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**In Re Amendments to Rules of Procedure - District Court of Appeal Performance & Accountability
Recommendations**

SC08-1724

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD,

DRAW NEAR, GIVE ATTENTION, AND

YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,

THIS GREAT STATE OF FLORIDA,

AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO

THE FLORIDA SUPREME COURT.

THE FIRST CASE ON OUR CALENDAR

THIS MORNING IS IN RE

AMENDMENTS TO THE RULES OF

JUDICIAL PROCEDURE JUVENILE

PROCEDURE, APPELLATE PROCEDURE.

ARE THE PARTIES READY TO

PROCEED?

ARE WE STARTING WITH

MR. SILVERSTEIN.

PLEASE BE MINDFUL YOU HAVE A
NUMBER OF PEOPLE WHO ARE
ARGUING ON THIS SIDE AT LEAST.
PLEASE BE MINDFUL OF THE TIME
AS YOU HAVE DIVIDED IT.

>> YES, YOUR HONOR.

DAVID SILVERSTEIN WITH THE
JUVENILE COURT RULES COMMITTEE.
AND WE APPLAUD THE EFFORTS OF
THE DCA COMMISSION IN AND
JUSTICES FOR CHARGING US WITH
AMENDING THE JUVENILE RULES, TO
EXPEDITE THE PROCESS.

APPEALS FOR DEPENDENCY AND
PARENTAL RIGHTS CASES TO GET
CHILDREN TO PERMANENCY AS
QUICKLY AS POSSIBLE.

OUR COMMITTEE, WE ADOPTED,
ESSENTIALLY, THE
RECOMMENDATIONS OF THE DCA
COMMISSION.

THE DCA COMMISSION RECOMMENDED
THAT THE JUVENILE RULES REFER
TO THE APPELLATE RULES
PROCEDURE.

PRACTITIONERS HAVE AN EASY
REFERENCE.

WE DID THAT.

WE BASICALLY ALLIGNED THE
STAFF PROPOSAL VERBATIM.

>> ONE OF THE ISSUES SEEMS TO
ME HERE, AND IS BROUGHT UP BY
DCF, I BELIEVE IS, WHETHER OR
NOT THE AUTOMATIC PROVISION OF
RULE 9.130, IS GOING TO BE
APPLICABLE IN THESE KIND OF
PROCEEDINGS VERSUS THE LANGUAGE
THAT IS IN 9.146.

SO WHAT IS YOUR, EXPLANATION OF
THE AMENDMENT?

>> WELL, WE ACKNOWLEDGE DCF'S
CONCERNS WITH THAT REGARD.

BUT, IF YOU READ 8.276, IT
SAYS THAT 9.146 GENERALLY
APPLIES TO APPEALS.

SO THE, I DON'T THINK THAT EVEN
OUR PROVISION THAT WE PUT IN
AND AS RECOMMENDED BY THE
COMMISSION, THAT THAT RESTRICT
A PARTY FROM LOOKING ANYWHERE
ELSE IN THE APPELLATE RULES.

WE HAVE NO OBJECTION, AND WE
PUT THIS IN OUR RESPONSE, TO
THE COURT CLARIFYING THIS
ISSUE.

>> IN OTHER WORDS, YOU AGREE

THERE IS AN AUTOMATIC STAY?

>> WELL, YOUR HONOR, AS FAR AS THAT ISSUE, THE COMMITTEE REALLY DID NOT ADDRESS THAT SPECIFIC ISSUE.

BUT IN MAKING ITS RECOMMENDATIONS, WE DIDN'T, WE ARE NOT ASKING THAT YOU MAKE ANY SUBSTANTIVE CHANGE.

>> WHY DON'T YOU, AS JUSTICE QUINCE SAYS, YOU HAVE A VERY SHORT TIME, IT SEEMS TO BE, THE BIGGEST CONTROVERSY, SEEMS TO BE ABOUT WHETHER TO LIST THE CATEGORIES OF NON-FINAL APPEALS AND THE CONCERN THAT HAS BEEN RAISED BY DCF AND OTHERS, AND, IS THAT, WHAT YOU DO, ESSENTIALLY IS, ACTUALLY ACT CONTRARY TO THE WHOLE PURPOSE OF THIS INITIATIVE, WHICH IS TO EXPEDITE THE MOVE TO PERMANENCY.

SO WHAT'S THE POSITION OF YOUR COMMITTEE ON THAT, AND, FOR OR AGAINST AND WHY?

>> THE JUVENILE RULES COMMITTEE DID NOT AGREE WITH THE APPELLATE RULES COMMITTEE

PROPOSAL TO CREATE THE LIST OF
NON-FINAL ORDERS.

AS YOU ALL KNOW, WE HAVE A LOT
OF DIFFERENT PRACTITIONERS.

WE HAVE JUDGES, PARENTS
ATTORNEYS, DCF ATTORNEYS,
GUARDIAN AD LITEMS.

EVERYONE HAS GOT A DIFFERENT
OPINION.

WE DID COME TO CONSENSUS THAT
WE DID NOT AGREE TO THE
PROPOSAL FOR NUMEROUS REASONS.

ONE, AS THE COMMISSION POINTED
OUT IN THEIR RESPONSE, THAT
BASICALLY IT IS GOING TO CAUSE
A DELAY IN THE PROCESS AND IS
CONTRARY TO THEIR CHARGE TO THE
COMMITTEE.

SOME ON THE COMMITTEE SAID,
WELL, WHY ARE YOU JUST CREATING
THIS EXCLUSIVE LIST OF
NON-FINAL ORDERS?

WHY AREN'T THERE ANY OTHER
NON-FINAL ORDERS?

SO WE HAD DIVERSE OPINIONS BUT
ALL CAME TO AN AGREEMENT THAT
WE DID NOT APPROVE THE
APPELLATE COURT RULES

COMMITTEE'S RECOMMENDATION.

>> OKAY.

WHAT ABOUT THIS, THE ISSUE YOU
HAVE ABOUT THE ADJUDICATORY
HEARINGS AND WHETHER OR NOT A
PARENT, YOUR PROPOSAL IS THAT
EVEN IF A PARENT, ONE PARENT IS
NOT THE PARENT WHO IS MAKING
THE CHILD DEPENDENT, FOR WONT
OF A BETTER WORD IS ENTITLED TO
NOTICE OF SUBSEQUENT HEARINGS?
IS THAT YOUR PROPOSAL?

>> YES.

WHAT HAPPENED WAS IS THAT THE
COMMISSION RECOMMENDED THAT WE
INCLUDE THE DATES OF THE
ADJUDICATORY HEARINGS IN THE
DEPENDENCY AND TERMINATION OF
PARENTAL RIGHTS AJUDICATION
ORDER.

THEY MADE A RECOMMENDATION TO
AMEND RULE 8.330.

THE ISSUE IS THAT IN YOUR
THREE-YEAR CYCLE REPORT WE
ALREADY AMENDED 8.330.

AND THAT IS WHY THE ISSUE
REGARDING DISMISSALS AT TRIAL
OF A DEPENDENCY PETITION OF
ALLEGATIONS AND ALLEGATIONS OF

A DEPENDENCY PETITION CAME
ABOUT.

THE ISSUES THAT WE WERE TRYING
TO ADDRESS IS THAT, COURTS WERE
SAYING, OKAY, WE'RE GOING TO
DISMISS AT TRIAL.

I'M GOING TO DISMISS THE
PETITION AS TO THE FATHER BUT
I'M GOING TO GRANT IT AS TO THE
MOTHER.

WELL, NOW, ONE PARENT IS THE
COURT WOULD TREAT ONE PARENT NO
LONGER AS A PARTY TO THE
PROCEEDINGS AND THAT'S NOT
CORRECT BECAUSE THE BOTH
PARENTS CONTINUE TO BE PARTIES,
AND THIS CAME ABOUT AND WAS
ACTUALLY BROUGHT UP IN A FIFTH
DISTRICT COURT OF APPEAL CASE,
THE CLR CASE WHICH WE CITED.

>> IS THERE ANY REAL OPPOSITION
TO THAT?

IS DCF IN OPPOSITION TO THAT?

>> I DON'T BELIEVE THAT DCF IS
IN OPPOSITION AS FAR AS THE
CONCEPT THAT THE RULES, AS THEY
STAND NOW, ONLY ALLOW THE COURT
TO RULE ON THE ENTIRE PETITION,

OR NOT.

