE JUDGES RUN IT.

YOU WIND UP HAVING TWO SYSTEMS SIMULTANEOUSLY AND POTENTIALLY IN CONFLICT WITH EACH OTHER.

THE UNANIMITY OF THE RULES COMMITTEE WAS BASED NOT BECAUSE THE LAWYERS SHOULD CONTROL VERSUS THE ATTORNEYS -- VERSUS THE JUDGES SHOULD CONTROL THE DOCKET.

>> WE TOOK IT FOR GRANTED THAT THE TASK FORCE HAD DONE ITS HOMEWORK ON THE ISSUE, AND ALTHOUGH WE COULDN'T FIND EMPIRICAL EVIDENCE FROM THE CLERK OF COURT LEVEL AS WE PUT IN OUR REPORT PAGES 3 AND 4, WE -- THE APPROACH ISSUE ACCEPTING THE PERCEPTION OF A PROBLEM AND WHAT COULD, WHAT WOULD OR COULD BE DONE IN ORDER TO SOLVE THAT PROBLEM.

>> WELL, I MEAN, BUT THEN YOU'RE SAYING IT'S NOT BEING USED, SO YOU MUST -- WHAT IS -- WE JUST THROW UP OUR HANDS AND FORGET ABOUT IT?

>> NO, YOUR HONOR. ONE OF THE MAIN PROBLEMS WITH THE PROPOSED RULE IS BECAUSE OF THE LACK OF EMPIRICAL EVIDENCE THAT SHOWS WHAT THE ROOT PROBLEMS ARE, WE CANNOT BE SURE THIS RULE --

>> WHAT KIND OF EMPIRICAL STUDIES ARE YOU PROPOSING OTHER THAN THE HEARINGS THAT WERE DONE AND CONDUCTED AND THOSE KINDS OF THINGS?

IT WAS MY UNDERSTANDING THEY WENT TO CLERKS TO GET EVERYTHING THEY COULD, AND YOU CAN'T GET IT BECAUSE WE DON'T EVEN HAVE COVER SHEETS THAT TELL US WHAT THE CASES ARE.

>> THAT'S CORRECT, YOUR HONOR. AND SO THE RULES COMMITTEE ACTUALLY AGREES WITH THE TASK FORCE RECOMMENDATION OF MODIFYING THE CIVIL COVER SHEET TO ENABLE US TO GATHER THE INFORMATION TO STUDY THE --

>> SO THIS IS ANOTHER TEN-YEAR PROCESS LIKE THE RULE WITH REGARD TO TIME FOR FILING THE NUMBER OF DAYS FOR FILING A MOTION FOR ATTORNEYS' FEES?

>> YOUR HONOR --

>> IS THAT WHERE WE'RE HEADED?

>> WE DON'T BELIEVE IT NEEDS TO BE A TEN-YEAR PROCESS, BUT IN ORDER TO FIX THE PROBLEM YOU NEED TO KNOW WHAT THE ORIGINS OF THE PROBLEM ARE.

>> DID THEY EVER COME OUT TO OPPOSE THE CONFLICTS DIVISION? BECAUSE ALL OF THEM OPERATE WITH THE NOTION THAT YOU'RE GOING TO HAVE MANDATORY CASE MANAGEMENT, AND JUDGE ROACH IN ORLANDO, I MEAN, JUDGE FREEMAN IN MIAMI, MOST OF THOSE CASES ACTUALLY SETTLED BECAUSE, YOU KNOW, WHAT ALL ACROSS THE COUNTRY THEY SHOW THAT IF YOU HAVE A JUDGE CONTROLLING THE CASE AND THE CASE IS A DIFFICULT CASE, THAT CASE IS MORE LIKELY TO GET RESOLVED IF IT IS MANAGED EARLY. AND SO ARE YOU OPPOSED TO THOSE DIVISIONS THAT SINGLE OUT THOSE CASES AND HAVE MANDATORY, YOU KNOW, ORDERS?

>> THE RULES COMMITTEE WAS AWARE OF THOSE.

IT HAS NEVER BEEN SQUARELY APPOINTED WITH THE ISSUE TO OPPOSE OR NOT OPPOSE --

>> BECAUSE THIS GOES ACROSS THE STATE SO WE DON'T HAVE TO SET UP DIVISIONS AND TAKE A JUDGE OUT OF HIS OR HER DOCKET AND PUT HIM INTO ONE TYPE OF CASE.

THIS ALLOWS ANY JUDGE TO BE ABLE TO DIFFERENTIATE A CASE.

AND SO IT'S A TOOL.

