In Re: Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators

SC08-998

IN RE: FLORIDA RULES OF CIVIL PROCEDURE FOR
INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS
>> THE NEXT CASE ON THE COURT'S
CALENDAR IS FLORIDA RULES OF
CIVIL PROCEDURE FOR INVOLUNTARY
COMMITMENT OF SEXUALLY VIOLENT
PREDATORS.
JUDGE EATON, ARE YOU READY TO
PROCEED?
>> YES, MA'AM.
GOOD MORNING.
MY NAME IS O.H. EATON, JR., I'M
A CIRCUIT JUDGE IN THE 18TH
CUT.
>> HOLD ON JUST A MOMENT.
>> THEY'RE HAVING A GOOD TIME
OUT THERE.
>> SEEMED TO HAVE GENERATED
SOME CONVERSATION.
>> JUDGE EATON.
>> MY NAME IS O.H. EATON, JR.
I'M A CIRCUIT JUDGE IN THE 18TH
CIRCUIT AND I CHAIR YOUR
CRIMINAL COURTS STEERING
COMMITTEE.
THE COURT TASKED THE COMMITTEE
SOME TIME AGO TO COME UP WITH
PROPOSED RULES FOR JIMMY RYCE
CASES.
THEY ARE BEFORE THE COURT NOW
AND I'M HERE TO ANSWER ANY
QUESTIONS THAT YOU MAY HAVE.
I'D LIKE TO START OFF BY
POINTING OUT THERE IS
TYPOGRAPHICAL ERROR AND I ONLY
THINK ONE, WHICH WOULD BE, IN
THE APPOINTMENT OF COUNSEL
RULE, 4.200.
THE SECOND SENTENCE HAS A, NOT,
IN IT THAT SHOULD BE STRICKEN.
SHOULD READ, THE APPOINTMENT
SHALL CONTINUE UNTIL THE COURT
DETERMINES WHETHER THE
RESPONDENT IS ENTITLED, RATHER
THAN IS NOT ENTITLED.

A RATHER IMPORTANT.
>> JUDGE EATON.
>> YES.
>> LET ME ASK A COUPLE QUESTIONS.
>> SURE.
>> FIRST OBSERVATION.
I TRIED A LOT OF THESE CASES IN PALM BEACH COUNTY WHEN I WAS THERE.
THERE IS LITTLE SECRET ABOUT THESE CASES PERHAPS FOLKS UP HERE DON'T KNOW.
THESE FOLKS ARE KEPT, THEY ARE KEPT AT ARCADIA, CORRECT?
>> RIGHT.
>> AND THAT'S PRETRIAL AND POST-TRIAL?
>> RIGHT.
>> THE LOCAL SHERIFFS WHO TYPICALLY RUN THE JAILS ARE OF THE POSITION THAT BECAUSE THESE FOLKS ARE BEING CIVILLY COMMITTED THAT THEY'RE NOT TO BE KEPT IN THE SAME FACILITIES WITH PEOPLE CHARGED WITH CRIMES.
SO WHAT IS HAPPENING IS, AT LEAST IN PALM BEACH COUNTY, AND I HAD LONG CONVERSATIONS WITH THE GUARDS WHO TRANSPORTED THESE FOLKS, THEY ARE TRANSPORTED FROM ARCADIA TO PALM BEACH COUNTY EVERY SINGLE MORNING, FOR EVERY HEARING.
AND THEN TRANSPORTED BACK TO ARCADIA EVERY NIGHT.
>> I DON'T THINK THAT IS TRUE STATEWIDE BUT AND I DON'T REALLY HAVE AN ANSWER FOR IT.
CERTAINLY I DON'T THINK IT HAD ANYTHING TO DO WITH THE PROCEDURAL RULES.
>> NOT PROCEDURAL RULES, BUT I'M JUST SAYING --
>> THERE IS MORE PROBLEMS THAN THAT.
THE FIRST PROBLEM OF COURSE IS THAT THE 30-DAY LIMIT OF GETTING THE CASE TO TRY IS JUST NOT WORKABLE.
DOESN'T WORK ANYWHERE.
>> THAT IS ANOTHER ISSUE.
BUT MY CONCERN IS, THAT, AND