THAT EITHER THE ENTIRE PETITION
IS DISMISSED AT TRIAL OR NOT.

AND WHAT WE WERE TRYING TO
ADDRESS IS, AT THAT YOU MAY
HAVE ALLEGATIONS IN THE
PETITION REGARDING BOTH PARENTS
AND THE COURT MAY MAKE A
FINDING REGARDING ONE PARENT
BUT DISMISS THE ALLEGATIONS
REGARDING THE OTHER.

SO I DON'T THINK THAT DCF HAS A
PROBLEM WITH THE DISMISSAL OF
ALLEGATIONS.

I THINK WHAT THEY HAVE AN ISSUE
WITH IS THAT WE USED LANGUAGE
THAT THE COURT MAY DISMISSAL
MITIGATIONS AGAINST A PARTY.

AND THAT ALLEGATIONS IN A
DEPENDENCY PETITION ARE
REGARDING THE CHILD'S
SITUATION, AND NOT REALLY
CHARGES AGAINST A PARENT.

SO --

>> YOU'RE INTO YOUR REBUTTAL
TIME, IF YOU WANT TO SAVE SOME
TIME FOR REBUTTAL.

>> THANK YOU, YOUR HONOR.

>> MISS GIDDINGS, ARE YOU NEXT?

>> MAY IT PLEASE THE COURT.

I'M KATHY GIDDINGS AND I'M HERE
ON BEHALF OF SCOTT DIAMOND,
CHAIR OF THE RULES OF JUDICIAL
ADMINISTRATION COMMITTEE.

I'M HERE TODAY JUST BRIEFLY TO
ADDRESS CONCERNS THAT HAVE BEEN
EXPRESSED WITH THE RULE, THE
COMMISSION PROPOSED A NEW RULE
BE ADDED TO COURT REPORTING,
WHICH WAS 2.535-I.

AND THE NEW RULE THAT THEY'RE
PROPOSING IS THAT TRANSCRIPTION
OF HEARINGS FOR APPEALS OF
ORDERS IN JUVENILE DEPENDENCY
AND TERMINATION OF PARENTAL
RIGHTS CASES SHOULD BE GIVEN
PRIORITY OVER THE TRANSCRIPT OF
ALL OTHER PROCEEDINGS.

>> AND MISS GIDDINGS, I KNOW
YOUR COMMITTEE LOOKED AT THIS
AND THEN YOU, ACCORDING TO THE
COMMISSION AND OTHERS REALLY
WATERED IT DOWN BECAUSE IF YOU
READ EVERYTHING THAT THE
COMMISSION DID, RATHER THAN
CHANGE THE TIME FOR WHEN THE
BRIEFS WERE GOING TO BE FILED

OR ANY OTHER PROCESS, THEY SAID
THE BIGGEST SOURCE OF DELAY IS
THAT THESE TRANSCRIPTS IN THESE
CASES ARE NOT BEING FILED IN A
WAY, AND WE ALL KNOW THAT, WHEN
IT COMES TO CHILDREN, EVERY DAY
IS A SIGNIFICANT IN THEIR
LIVES.

SO I GUESS THAT, I, WHAT IS THE
BEST -- I KNOW THERE ARE
ARGUMENTS, WELL, THERE ARE
OTHER CASES THAT ARE IMPORTANT
LIKE CAPITAL CASES BUT WE KNOW
CAPITAL CASES GO ON FOR 20 OR
30 YEARS.

WE'RE TRYING TO GET THESE
PARTICULAR CASES FINISHED IN A
WAY THAT DOESN'T DENY THE
ADMINISTRATION OF JUSTICE TO
THE PEOPLE INVOLVED.

SO WHAT'S WRONG WITH THE
COMMISSION'S PROPOSAL?

>> YOUR HONOR, WE DO NOT TAKE A
POSITION SUBSTANTIVELY WHICH
CASES SHOULD OR SHOULD NOT BE
GIVEN A PRIORITY.

THE COMMITTEE WAS CONCERNED
THAT THIS RULE CONFLICTED WITH
A NUMBER OF OTHER RULES IN THE

RULES OF JUDICIAL

ADMINISTRATION, SPECIFICALLY,

RULE 2.535-H-4 SAYS THAT

TRANSCRIPT IN CAPITAL CASES

HAVE TO BE GIVEN A PRIORITY.

2.545-C STATES THAT, IN ALL

NON-CRIMINAL CASES ASSIGNED A

PRIORITY STATUS BY STATUTE,

RULE OF PROCEDURE, CASE LAW OR

OTHERWISE.

MUST BE GIVEN A PRIORITY.

RULE 2.215-G STATES, AND THIS

IS THE PARTICULAR TO YOUR

QUESTION, IT SAYS PARTICULAR

ATTENTION SHALL BE GIVEN TO ALL

JUVENILE DEPENDENCY AND

TERMINATION OF PARENTAL RIGHTS

CASES BUT GOES ON TO SAY, AND

CASES INVOLVING FAMILIES AND

CHILDREN IN NEED OF SERVICE AND

CHALLENGES INVOLVING ELECTIONS

AND PROPOSED CONSTITUTIONAL

AMENDMENTS.

AND THEN RULE 2.550-A STATES,

THAT IN DETERMINING PRIORITY

FOR CONFLICT PURPOSES, YOU HAVE

TO GIVE PRIORITY TO JUVENILE

DEPENDENCY AND TERMINATION OF

PARENTAL RIGHTS.

THEY ARE TO GENERALLY BE GIVEN
PREFERENCE OVER OTHER CASES
EXCEPT FOR SPEEDY TRIAL AND
CAPITAL.

>> I GUESS THIS THOUGH WAS TO
BE SPECIFICALLY SO THERE WOULD
BE A RULE THAT THE, YOU KNOW,
WHOEVER IS CALLING UP THE COURT
REPORTER TO SAY, DO MY
TRANSCRIPT FIRST.

I MEAN IT, SORT OF A PRAGMATIC
THING.

I GUESS IF WE COULD ORDER COURT
REPORTERS JUST TO DO THAT, BUT,
YOU KNOW, WHAT YOU'RE TALKING
ABOUT IS SOME GENERAL
PRIORITIES AS FAR AS COURT
PROCEEDINGS.

AS FAR AS THE ACTUAL
TRANSCRIPT, I DON'T, I DIDN'T
HEAR THAT ANY OF THOSE REALLY
SPOKE ABOUT THE TRANSCRIPT,
OTHER THAN MAYBE CAPITAL CASES.

>> WELL, CAPITAL CASES
TRANSCRIPTS IT DIRECTLY
CONFLICTS WITH THAT RULE.

>> WE WOULD HAVE TO CLARIFY --

>> WE'RE NOT TAKING A POSITION.

WE WERE CONCERNED THAT THOSE,
THAT THERE ARE OTHER CASES THAT
BY CASE LAW STATUTE, AND RULE
ARE TO BE GIVEN PRIORITY.

IT IS IMPOSSIBLE TO LIST THEM
ALL.

AND ONE OF THE OTHER RULES
ALREADY LISTED IN ADDITION TO
JUVENILE DEPENDENCY, CASES
INVOLVING FAMILY AND CHILDREN
IN NEED OF SERVICES.

>> SO YOU ARE SAYING WE WOULD
HAVE TO SAY, WHEN THERE'S A
COURT REPORTER WORKING ON A
CAPITAL CASE, I MEAN THE
CAPITAL CASE IS READY OR THIS
TWO-DAY TERMINATION OF PARENTAL
RIGHTS THING, WE BETTER TELL
THEM THEY BETTER DO THE
TERMINATION OF PARENTAL RIGHTS
FIRST BEFORE THE CAPITAL CASE?

>> I THINK WHAT WE WERE SAYING
THERE HAS TO BE SOME DISCRETION
INVOLVED.

TO MAKE IT CONSISTENT WITH THE
OTHER RULES.

IF THIS COURT, I MEAN THESE ARE
THIS COURT'S RULES.