AND THE JUDGE HAS THE ABILITY TO SAY, NO, I DON'T THINK THIS QUALIFIES AS A COMPLEX CASE.

I'M NOT GOING TO GO THROUGH IT, SO IT'S NOT A MANDATORY, IT'S NOT EVEN MANDATORY TO THAT EXTENT.

IT GIVES THE JUDGE THAT DISCRETION.

>> WE REALLY DON'T KNOW WHAT THE EFFECT IS GOING TO BE ON -- ONE OF THE INTERESTING THINGS THAT CAME UP DURING THE COMMITTEE'S RESEARCH WAS THAT IN SOME JURISDICTIONS, CASES SUCH AS ASBESTOS THAT WERE CONSIDERED

COMPLEX NOW NO LONGER ARE
CONSIDERED NEEDING A DIVISION.
SAME THING ANOTHER CIRCUIT WAS
CONSIDERING SETTING UP A TOBACCO
DIVISION --

>> THAT'S A TOTALLY DIFFERENT
ISSUE.

THOSE ARE MASS LITIGATION
ISSUES.

WE'RE TALKING ABOUT A COMPLEX
CASE AND A SINGLE CASE THAT YOU
NEED CASE MANAGEMENT.

THOSE ARE DOCKET MANAGEMENT
FROM -- YOU HAVE THOUSANDS OF
ASBESTOS CASES OR THOUSANDS OF
SMOKERS.

ISN'T THAT A DIFFERENT ISSUE
THAN A COMPLEX CASE WITH
MULTIPLE WITNESSES, NOT MULTIPLE
PARTIES IN DIFFERENT CASES?

>> WITH ALL DUE RESPECT, YOUR
HONOR, I WOULD RESPECTFULLY
DISAGREE BECAUSE ALL OF THOSE
CASES ARE THE TYPES OF CASES
THAT PERSONAL INJURY ATTORNEYS
WOULD CONSIDER COMPLEX BECAUSE
OF THE NUMBER OF EXPERTS AND
WITNESSES INVOLVED, CAUSATION
ISSUES.

THOSE TYPES OF ISSUES ARE COMMON
NOT JUST IN THOSE TYPES OF
CASES, BUT MANY DIFFERENT TYPES
OF BOTH TORT LITIGATION CASES.

>> WHICH IT SEEMS TO ME YOU'RE
SAYING, AGAIN, SO IF YOU'RE NOT
REALLY IN FAVOR OF SAYING THERE
SHOULDN'T BE A DIVISION SET UP
JUST BECAUSE THERE'S A CERTAIN
KIND OF CASE, THEN WHAT IS WRONG
WITH THE IDEA OF HAVING A
SPECIALIZED RULE TO DEAL WITH
CASES THAT ARE GOING TO, BY
THEIR VERY NATURE, INVOLVE MORE
JUDGE TIME AND MORE LAWYER TIME?
TO TRY TO GET CONTROL OVER THAT
CASE?

>> ONE OF THE PRIMARY CONCERNS
RIGHT NOW IS THE BUDGET CRISIS
THAT WAS ADDRESSED IN OUR
RESPONSE.

THE RULE DOES NOT CONTEMPLATE
ANY ASSISTANCE OR FURTHER
BUDGET --

>> WHAT ABOUT THE RULE REQUIRES

ADDITIONAL PEOPLE?

YOU'VE HEARD A JUDGE THAT ACTUALLY DOES THIS, AND WE HAVE A JUSTICE WHO WAS A TRIAL COURT JUDGE AND ADMINISTERED CALENDARS.

WHY IS IT NOT SAVING RATHER THAN CREATING IF AT THE OUTSET YOU GET CONTROL OF THE CASE, YOU SET THE SCHEDULE, AND YOU DON'T HAVE THOSE REPETITIVE -- IT SEEMS TO ME THAT THIS IS A TREMENDOUS, TREMENDOUS TIME SAVER FOR A CIRCUIT JUDGE.

>> YOUR HONOR, AGAIN, THE RULES COMMITTEE IS NOT OPPOSED TO CASE MANAGEMENT BY THE JUDGES.

IN FACT, DURING OUR INVESTIGATIONS WE HAD MANY JUDGES WHO SAID THAT AT THE FRONT END OF THEIR CASES THEY ALWAYS BRING IN THE CASE AND ENGAGE IN THIS TYPE OF CASE MANAGEMENT WITH ALL OF THEIR CASES.

BUT THE FACT IS THAT NOT ALL JUDGES DO IT.

THE TOOLS ALREADY EXIST --

>> WAIT A MINUTE, WE'RE NOW MIXING APPLES AND ORANGES. YOU SAID IT'S GOING TO COST MORE, YOU'RE GOING TO NEED MORE PEOPLE.