FROM SPEAKING WITH THESE
GUARDS, IT GOES ON, THEY
TRANSPORT PEOPLE FROM ARCADIA
TO MIAMI, AND BACK EVERY NIGHT.
AND THESE TRIALS COULD TAKE, I
HAD ONE THAT TOOK TWO WEEKS.
SO EVERY SINGLE MORNING THEY
GET UP, ABOUT 4:00 IN THE
MORNING TO TRANSPORT THIS
PRISONER DOWN TO PALM BEACH
COUNTY OR MIAMI.
>> I UNDERSTAND THAT IS A
PROBLEM.
>> AND TRANSPORT THEM BACK.
SEEMS TO ME THERE OUGHT TO BE
SOMETHING IN THE RULES OR
PERHAPS LEGISLATURE'S NOT AWARE
THIS IS GOING ON.
>> I DON'T THINK IT IS A
PROCEDURAL PROBLEM.
>> NOT A PROCEDURAL PROBLEM.
>> IT IS, IF THE SHERIFFS
AREN'T GOING TO HOUSE PEOPLE IN
THE JAIL, THEN SOMEBODY HAS TO
TELL THE SHERIFF TO DO IT.
I GUESS IT OUGHT BE THE
LEGISLATURE TO DO THAT.
>> AND PERHAPS YOU CAN ADDRESS
THAT WITH THE LEGISLATURE.
BUT SEEMS SOMEONE OUGHT TO
BRING THAT UP BECAUSE IN THESE
TIMES OF BUDGET PROBLEMS, SEEMS
LIKE A TOTAL WASTE OF MONEY AND
RESOURCES HAVE TWO GUARDS
TRANSPORT PEOPLE BACK AND FORTH
EVERY DAY FOR HUNDREDS OF MILES
EACH WAY, IN SOME INSTANCES.
THE SECOND ISSUE I HAVE WITH
THE RULES BECAUSE YOU HAVE
SOME, YOU ASKED US FOR
QUESTIONS.
ON THE ISSUE OF COMPETENCE TO
PROCEED.
IT SEEMS LIKE THE RULE TRACKS
THE SAME RULE OF CRIMINAL
PROCEDURE IN DETERMINING
WHETHER SOMEONE IS COMPETENT TO
PROCEED OR NOT.
>> BASICALLY THE SAME RULE,
YES.
>> THE QUESTION I HAD, I WAS
REVERSED FOR THIS, ONCE THE
TRIAL JUDGE DETERMINES THAT A
PERSON IS NOT COMPETENT TO

PROCEED, IN A CIVIL RIGHTS
PROCEEDING WHICH IS A CIVIL
PROCEEDING, WHAT DO WE DO WITH
THEM?
I JUST WENT AHEAD AND FOLLOWED
THE RULES OF CRIMINAL PROCEDURE
AND DETERMINED HIM NOT TO BE
COMPETENT TO PROCEED AND
ORDERED DCF TAKE CUSTODY WAY
THEY WOULD ANY OTHER PRISONER.
SEND THEM TO CHATTAHOOCHEE OR
WHEREVER AND HAVE THEM TRAINED
TO BE COMPETENT.
THE FOURTH DISTRICT SAYS YOU
CAN'T DO THAT.
THE RULES OF CRIMINAL PROCEDURE
DON'T APPLY.
YOU CAN'T REQUIRE DCF TO TAKE
CUSTODY OF FOLKS.
WHERE DO WE SEND THEM TO BE
COMPETENT AGAIN?
WHAT DO WE DO?
>> THAT'S A GOOD QUESTION TOO.
I DON'T, SORRY, I DON'T HAVE AN
INSTITUTION TO SEND THEM TO.
I DON'T KNOW WHAT THE ANSWER TO
THAT WOULD BE.
>> SO WE DETERMINE SOMEONE IS
INCOMPETENT TO PROCEED BUT WE
HAVE NO PLACE TO PLACE THEM.
WE CAN'T TRY THEM.
>> WELL, YOU KNOW, THE PROBLEMS
WITH THIS STATUTE, AND WITH
THIS WHOLE PROCESS ARE BIGGER
THAN JUST GETTING CASES TO
TRIAL.
I TRIED ONE A COUPLE MONTHS AGO
WHERE THE REQUEST WAS TO BE
RELEASED FROM CUSTODY, AND
DR.^TED SHAW TESTIFIED, AND
HE'S THE ONE THAT TESTIFIES IN
MOST OF THESES AND HE'S FROM
THE FACILITY HE SAID THAT HE
COULDN'T RECOMMEND THIS TO BE
RELEASED FROM CUSTODY EVEN
THOUGH THE PERSON HAD MAXIMUM
BENEFIT BECAUSE THE PERSON
WASN'T GOING TO BE RELEASED ON
PROBATION.
AND, I SAID, I NEVER HEARD OF
SUCH A THING.
HOW MANY PEOPLE YOU GOT LIKE
THAT IN THIS FACILITY?
OH ABOUT 450 AND COSTING