WE ARE JUST HEAR HERE TO MAKE
RECOMMENDATIONS TO YOU.
AND IT WAS OUR CHARGE TO POINT
OUT THAT THERE WERE CONFLICTS
IN THE RULES AND WE WERE TRYING
TO COME UP WITH A MECHANISM FOR
ELIMINATING THAT CONFLICT, OR,
AND SO, BUT, WE ALSO RECOGNIZE
THAT THERE MAY BE OTHER CASES
OUT THERE THAT NEED PRIORITY,
AND SO, TO ONLY PUT THESE TWO
IN THAT PRIOR STATUS COULD
CAUSE PROBLEMS.

AND SO THAT WAS WHAT THE
COMMITTEE'S CONCERN WAS.

>> I BELIEVE YOU'RE WELL BEYOND
YOUR TIME.

>> OKAY.

>> MR.^MILLER?

>> MAY IT PLEASE THE COURT.

>> VERY CONFUSED HOW THEY HAVE
ALLOCATED TIME.

>> I'M DAVID MILLER.

I'M SECRETARY OF THE APPELLATE
COURT RULES COMMITTEE.

OUR CHAIR, JOHN MILLS, APOLOGIZES
FOR NOT BEING HERE.

HE BECAME SICK YESTERDAY AND
WAS UNABLE TO TRAVEL.

HOWEVER, WE HAVE WITH US HERE
TOM YOUNG, WHO IS A MEMBER OF
OUR COMMITTEE.

HE IS ALSO PRESENTING ON BEHALF
THE GUARDIAN AD LITEM PROGRAM.
BUT HE IS NOT JUST A MEMBER OF
OUR COMMITTEE BUT^CHAired THE
SUBCOMMITTEE WHICH STUDIED AND
REPORTED THIS ISSUE.

HE BEST ABLE TO ANSWER YOUR
QUESTIONS ABOUT THE COMMITTEE'S
DELIBERATIONS.

SO WE WOULD LIKE TO CEDE OUR
TIME TO HIM AND ASK HIM TO
PRESENT FOR US.

>> TO WHOM, WHO ARE YOU CEDING
YOUR TIME TO?

>> MR.^TOM YOUNG.

WHO IS SEATED WITH ME AT THE
COUNSEL TABLE AND HE REPRESENTS
THE GUARDIAN AD LITEM PROGRAM
AS WELL. THANK YOU.

>> MR.^YOUNG, YOU WILL BE ABLE
TO DISCUSS THE PROVISION
CONCERNING THE NON-FINAL
ORDERS?

>> THAT'S CORRECT, YOUR HONOR.
THAT'S CORRECT.

AND TO CORRECT ONE THING, THAT
MR. MILLER SAID, I AM THE
CURRENT CHAIR OF THE FAMILY LAW
SUBCOMMITTEE.

I DID NOT CHAIR IT WHEN THE
COMMITTEE STUDIED THIS ISSUE
BUT I WAS ON THAT SUBCOMMITTEE.

>> CAN I JUST ON MISS GIDDINGS
ISSUE AND TRYING TO MAKE SURE
WE STICK TO THE ORIGINAL GOAL
TRYING TO EXPEDITE THESE CASES,
DO YOU FIND AS SOMEBODY THAT
HANDLES APPEALS FOR THE
GUARDIAN AD LITEM PROGRAM THAT
TRANSCRIPTS AND GETTING
TRANSCRIPTS IN A TIMELY FASHION
CONTINUE TO BE A PROBLEM AROUND
THE STATE?

>> IN SOME AREAS OF THE STATE
IT WAS A PROBLEM, THAT IS
CORRECT.

FROM THE COMMITTEE STANDPOINT
THE APPELLATE COURT RULES
COMMITTEE FELT IT SHOULD DEFER
TO THE RULES OF JUDICIAL
ADMINISTRATION COMMITTEE AND --

>> THEY WERE JUST DEFERING
BECAUSE THEY FELT WE HAD MAYBE
SAID CAPITAL CASES ARE

PRIORITY, SO WE'RE COME BACK

AROUND TO.

>> RIGHT.

>> TRYING TO MAKE SURE WE CAN

HAVE SANITY HERE IN TERMS OF

WHAT OUR ORIGINAL PURPOSE IS.

I KNOW YOU SEEM TO BE THE

GUARDIAN AD LITEM PROGRAM SEEMS

TO BE AT ODDS WITH OTHER

CHILDREN'S ADVOCATES SAYING

WHETHER IT IS A GOOD THING TO

LIST THESE CATEGORIES OF

NON-FINAL ORDERS.

OTHER PEOPLE SEEM TO BE

CONCERNED THAT WHAT WE'LL DO IS

ACTUALLY GIVE LAWYERS

REPRESENTING PARENTS, ALL THESE

AVENUES TO APPEAL ORDERS THAT

ARE CURRENTLY NOT BEING

APPEALED.

THE DETRIMENT OF THE STABILITY

OF THE CHILD AND THE ULTIMATE

GOAL OF TRYING TO GET THE

CHILDREN TO PERMANENCY, AND

THE, MOST EXPEDITIOUS WAYS.

SO LET ME HEAR YOUR, REASONS

FOR WHY YOU REALLY GONE AGAINST

WHAT THE COMMISSION HAS

RECOMMENDED THAT THAT, DOES NOT
OCCUR AND THAT YOU THINK THIS
WILL ACTUALLY HELP EXPEDITE THE
PROCEEDINGS, RATHER THAN
FRUSTRATE THEM.

>> I WILL BE HAPPY TO DO THAT.

AND WE GOT TAKEN OFF DOWN THE
ROAD ARGUMENT AND I WOULD LIKE
TO RESERVE A BIT OF MY TIME FOR
REBUTTAL, TWO MINUTES.

SO I WILL TRY TO WATCH MY CLOCK
HERE.

I TOLD THE MARSHAL WHEN WE
STARTED, IF THAT'S NOT OKAY.

THAT'S FINE.

TO ANSWER YOUR QUESTION, JUSTICE
PARIENTE, I THINK A
COUPLE OF THINGS NEED
TO BE CONSIDERED FIRST.

CERTIORARI REVIEW DOES NOT
GUARANTEE A DECISION ON THE
MERITS.

IT'S A DISCRETIONARY STANDARD
OF REVIEW THAT VARIES PANEL BY
PANEL AND COURT BY COURT.

AND IF YOU LOOK AT THE REPORT
OF THE COMMISSION ON THE
DISTRICT COURT PERFORMANCE
ACCOUNTABILITY COMMISSION, WHAT

YOU SEE IS THAT THE COMMISSION
ACKNOWLEDGES THAT ALREADY,
THESE CASES ARE BEING FILED.
THEY'RE SIMPLY BEING MISFILED
AS APPEALS FROM FINAL ORDERS.
AND THE COURTS AREN'T
DISCOVERING THAT MISFILING
UNTIL THEY, THE RECORD IS
PERFECTED AND THEY'RE REVIEWING
THE BRIEFS AND THEY'RE LIKE,
HOLY COW THIS IS NON-FINAL
ORDER.

>> IN THE HOLY COW CATEGORY,
GUARDIAN AD LITEM IS A PARTY TO
THE APPEAL AND DCF WHY DOESN'T
SOMEBODY SOON AS THAT NOTICE OF
APPEAL IS FILED ERRONEOUSLY,
ADVISE THE COURT THAT IT HAS TO
BE REDESIGNATED AS NON-FINAL
APPEAL?

FOR THE LIFE OF ME I DON'T KNOW
HOW WE END CREATING A WHOLE
OTHER RULE WHERE THE SOLUTION
BE WITHIN THE GUARDIAN AD LITEM
PROGRAM AND THE DEPARTMENT OF
CHILDREN AND FAMILIES.

>> YOUR HONOR, TO ADDRESS THAT,
AS A GUARDIAN, WHEN I WORKED

WITH THE GUARDIAN AD LITEM PROGRAM, WE DID FILE MOTIONS TO DISMISS OR TO CONVERT TO CERTIORARI PROCEEDINGS.

THERE IS CASE LAW IN THE 5th AND THE FOURTH DISTRICT REVIEWING SHELTER ORDERS AS FINAL ORDERS.

AND SO THIS INCONSISTENCY IS OUT THERE.

OUR MOTIONS HAVE NOT BEEN ACCEPTED BY SOME OF THE COURTS.

WHAT THIS RULE DOES IS IT TRIES TO BRING SOME CONSISTENCY BY SAYING, BY CREATING A FRAMEWORK AND BY SAYING, THIS IS WHAT IS FINAL.