THAT'S THE ISSUE WE'RE DISCUSSING RIGHT NOW.

WHAT ADDITIONAL PEOPLE WHEN YOU'RE HEARD JUDGES AND THEY HAD PUBLIC HEARINGS THAT DID NOT INDICATE THAT?

WHAT'S THIS BASED ON?

>> WELL, CURRENTLY AS THE SYSTEM'S RUN THE JUDGES ARE NOT AS HANDS-ON.

THE JUDGES ALREADY HAVE FULL DOCKETS, AND YET THIS RULE CONTEMPLATES THAT THE JUDGES WILL BE HANDS-ON MANAGING CASES AND MUCH MORE SO THAN THEY CURRENTLY ARE.

THIS WILL TAKE TIME, AND IN ORDER TO SPEED THE PROCESS ALONG THE JUDGES IN ALL LIKELIHOOD WOULD NEED ASSISTANCE.

AND AGAIN, THE ASSISTANCE

REQUIRES MONEY WHICH THE BUDGET DOESN'T ALLOW.

IT SIMPLY, IT'S MORE WORK, AND MORE WORK TRANSLATES TO BUDGET AND TIME RESTRICTIONS.

>> I THINK WHAT YOU'VE BEEN TELLING US HERE TODAY IS THERE'S ALREADY A RULE IN PLACE THAT PROVIDES THIS.

THE PROBLEM WITH THAT IS THAT IT DOES NOT PROVIDE FOR UNIFORMITY AMONG CIRCUITS.

IN FACT, I MENTIONED EARLIER TO JUDGE BATEMAN THAT, YOU KNOW, EACH JUDGE HAS HIS OR HER OWN TRIAL ORDER, AND THEY DIFFER. AND I THINK THAT SOMEONE PRACTICING IN JACKSONVILLE WHO IS TRYING A CASE IN MIAMI SHOULD KNOW WHAT THE RULES ARE ACROSS THE STATE.

I THINK THAT WOULD BRING SOME UNIFORMITY, SOME STRUCTURE TO OUR SYSTEM WHERE EVERYBODY KNOWS WHAT THE PLAYING FIELD IS.

DO YOU NOT AGREE THAT IF WE HAVE THAT SORT OF UNIFORMITY THROUGHOUT THE STATE AS TO WHAT THE DEADLINES ARE OR LISTING YOUR EXPERTS, THE DEADLINE FOR LISTING YOUR, YOU KNOW, MAIN WITNESSES IF WE HAD THAT ACROSS THE STATE, WOULD THAT NOT, ONE, ENCOURAGE MORE SETTLEMENTS AND, TWO, PROVIDE THE TRIAL JUDGE WITH MORE PLANNING TIME IN RUNNING THE DIVISION?

INSTEAD OF JUST THIS FREE-FOR-ALL THAT SEEMS TO BE GOING ON?

>> WELL, AS POINTED OUT IN OUR RESPONSE FILED WITH THE COURT THERE IS NO GUARANTEE THE RULE WILL ACTUALLY BE USED BY THE JUDGES.

IT REQUIRES A MOTION BY THE PARTIES [INAUDIBLE] AND THEN THE COURT TO HAVE THE HEARING TO DETERMINE THAT THE CASE WOULD BE, IN FACT, COMPLEX.

JUDGES WHO DON'T CURRENTLY USE -- AND PARTIES WHO DON'T ASK FOR CASE MANAGEMENT CONFERENCE AS WELL -- WHO DON'T CURRENTLY

USE THE CURVE SYSTEM SET UP IN 1.200 WHICH ALLOWS FOR ALL OF THIS TO HAPPEN ALREADY ARE PROBABLY NOT GOING TO BE INCLINED TO DECLARE THE CASE COMPLEX AND IMPOSE ALL THESE REQUIREMENTS EITHER.

>> SO THEN IN THE END WE WOULD HAVE A USELESS RULE, AND THAT WOULD BE VERY, YOU KNOW, THAT ITSELF WOULD BE A COMMENTARY. BUT I'M NOT SURE IS THAT A REASON TO REJECT A RULE THAT SOUNDS LIKE IT HAS A GOOD BASIS AND THAT YOU YOURSELF HAVE SAID THAT IF THERE WERE, THAT THE IDEA OF THE JUDGE MANAGING HIS OR HER CASES IS A GOAL THAT YOU AGREED WITH.

>> THE GOAL OF MANAGING THE CASES IS A GOAL THAT WE AGREE WITH.