AND IF IT IS NOT IN THIS LIST OF ORDERS THAT MAY BE REVIEWED AS FINAL, THIS IS THE METHOD OF REVIEW AND BY DEFINING A METHOD OF REVIEW IT THEREBY ELIMINATES THE DELAY THAT THE COMMISSION ACKNOWLEDGED OCCURS WHEN THESE CASES ARE MISFILED.

>> ARE YOU --

>> CLARIFYING POINT OF CREATING MORE APPEALS, WHY NOT DO THE SLIP SIDE?

>> WELL, AGAIN, -- FLIP SIDE.

AGAIN CERTIORARI, THERE ARE TWO
WAYS TO EXPEDITE, HOW MANY DAYS
IT TAKES TO REACH A DECISION
AND WHEN THE APPEAL CAN BE
FILED.

CERTIORARI DOES NOT ASSURE A
DECISION ON THE MERITS.

IT MAY ACTUALLY POSTPONE A
REVIEW OF A NON-FINAL ORDER
INDEFINITELY CREATES FURTHER
PROBLEMS.

IT MAY, WHY LEAVE A, IN A
PLACEMENT UNDER AN INFIRM TRIAL
COURT ORDER WHEN, LONGER THAN
IS NECESSARY?

>> WELL SOME OF THE --

[INAUDIBLE]

ARE CHILDRENS CASE PLANS
CHANGED?

>> IT VARIES.

THERE CAN BE MULTIPLE CHANGES.

>> RIGHT.

SO EVERY TIME THERE IS GOING TO
BE A MODIFICATION TO A CASE
PLAN, IS THERE GOING TO BE
APPEAL FROM THAT?

>> YOUR HONOR, THE CONCEPT

HERE, AGAIN, WAS A FRAMEWORK.

WITH REGARD TO THAT SPECIFIC
RULE, CASE PLANS TURN ON, ARE
SUPPOSED TO ADDRESS WHAT
SERVICES, WHAT TASKS, WHAT
GOALS ARE NECESSARY REALIZE A
CHILD'S BEST INTEREST.

>> IT IS A VERY FLUID THING,
RIGHT?

>> IT IS A FLUID THING, BUT
WHAT WAS, WHAT THE GENERAL
INTENT THOUGH WAS, WAS BECAUSE
THE STANDARD FOR THE TRIAL
COURT IS THE CHILD'S BEST
INTEREST, IT WAS MORE LIKELY
THAT AN ORDER DENYING A MOTION
TO AMEND WOULD THWART A CHILD,
WOULD MORE LIKELY THWART A
CHILD'S BEST INTEREST.

NO RULE IS PERFECT AND
CERTAINLY THIS PARTICULAR LIST
IS NOT PERFECT.

>> ESPECIALLY THE PROVISION
THAT BOTHERS ME THE MOST IS THE
ONE THAT SAYS, PERTAINING TO A
CHILD WHO WILL TURN 18 WITHIN
24 MONTHS OF RENDITION OF THE
NON-FINAL ORDER.

ANY OTHER PERTAINING TO A CHILD

WHO WILL TURN 18 WITHIN 24
MONTHS, WOULD THEN BE
APPEALABLE?

>> YOUR HONOR, THE, TWO THINGS.

AND I WOULD NOTE AS JUSTICE
PARIENTE BEGAN HER QUESTION
WITH, DIFFERENT ORGANIZATIONS
REPRESENTING YOUTH HAVE TAKEN
DIFFERENT POSITIONS.

IN FOSTER CHILDRENS PROJECT FOR
EXAMPLE, DOES NOT DISAGREE WITH
THE LIST.

THEY DISAGREE WITH THE FIRST
THREE ITEMS ON THE LIST.

SO FOSTER CHILDRENS PROJECT
ACTUALLY IN THEIR COMMENT DID
NOT TAKE EXCEPTION TO THE POINT
THAT YOU JUST RAISED, JUSTICE
QUINCE.

>> BUT WHAT'S THE ANSWER THOUGH
TO THE QUESTION?

ANY ORDER PERTAINING TO A CHILD
WHO TURNED 20 -- 18 WITHIN 24
MONTHS OF THAT ORDER WOULD THEN
BE APPEALABLE?

>> YES. AND THE REASON FOR THAT IS
BECAUSE THESE ARE THE YOUTH WHO
ARE ABOUT TO AGE OUT AND WHO

ARE GOING TO BE EXPECTED TO
LIVE SUCCESSFULLY AS
INDEPENDENT ADULTS.

AND SO THE RATIONALE BEHIND THAT
PARTICULAR RULE WAS THAT THE
ORDERS THAT ARE GOING TO BE
LIKELY SIGNIFICANT TO THE
YOUTH, ARE GOING TO BE THOSE
EFFECTING YOUTH WHO ARE AGING
OUT.

>> I MEAN WE DON'T EVEN HAVE
ENOUGH LAWYERS OR GUARDIAN AD
LITEMS FOR THESE CHILDREN TO
BEGIN WITH.

THE IDEA THAT, OF OPENING UP
AND CONCENTRATING SOURCES ON
WHETHER THESE KINDS OF ORDERS
SHOULD BE APPEALED, I JUST FIND
THIS IS A VERY
COUNTERPRODUCTIVE POSITION THAT
THE GUARDIAN AD LITEM PROGRAM'S
TAKING.

>> WELL, YOUR HONOR, AGAIN THE
CASES ARE BEING FILED.

THE COMMISSION RECOGNIZED IN
ITS REPORT THAT THESE CASES ARE
BEING FILED NOW.

IT IS JUST A MATTER OF
PROVIDING A CERTAIN METHOD FOR

REVIEW.

I WILL BE THE FIRST TO CONCEDE
THAT ANYTHING THAT THE COURT
CAN DO IN THE RULES TO SAY,
THESE ARE FINAL ORDERS AND
EVERYTHING ELSE GOES THROUGH
THIS, TAKES THIS PATH FOR
APPELLATE REVIEW, WOULD BE
HELPFUL.

BUT THE APPELLATE COURT RULES
COMMITTEE TOOK THE VIEW, AND
CERTAINLY THE SUBCOMMITTEE IN
DISCUSSING IT, TOOK THE VIEW
THAT THESE CASES, THESE ISSUES
ARE NO LESS IMPORTANT THAN
ORDERS DEALING WITH IMMEDIATE
RETURN OF PROPERTY OR IMMEDIATE
MONETARY RELIEF, WHICH ARE
REVIEWABLE BY DIRECT APPEAL.

>> ALL OF THESE KINDS OF ORDERS
YOU LISTED HERE, A THROUGH I,
ARE THE KINDS OF ORDERS THAT
ARE PRESENTLY EITHER BEING
APPEALED OR, BROUGHT BEFORE THE
COURT VIA CERT, IS THAT YOUR
POSITION?

>> YES.

IF YOU LOOK AT EXHIBIT E, I

BELIEVE IT WAS OF THE
COMMISSION'S REPORT, THEY
IDENTIFIED NUMBER OF THAT WERE
APAPPEALED.

I'M RUNNING OUT OF TIME.

LET ME JUST SAY, PROVISION
ALLOWING VIEW OF THE SHELTER
ORDER, THAT WAS BEFORE THE
COURT.

THE APPELLATE COURT RULES
COMMITTEE SENT THAT TO THE
COURT BACK IN 2005 AND THE
COMMITTEE FEELS STRONGLY THAT
ORDERS THAT EFFECT CUSTODY,
SHOULD BE REVIEWED ON PAR WITH
ALL OTHER FAMILY LAW MATTERS
BECAUSE TO DO OTHERWISE REALLY
CREATES A CASTE WITH DEPENDENT
CHILDREN BEING TREATED
DIFFERENTLY.

I'M OUT OF TIME.

I APPRECIATE THE COURT'S
ATTENTION.

THANK YOU VERY MUCH.

>> THANK YOU.

MR.^MUSTO.

>> MAY IT PLEASE THE COURT.

GOOD MORNING, YOUR HONORS.

ANTHONY MUSTO ON BEHALF OF THE

DEPARTMENT OF CHILDREN AND
FAMILIES.

THE MEAT AND POTATOES OF THE
COMMISSION'S REPORT WAS THE
RECOMMENDATION TO REQUIRE COURT
REPORTERS TO FILE THE
TRANSCRIPTS MORE EXPEDITIOUSLY.

AND IF YOU LOOK AT THE
APPENDIXES, APPENDICES TO THAT
REPORT YOU CAN SEE THAT THE
NUMBERS BEAR THAT OUT.

THAT WAS VERY APPARENT AT ALL
THE WORKSHOPS.

I WENT TO TWO OF THE REGIONAL
WORKSHOPS AND THE STATEWIDE
WORKSHOPS.

THE NUMBERS SHOW THAT THE
MEDIAN TIME FROM NOTICE OF
APPEAL TO REFLY BRIEF, BEFORE
IT IS IN THE COURTS HANDS
TOTALLY, 155 DAYS.

OF THAT, 86 IS SPENT WAITING
FOR THE RECORD.

OVER HALF OF IT.

NOW, WE ALSO INQUIRED, WHAT
HAPPENS THERE?

WELL THE CLERK GETS RECORD.

THEY SEND IT TO THE APPELLATE

COURT, MATTER OF THREE DAYS,
FIVE DAYS A WEEK.

SO THE BULK OF THIS TIME IS
WAITING FOR TRANSCRIPTS.

YOU'RE TALKING ABOUT AN ALMOST
THREE-MONTH DELAY THAT CAN BE
SHORTENED TO ABOUT TWO WEEKS.

YOU CAN CUT 2 1/2 MONTHS OUT OF
THIS PROCESS WITH THIS ONE
RULE.

THIS ONE RULE, HAS A BIGGER
IMPACT THAN ALL THE OTHER
RECOMMENDATIONS COMBINED.

>> DID YOU TAKE A LOOK AT THE
AREAS WHERE IT HAS BEEN
MENTIONED, IF WE DO SO WE'LL BE
CREATING CONFLICT WITHIN OUR
OWN RULES?

AND IF SO, WHAT ARE YOUR
SUGGESTIONS OR DATIONS WITH
REGARD TO THAT?

>> WELL, FIRST OF ALL I DON'T
THINK THEY ACTUALLY DO CREATE
THE CONFLICT THEY SAY, FOR
INSTANCE, THE PROVISION THAT
MISS GIDDING CITED DEATH
PENALTY CASE SHOULD BE GIVEN A
PRIORITY.

DOESN'T SAY THE HIGHEST

PRIORITY.

ONE OF THE OTHER SAYS THAT
MATTERS WHICH ARE GIVEN
PRIORITY BY STATUTE, RULE OF
PROCEDURE OR OTHERWISE.

>> AGAIN, WE DON'T HAVE THE
PUBLIC DEFENDERS OR CRIMINAL
LAW SECTIONS HERE AS WELL.
ARE WE GETTING INTO A FIGHT
BETWEEN DIFFERENT AREAS OF THE
LAW?

BECAUSE WHEN ONE SAYS IT IS A
PRIORITY, BROADER VIEW THERE IS
A CONCERN WITH CAPITAL CASES,
CERTAINLY, AND, DO WE, PLACE
THIS ABOVE THAT AND THAT'S WHAT
I'M LOOKING FOR?

HOW DO WE ADDRESS THAT?

>> WELL THE ANSWER TO THAT
QUESTION, NUMBER ONE, I DON'T
THINK THERE IS CONFLICT AS I
SAID.

NUMBER TWO, IF THERE IS A
CONFLICT, YES, THESE CASES
SHOULD HAVE PRIORITY.

THE FUTURE OF A CHILD BEING
DELAYED FOR TWO OR THREE MONTHS
HAS A LOT MORE IMPACT WAITING

AN EXTRA WEEK TO PROCEED WITH A
DEATH PENALTY CASE.

IT JUST MEANS THAT THE STATE OF
FLORIDA HAS TO FEED SOMEBODY
FOR AN EXTRA WEEK.

>> WHAT HAPPENS -- WHAT HAPPENS
WHEN THE GOVERNOR HAS ISSUED A
DEATH WARRANT?

>> VERY DIFFERENT.

>> SO THERE DIFFERENT
CIRCUMSTANCES?

>> YES.

>> SO WHO GETS TO CHOOSE?

>> NO.

WE DO SUGGEST THAT THE RULE
CONTAIN A PROVISION THAT A
TRIAL COURT, THAT IT IS GIVEN
PRIORITY UNLESS THE TRIAL COURT
ORDERS OTHERWISE.

IF YOU HAVE A WARRANT PENDING,
YOU HAVE A PULL THE PLUG IN THE
HOSPITAL SITUATION, CERTAINLY
THOSE SHOULD GET PRIORITY.

THIS IS NOT AN ABSOLUTE RULE.

IT GIVES A JUDGE IN A
PARTICULAR CASE THE AUTHORITY
TO OVERRIDE IT.

AND IT SHOULD.

>> IT SAYS, IT SAYS

EXTRAORDINARY CIRCUMSTANCES OR
IS THAT JUST SOMETHING ELSE?

>> I DON'T REMEMBER THE EXACT
WORDING.

>> BUT A JUDGE GETS, AGAIN, I
MEAN WE'RE REALLY DEALING, I
GUESS WITH THE COURT REPORTERS
THAT ARE HANDLING THESE
TERMINATION OF PARENTAL RIGHTS
AND DEPENDENCY HEARINGS, EN
TIMES THERE ARE PROBABLY
ACTUALLY RECORDING THEM THROUGH
THE AUDIO RECORDING.

THEY MAY NOT EVEN BE A LIVE
COURT REPORTER THERE, CORRECT.

>> CORRECT.

>> SO IT WOULD BE RARE THAT
THEY WOULD BE WORKING ON A
WARRANT CASE AT THE SAME TIME
THEY WOULD BE WORKING ON A
DEPENDENCY CASE?

>> IT PROBABLY WOULD.

ALSO IN ADDITION TO THAT, LET'S
LOOK AT THE IMPACT OF THIS.

THERE IS ONLY A LITTLE OVER 500
OF DEPENDENCY TPR CASES PER
YEAR.

THAT WORKS OUT TO ABOUT 100 PER

DISTRICT.

THAT WORKS OUT TO TWO A WEEK
FOR ALL THE CIRCUITS IN A
DISTRICT AND ALL THE COURT
REPORTERS.

THERE IS NOT A WHOLE LOT OF
THESE CASES THAT ARE GOING TO
HAVE AN IMPACT.

I ALSO WANT TO STRESS THE FACT
AT THESE WORKSHOPS THIS WAS ONE
AREA EVERYBODY AGREED ON,
INCLUDING COURT REPORTERS.

THE COURT REPORTERS WANT THIS
RULE.

IT WAS APPARENT TO EVERYBODY
LOOKING AT TIME FRAME, THIS IS
WHERE THE BACKUP IS.

SO THE QUESTION WENT TO THE
COURT REPORTERS, ARE YOU
WILLING TO WORK WITH US TO DO
THIS?

THEY SAID, YES, YOU WE WANT TO
BUT WE NEED A RULE.

WHY?

BECAUSE WE CAN'T JUST TO OUR
OTHER CLIENTS WHY WE'RE MOVING
A CASE AHEAD OF THEIRS UNLESS
WE HAVE A RULE.

WE NEED TO BE MANDATED TO DO

THIS.

IF WE DO IT, WE'RE HAPPY TO DO

IT.

IF WE DON'T, WE CAN'T.

WHICH IS WHY THE FEEL-GOOD LANGUAGE

THAT IS BEING PROPOSED WILL

HAVE NO IMPACT AT ALL.

>> SO YOU WANT TO TAKE OUT OF

THIS RULE TO THE EXTENT

REASONABLY POSSIBLE, IS THAT

WHAT IT IS?

>> I DIDN'T GET INTO

SPECIFICS. WHAT I'M

SUGGESTING THAT THE RULE NEEDS

TO BE MANDATORY AND IT NEEDS TO

TELL COURT REPORTERS WHEN A

DESIGNATION COMES IN, THAT CASE

IS THE NEXT CASE THEY DO, AFTER

THEY FINISH WHAT THEY'RE

WORKING ON.

IF THAT IS UNWORKABLE, JUST

HAVE A FIVE-DAY OR SEVEN-DAY

PROVISION OR WHATEVER IT TO GET

THIS DONE.