THE RULE WE BELIEVE, THOUGH, TAKES THE DISCRETION AWAY FROM JUDGES TO MANAGE THE CASES ACCORDING TO EACH CASE IN THE COURT'S DOCKET.

IN TODAY'S BUDGETARY TIMES, THE WEAPON AT THE BEST SERVICE OF A JUDGE NOW IS DISCRETION AND THE FLEXIBILITY OF THE CURRENT RULE 1.200.

THE CURRENT PROPOSED RULE 1.201 TAKES AWAY THE JUDGE'S DISCRETION.

IT FORCES THEM TO TAKE CERTAIN ACTIONS WHETHER --

>> IT DOESN'T REALLY.

I GUESS THE QUESTION IS AT NO POINT DOES THIS SAY A JUDGE HAS TO DECLARE ANY PARTICULAR CASE COMPLEX LITIGATION CASE, DOES IT?

>> THAT'S CORRECT, YOUR HONOR, BUT ONCE THE CASE IS DECLARED COMPLEX, A SERIES OF REQUIREMENTS THEN MUST BE MET THAT ARE MANDATORY THAT TAKES AWAY THE DISCRETION.

AND THAT IS ONE OF THE PRINCIPLE REASONS WHY PEOPLE STUDYING THE RULE --

>> YOU ALWAYS SAY IT TAKES AWAY THE DISCRETION.

WHAT SPECIFICALLY DOES THIS REQUIRE A JUDGE TO DO THAT ANY JUDGE SHOULDN'T BE DOING ANYWAY? I MEAN, WHAT DISCRETION IS ACTUALLY BEING TAKEN AWAY FROM A JUDGE UNDER THIS RULE?

>> WELL, IT HAS TIME LIMITS FOR WHEN CERTAIN HEARINGS SHOULD BE HAD, IT HAS TIME LIMITS FOR WHEN EXPERT DISCLOSURE SHOULD BE HAD, WHEN EXPERT DEPOSITIONS SHOULD BE HAD.

IT -- RATHER THAN HAVING THE JUDGE WORK OUT A CASE MANAGEMENT ORDER THAT TAKES INTO CONSIDERATION THE SPECIFIC DISCOVERY NEEDS OF A PARTICULAR CASE, IT HAS SET DISCOVERY DEADLINES AND TIMELINES THAT MUST BE ABIDED BY ONCE IT'S DECLARED TO BE COMPLEX.

>> WELL, THE ONE AREA WHERE IT DOES TAKE THE DISCRETION AWAY IS REQUIRING A TRIAL JUDGE TO SEND THE CASE TO TRIAL WITHIN 24 MONTHS, BUT GOING BACK TO THE BUDGET WHICH IS OF MAJOR INTEREST TO ME, I DON'T UNDERSTAND HOW IT AFFECTS TRIAL JUDGES.

I WAS A TRIAL JUDGE IN CIVIL DIVISION.

I NEVER HAD A CASE MANAGER, AND I HAD OVER A THOUSAND CASES I SIGNED TO ME.

THE FIRST TIME I HAD A CASE MANAGER WAS WHEN I WAS IN FAMILY.

THAT'S A WHOLE DIFFERENT BALL GAME.

BUT IN CIVIL I NEVER HAD A CASE MANAGER, SO I DON'T KNOW WHAT IT IS THAT IS GOING TO COST MONEY TO IMPLEMENT THIS RULE?

WHERE'S IT GOING TO COME?

I DON'T UNDERSTAND WHERE THE EXPENSE IS.

>> IT'S THE EXTRA TIME THAT THE COURT HAS TO SPEND TO MANAGE THESE CASES WHERE THE COURTS ARE NOT DOING SO CURRENTLY.

RIGHT NOW IT TAKES 3-4 MONTHS TO SCHEDULE A HEARING ON THE ISSUES REQUIRING, SAY, 20 MINUTES OR

MORE IN MOST OF THE CIRCUITS,
AND THIS TYPE OF CASE MANAGEMENT
IS GOING TO REQUIRE THE JUDGES'
TIME AS WELL.

>> WELL, WITH THAT --

>> IN ORDER TO MEET THOSE --

>> WITH THAT YOU HAVE MORE THAN
EXCEEDED YOUR TIME.

THANK YOU VERY MUCH FOR YOUR
ARGUMENT, AND THANK BOTH OF YOU
FOR YOUR ARGUMENTS HERE TODAY.

THE COURT WILL NOW TAKE ITS
MORNING RECESS FOR 10 MINUTES.

>> PLEASE RISE.

>> SUPREME COURT'S NOW IN
RECESS.