GET THAT THREE MONTHS DOWN TO

THE TWO WEEKS.

THAT CAN BE DONE.

AND I THINK IT IS IMPORTANT TO

REALIZE, AS JUSTICE PARIENTE
MENTIONED, THE OVERALL PURPOSE
OF THIS WHOLE PROCESS IS TO CUT
THE TIME IN THESE CASES.

AND THE COMMITTEES TAKEN OUT
THIS BIG CHANGE AND THEY
HAVEN'T OFFERED ANY
ALTERNATIVE.

THEY HAVEN'T SAID WE'LL DO THIS
INSTEAD.

DO THAT INSTEAD.

IF THIS IS NOT ADOPTED, YEAH
WE'RE GOING TO SAVE FIVE DAYS
HERE.

THREE DAYS THERE, WHATEVER IT
MIGHT BE BUT IT IS NOT GOING TO
HAVE A WHOLE LOT OF IMPACT.

>> GET YOU BACK INTO YOUR
LANGUAGE ON WHAT JUSTICE
QUINCE.

IF YOU ELIMINATE THE EXTENT
REASONABLY POSSIBLE, ADD TO END
OF PROPOSED RULE UNLESS THE
COURT ORDER, OTHERWISE, RIGHT?
THAT IS PRIORITY CONSISTENT
WITH RULE 2.215-G.

UNLESS THE OCCURRED ORDERS
OTHERWISE, THAT'S WHAT YOU'RE
PROPOSING?

>> THAT SOUNDS IN CONCEPT LIKE

WHAT I'M PROPOSING.

FRANKLY I DID NOT GET DOWN TO

ACTUAL DRAFTING.

I DISCUSSED THIS IN TERMS OF

THE CONCEPT.

SO I DON'T WANT TO SAY THOSE

EXACT WORDING BUT I THINK YOU

UNDERSTAND THE CONCEPT THAT I'M

ADVOCATING.

I DO WANT TO ALSO TALK A LITTLE

BIT ABOUT THE RULE ON THE

NON-FINAL APPEALS.

>> BEFORE THAT, NO ONE

MENTIONED THERE IS ALSO THE

RULE THAT WILL SET FORTH WHAT

ARE FINAL ORDERS.

DO YOU AGREE WITH THAT RULE?

>> NO.

FINAL ORDER IS A FINAL ORDER.

THERE IS NO NEED TO ENUMERATE

IT.

>> I GUESS THE REASON THEY WERE

SAYING IT IS NEEDED WAS BECAUSE

THERE WERE THOSE IN THE STATE,

INEXPERIENCED APPELLATE

LAWYERS, THAT NOT UNDERSTANDING

THAT, IN THESE AREAS OF -- I

MEAN, ARE THOSE IN FACT NOW, DO YOU AGREE THOSE ARE ALL FINAL ORDERS, THE ONES THAT THEY HAVE LISTED?

>> NOT NECESSARILY.

FOR INSTANCE, I GIVE AN EXAMPLE IN THE COMMENTS THAT I FILED ABOUT A ORDER OF DISMISSAL, WHICH CAN BE OR MAY NOT BE A FINAL ORDER, DEPENDING ON THE CIRCUMSTANCES.

AND I ALSO TAKE ISSUE WITH THE UNDERLYING PHILOSOPHY AS TO THAT RULE, AS TO THE NON-FINAL RULE, AS TO THE SIGNPOST.

IT SEEMS TO BE WELL, THESE LAWYERS DON'T KNOW WHAT THEY'RE DOING.

WELL, I THINK THEY DO.

I DON'T SEE ANY REASON TO SINGLE THESE LAWYERS OUT AND SAY THEY DON'T UNDERSTAND WHAT IS GOING ON ANYMORE THAN ANY OTHER AREA OF THE LAW.

>> ARE THERE CASES WHERE, FOR EXAMPLE THE FOURTH DISTRICT REVIEWED A SHELTER ORDER AS A FINAL ORDER?

>> I THINK THERE MAY HAVE SOME

CONFUSION IN THE LAW AT ONE
POINT.

I THINK, AT THE TIME THAT THE
COMMITTEES DECIDED THIS THERE
MAY HAVE BEEN SOME CONFUSION,
BUT I THINK THOSE THINGS HAVE
BEEN BASICALLY RESOLVED.

>> HOPEFULLY THE APPELLATE
COURTS ARE MONITORING WHAT
THEY'RE DOING.

>> I THINK IT IS ALL FALLING
INTO PLACE.

I THINK IF YOU LOOK AT
APPELLATE RULES COMMITTEE
RESPONSE THEY ALMOST ADMIT
THAT.

THEY SAY YES, BUT ATTORNEYS
AREN'T AWARE OF IT YET.

WELL, ATTORNEYS WILL BECOME A
IRWITH OF IT.

SO I DON'T THINK THAT IS A
CONCERN.

>> LET ME ASK ABOUT THE
SHELTER, THE ORDER RENDERED AT
THE CONCLUSION OF A SHELTER
HEARING.

WHAT'S THE CURRENT STATUS OF
THAT?

>> I WOULD THINK THAT IT IS A
NON-FINAL ORDER SUBJECT TO
REVIEW BY CERTIORARI.

>> SO IT IS DEALT WITH BY
CERT. WHY SHOULDN'T IT BE APPEALABLE
AS MATTER OF RIGHT?

WHEN THE STATE IS TAKING A
CHILD OUT OF A HOME AND PLACING
IT, THAT IS KIND OF THE
INITIAL, ACTION OF THE STATE,
WHICH CAN HAVE QUITE
SIGNIFICANT CONSEQUENCES.

AND, MAY NOT BE JUSTIFIED,
MIGHT NOT STAND UP TO ANY SORT
OF REVIEW, BUT THEY HAVE GOT TO
GO THROUGH THE, JUMP THROUGH
THE CERT HURDLES NOW.

WHY SHOULDN'T THAT BE
APPEALABLE AS A MATTER OF
RIGHT?

>> IF IT WON'T STAND UP TO ANY
SORT OF REVIEW IT WON'T STAND
UP WITH CERTIORARI REVIEW.

>> THE PROBLEM WITH CERT AS YOU
KNOW, IT IS DISCRETIONARY, AND
THAT IS, WHEN YOU, I'M EFFECTED
BY MY EXPERIENCE AS AN
APPELLATE COURT JUDGE, THE
VARIABILITY OF THE WAY CERT

PETITIONS ARE TREATED I THINK

IS QUITE GREAT.

IF IT IS SOMETHING, SOMETHING

THAT SHOULD BE APPEALABLE AS A

MATTER OF RIGHT WHY DELEGATE IT

OR SEND IT OVER TO CERT?

I THINK THAT IS THE POINT THAT

WAS BEING MADE EARLIER.

>> I THINK THIS GOES TO THE

NATURE OF THESE TYPES OF

PROCEEDINGS.

THESE ARE NOT IN THE TRIAL

COURT.

THESE ARE NOT TRADITIONAL

ADVERSARIAL PROCEEDINGS.

THESE ARE SITUATIONS WHERE THE

TRIAL COURT IS VERY ACTIVE, IS

VERY INVOLVED AND IS THE

SHEPARD OF THE CHILD'S WELFARE.

THEREFORE --

>> LET ME GIVE YOU AN EXAMPLE

OF A CASE THAT WAS BEFORE THE

SECOND DISTRICT WHERE THE

SHELTER HEARING AND THE, THIS

HAS BEEN AJUDICATED AND

IT IS OVER A SHELTER HEARING

WHERE THE PARENTS SHOWED

UP TO OBJECT

AND THEY WERE NOT HEARD.

THEY WERE THERE WITH COUNSEL

AND WERE NOT GIVEN AN

OPPORTUNITY TO BE HEARD AT THE

SHELTER HEARING.

>> THAT SOUNDS LIKE A VIOLATION

OF DUE PROCESS RIGHTS.

>> YES.

>> CERTAINLY GROUNDS TO

CERTIORARI.

>> I WOULD LIKE TO THINK THAT

SORT OF THING DOES NOT HAPPEN

WITH GREAT FREQUENCY.

IT SEEMS TO ME THAT IS SUCH A

SIGNIFICANT STEP, THAT, TO, TO

NOT ACKNOWLEDGE THAT AS AN

APPEALABLE NON-FINAL ORDER DOES

NOT RECOGNIZE THE SIGNIFICANCE

OF THAT STEP THAT THE STATE IS

TAKING.

>> I UNDERSTAND THAT.

I GUESS MY RESPONSE IS, I THINK

IN THOSE SITUATIONS IT CAN BE

DEALT WITH BY CERTIORARI.

I SEE THAT MY TIME IS UP.

I WANT TO ADD ONE THING I THINK

IS REALLY IMPORTANT BECAUSE

MR.^YOUNG SEVERAL TIMES IN THE

RESPONSE SAID, THESE APPEALS

WERE ALREADY THERE.

THEY'RE NOT.

THERE WILL BE A FLOOD OF APPEALS.

THESE PARENTS ARE ALMOST ALWAYS

INDIGENT.

THEY HAVE COURT-APPOINTED

COUNSEL.

IT DOESN'T COST THEM ANYTHING

TO APPEAL.

THEY WILL BE TOLD YOU HAVE A

RIGHT TO APPEAL THIS.

DO YOU WANT TO?

THEY ARE GOING TO SAY YES.

THERE WILL BE A DELUGE OF

APPEALS IF THIS IS ADOPTED.

THANK YOU.

>> MR.^BOOTH.

>> JUSTICE, WILLIAM BOOTH,

FOSTER CHILDRENS PROJECT, LEGAL

AID SOCIETY, PALM BEACH COUNTY.

I'M HERE TO REALLY TALK ABOUT

THE NON-FINAL RULE THAT IS

BEING PROPOSED TO YOU, 9146.

WE THINK THE IMPACT ON KIDS,

AND THAT'S WHAT I WANT TO TALK

ABOUT TODAY, IS A PROBLEM.

THERE IS ALREADY IN THE SYSTEM,

CHAPTER 39, THE WAY THE

LEGISLATURE HAS CREATED IT IS

MADE --

>> WOULD YOU TALK INTO THE

MICROPHONE.

>> SURE.

CHAPTER 39 IS MADE, AS THE

LEGISLATURE CREATED IT TO

STREAMLINE THESE CHILDREN IN

AND OUT OF FOSTER CARE AS

QUICKLY AS.

IF WE NEED TO PROTECT THE KIDS,

LET'S REMOVE THEM BUT GET THEM

TO PERMANENT PLACEMENT AS

QUICKLY AS POSSIBLE.

WHETHER THAT IS BACK TO THEIR

HOME OR IN SOME OTHER PERMANENT

PLACEMENT, RELATIVE,

NON-RELATIVE, PERMANENT

GUARDIAN.

THE SYSTEM IS BUILT TO HAVE

CURRENTLY REVIEWS AFTER DEPEND

ENDEPENDENCY ADJUDICATION OR

REVIEWS OF PARENTAL RIGHTS.

SEEMS LIKE PERFECT

OPPORTUNITIES FOR A PARENT TO

COME UP TO DISTRICT COURT AND

QUESTION THE WHOLE DEPENDENCY

PROCEEDING.

WHAT THE NON-FINAL PROVISIONS

AND WE'RE OBJECTING TO THE
FIRST THREE IN THE NON-FINAL,
A, B AND C, WE FEEL THAT WILL
ADD MANY MORE OPPORTUNITIES FOR
A PARENT TO COME UP AND TAKE
ANOTHER BITE IN A SENSE WITH A
DISTRICT COURT, THEREBY
DELAYING THE CHILD TO
PERMANENCY.

AND THE IMPACT ON A CHILD, NOT
GETTING PERMANENCY QUICKLY IS A
PROBLEM.

>> SO YOU'RE SPECIFICALLY
OBJECTING TO THE FIRST THREE?

>> THE FIRST THREE UNDER --

>> WHICH INCLUDES THE
SHELTERING.

I LIKE TO ASK YOU TO ADDRESS
THE QUESTION I POSED BEFORE.

>> SURE.

>> I UNDERSTAND IT CAN DELAY
PERMANENCY BUT IF THERE HAS
BEEN AN ERROR, IN REMOVING A
CHILD FROM A HOME, ISN'T THAT A
SERIOUS THING THAT SHOULD BE
DEALT WITH EXPEDITIOUSLY?

>> WELL, SURE SEEMS THAT WHEN
YOU THIS AT THIS ABOUT IT, YOU

HAVE TO REMEMBER THE FACTS THAT
ARE PROBABLY ALLEGED IN THE
SHELTER PETITION ARE SAME FACTS
PROBABLY ALLEGED IN THE
DEPENDENCY PETITION.

THE DEPENDENCY PETITION WILL
LIKELY BE REVIEWED BY THE
DISTRICT COURT ON APPEAL.

THE WHOLE MATTER WILL BE
REVIEWED.

ALSO REMEMBER TOO --.

>> BUT IN THE MEANTIME, IN THE
MEANTIME THE CHILD HAS BEEN
REMOVED FROM THE HOME, AND, I
WILL CERTAINLY CONCEDE IN VAST
MAJORITY OF THAT IS GOING TO BE
WARRANTED.

BUT I THINK EXPERIENCE WOULD
BEAR THERE COULD BE SOME
CIRCUMSTANCES WHERE IT IS
UNWARRANTED AND IS NOT IN
CONFORMTY WITH THE REQUIREMENTS
OF LAW.

AND THAT SEEMS TO ME TO BE A
VERY SERIOUS THING TO HAVE THE
A CHILD TAKEN OUT OF ITS HOME,
OUT OF THE CHILD'S HOME AND NOT
HAVE SOME EXPEDITIOUS REVIEW
THAT DECISION.

>> I AGREE WITH YOU.

IT IS A SERIOUS THING TO PULL A
CHILD OUT OF A HOME.

>> SERIOUS FOR THE CHILD.

IT IS SERIOUS THING FOR THE
PARENTS.

AND IT'S A MATTER OF GREAT
PUBLIC CONCERN IF SUCH A THING
HAPPENS.

>> I AGREE.

>> AND IT IS NOT WARRANTED.

>> I AGREE WITH YOU IT IS VERY
SERIOUS TO PULL THE CHILD OUT
OF THE HOME.

ANOTHER WORD YOU SAID
EXPEDITIOUS.

IF WE HAVE TO PULL A CHILD OUT
OF A HOME TO PROTECT THEM, WE
HAVE TO PULL THEM OUT.

WE OF COURSE WANT THE PARENT TO
HAVE OPPORTUNITY TO REVIEW
THAT.

CHAPTER 39 BUILDS THAT IN.

IF YOU LOOK AT 39.40216 YOU CAN
REVIEW WITHIN 30 DAYS THE
SHELTER PLACEMENT.

THERE IS OPPORTUNITY TO
CONTINUALLY MONITOR PLACEMENT

AND SHELTER OF THESE KIDS.

>> WHERE DOES THAT REVIEW TAKE PLACE?

>> WITH THE TRIAL COURT.

>> BUT YES, BUT THE PROBLEM IS THAT SOMETIMES TRIAL COURTS, SOMETIMES, TRIAL COURTS ERR AGREED.

>> FOR WHATEVER REASON THE TRIAL COURT MAY MAKE AN ERROR AND WHEN CAN THE PARENTS GET IT TO A HIGHER COURT IS THE QUESTION?

>> WELL, HOW A DEPENDENCY CASE WORKS YOU HAVE THE SHELTER. WITHIN 30 DAYS YOU HAVE ARRAIGNMENT.

WITHIN X-NUMBER OF DAYS VERY QUICKLY YOU'RE SUPPOSED TO HAVE ADJUDICATORY HEARING, THE TRIAL.

THAT IS USALLY CONSIDERED A FINAL APPEAL, IF OUR DISTRICT ANYWAY.

GOES UP FOR APPEAL AND REVIEW BY THE DISTRICT COURT.

>> SO IT COULD BE SOME MONTHS THE CHILD COULD BE OUT OF THE HOME?

>> COUPLE MONTHS.

>> CHILD COULD BE OUT OF THE HOME FOR SOME MONTHS BEFORE THE PARENTS HAVE OPPORTUNITY TO EFFECTIVELY HAVE REVIEW OF THE INITIAL DECISIONS TO REMOVE THE CHILD?

>> A REMOVAL BY DISTRICT COURT BUT TRIAL COURT IS REVIEWING.

>> I UNDERSTAND.

>> REMEMBER THE TRIAL COURT IS ONE SEEING THIS FAMILY CONSISTENTLY.

THE PARTIES INVOLVED ARE THE ONES INVOLVED WITH THIS FAMILY CONSISTENTLY.

I'M HOPING THAT, IF A SHELTER OCCURS, IT IS VALID, AND FOR REASON NECESSARY.

>> I BELIEVE IN THE VAST MAJORITY OF CASES THAT WILL BE TRUE, BUT WE HAVE RULES THAT, I MEAN THE VAST MAJORITY OF TRIAL COURT DECISIONS ARE CORRECT.

>> AGREED.

>> BUT WE HAVE RULES TO DEAL WITH THE UNUSUAL CASE OF, FOR THE CASES WHERE THERE ARE, THAT

DON'T FIT WITHIN THE ORDINARY
COURSE OF THINGS.

AND THAT'S WHAT CONCERNS ME
ABOUT THIS.

>> RIGHT. AND THE CONCERN
THOUGH, IS TOO,

IF THE TRIAL COURT IS TO
ACTUALLY GET THESE CHILDREN AND
IN AND OUT OF CARE AS QUICKLY
AS POSSIBLE AND THERE
IS A PROPER SHELTER.

IF THERE ISN'T APPEAL OF
SHELTER ORDER, THAT STOPS THE
TRIAL COURT'S CONSIDERATION OF STAY.

IF EVEN IF THERE IS NO STAY, IF
THEY'RE THINKING AFTER CUSTODY
PROCEEDING HAPPENING HERE ARE
THEY GOING TO STOP THEMSELVES
FROM PUSHING THIS CASE WITH THE
PARTIES THROUGH?

WELL DCF --

>> [INAUDIBLE].

THE CASE GOES FORWARD, RIGHT?

>> I AGREE.

WHEN YOU THINK ABOUT IT IN
PRACTICAL SENSE WOULD THE
PARTIES REALLY WANT TO PROCEED
AS QUICKLY AS POSSIBLE, OR, IF
THE PROBABLE CAUSE OF THE

SHELTER IS UP FOR REVIEW.

IF THE CUSTODY OF THE CHILD IS
UP FOR REVIEW --

>> BY OPERATION OF LAW, IT
WOULD BE JUST BY THE PARTIES --

[INAUDIBLE]

>> CORRECT.

>> YOU'RE ARGUMENT WOULD BE,
FOR, WHAT JUSTICE CANADY IS
SAYING IF IT IS SO URGENT,
THERE'S BEEN A MISTAKE, THEN
CERT IS GOING TO BE THE QUICKEST
WAY TO REMEDY IT.

MY, BY THE TIME THE APPELLATE
COURT WOULD DECIDE THE SHELTER
ISSUE, EVEN UNDER THE BEST OF
CIRCUMSTANCES, FOUR MONTHS
COULD HAVE BY, THIS CHILD, WHO
KNOWS WHERE THE SITUATION IS
CORRECT.

>> AND SO THAT IS, I KNOW
YOU'RE TOTALLY OF YOUR TIME,
ARE YOU THEN AGREEING THERE
SHOULD BE OTHER CATEGORIES OF
NON-FINAL ORDERS LIKE D THROUGH
I?

>> WE CHOSE NOT TO TAKE A
POSITION ON THAT.

OUR VIEW OF THE DEPENDENCY
SYSTEM IF WE CAN GET THEM TO A
PERMANENT PLACEMENT AS QUICKLY
AS POSSIBLE THE OTHER ISSUES
FALL AWAY.

THAT'S WHY WE CHOSE JUST TO
CONCENTRATE ON THOSE THREE.

SO I'M ASKING, I GUESS THAT
DOES MEAN MY TIME IS OUT.

I'M ASKING THAT YOU NOT ADOPT
THOSE CHANGES.

>> ALL RIGHT.

THANK YOU.

I THINK, MR. SILVERSTEIN. YOU
HAVE SOME TIME LEFT FOR
REBUTTAL, IF YOU CARE TO USE?

>> THANK YOU, YOUR HONOR.

I JUST WANTED TO POINT OUT THAT
NOT ONLY DID THE RULES
COMMITTEE CONSIDER THE
RECOMMENDATIONS FROM THE
COMMISSION REGARDING THE
JUVENILE RULES, BUT WE DID HAVE
COMMENT ON THE WORK OF THE
OTHER RULES COMMITTEES.

AND JUST ON RULE 2.535-I
REGARDING EXPEDITING THE
TRANSCRIPT, GIVING THE
TRANSCRIPT PRIORITY, WE DID NOT

AGREE WITH PUTTING IN THE
LANGUAGE THAT PRIORITY TO THE
EXTENT REASONABLY POSSIBLE.

>> SO, WHO PUT THAT LANGUAGE
IN?

>> THAT WAS THE RULES OF THE
JUDICIAL ADMINISTRATION
COMMITTEE.

SO --

>> SO YOU DON'T AGREE WITH
THAT.

DO YOU AGREE WITH MR. ^MUSTO'S
POSITION THAT WE SHOULD TAKE
THAT TAKE LANGUAGE OUT PUT
SOMETHING IN EFFECT, UNLESS THE
TRIAL COURT ORDERS OTHERWISE?

>> YES.

>> OKAY.

>> AND, AS FAR AS, WE DID
COMMENT AND HAD A LOT OF
DISCUSSION, AS I SAID BEFORE,
REGARDING THE LIST OF NON-FINAL
ORDERS AND WE DO BELIEVE, AS
MEMBERS ON COMMITTEE DID
BELIEVE THAT THIS WOULD CREATE
A OF DELAY PERMANENCY AND
UNCERTAINTY IN THE PROCESS.
A LOT OF TIMES YOU MAY HAVE THE

CHILD REMOVED AND, IF THERE WAS AN APPEAL, BY THE TIME, MAYBE A COUPLE MONTHS LATER, THE CHILD IS RETURNED, HAS ALREADY BEEN RETURNED, SO, THESE CASES, AS SOMEONE MENTIONED --

>> THAT WOULD BE A MOOT APPEAL.

>> YES.

>> THAT'S NOT HARD TO DEAL WITH.

I DON'T UNDERSTAND THE PROBLEM WITH THAT.

DID YOUR COMMITTEE, ADDRESS THIS AS AN ALL-OR-NOTHING PROPOSITION WITH REGARD TO THIS LISTING AND NOT WITH REGARD TO EACH ONE INDIVIDUALLY?

BECAUSE YOU'VE HAD SOME QUESTIONS THIS MORNING, AND CERTAINLY IN THIS PROCESS IT'S GOING TO BE A BALANCE OF THIS MAGIC WORD, EXPEDITE, THAT WE SEEM TO THROW AROUND SO EASILY AGAINST JUSTICE AND WHAT IS CORRECT AND THAT IS KIND OF AT ATTENTION IN SOME CIRCUMSTANCES.

SO IN THAT LIGHT DID YOU LOOK AT, ARE THERE SOME OF THESE

THAT WOULD BE ESSENTIAL THAT
SHOULD BE REVIEWED WITHOUT THE
ENTIRE LIST, WITHOUT THE
THOROUGH REVIEW?

OR WAS THIS AN ALL OR NOTHING?

>> IT WAS AN ALL OR NOTHING.

>> OKAY.

>> WE JUST DID NOT LIKE THE
PROPOSITION OPENING UP THE
FLOODGATES SO TO SPEAK OF MANY
APPEALS.

BECAUSE WE HAVE SOME HEARINGS
IN DEPENDENCY HEARINGS.

>> CERTAINLY UNDERSTOOD.

I MEAN, AND I GUESS IN ANY KIND
OF LISTING ONE WOULD MAKE YOU
COULD HAVE DISCUSSION ABOUT
WHETHER THAT'S APPROPRIATE BUT
CERTAINLY THERE ARE SOME THAT
SEEM TO BE, ALMOST CRITICAL
BECAUSE OF THE NATURE OF WHAT
THEY ARE, BUT MAYBE NOT.

MAYBE IT IS THE CERT PROCESS.

I DON'T KNOW.

>> THANK YOU VERY MUCH.

THANK ALL OF YOU FOR YOUR
ARGUMENTS HERE TODAY.

WE WILL TAKE THIS UNDER

ADVISEMENT.