$65,000 A YEAR TO KEEP THEM THERE.
>> 65,000 PER PERSON?
>> YEAH.
THAT'S WHAT HE SAID.
>> THIS IS NOT MY FAVORITE STATUTE.
THESE RULES HAVE BEEN IN WORKING FOR 10 YEARS.
I GUESS, TRIALS HAVE GONE ON DAY IN, DAY OUT WITHOUT THE RULES BUT WE HAD HOPED FIVE YEARS AGO THAT WE'D HAVE SOME RULES SO WE COULD HAVE SOME UNIFORMTY.
SO DO YOU WANT, I MEAN DOESN'T SEEM, WE'VE GOT SOMEONE HERE FROM THE PUBLIC DEFENDER'S OFFICE.
ARE THERE PARTICULAR RULES YOU WANT TO BRING TO OUR ATTENTION?
OR WOULD YOU PREFER WE --
>> YES, I DO HAVE A COUPLE THINGS I WOULD LIKE TO BRING TO YOUR ATTENTION.
FIRST, AS I READ THE PUBLIC DEFENDER'S COMMENTS, WHEN THEY FILE, DIFFERENT ENTITIES FILED COMMENTS AND WE AMENDED THE TO ACCOMMODATE.
>> I APPRECIATE YOU DID THAT.
>> WE DID THAT TO ACCOMMODATE SOME OF THOSE BECAUSE THEY HAVE GOOD IDEAS.
BUT THE ONES I SEE NOW ARE THAT COMPLAINT WE ONLY ALLOW 10 TODAY'S FOR FILING OF AN ANSWER BUT ONLY GOT 30 DAYS TO GO TO TRIAL.
HONESTLY THESE ANSWERS ARE NOTHING MORE THAN GENERAL DENIALS.
THERE ARE NO AFFIRMITIVE DEFENSES TO THESE CASES.
>> HAS THAT BEEN THE PRACTICE OF THEM ANSWERING THESE PETITIONS?
I MEAN --
>> IN THE CASES I'VE HAD, YES.
>> -- NEED TO BE ANSWER BUT --
>> IN THE CASES I TRIED THEY DID FILE AN ANSWER AND IT WAS JUST A GENERAL DENIAL.
ONLY OTHER WEDNESDAY DEFENSE I

COULD IMAGINE WOULD BE IDENTITY.
>> DO YOU HAVE ANY INFORMATION ABOUT HOW MANY OF THESE CASES REALLY GO TO TRIAL WITHIN 30 DAYS?
>> NONE.
IN THE FIRST PLACE YOU CAN'T GET EXPERTS IN 30 DAYS.
>> WHAT IS, SO LET'S SEE.
SO YOUR FIRST CONCERN IS, IF WE EXTEND THE TIME FOR AN ANSWER TO 20 DAYS WE'RE GOING TO GO RIGHT SMACK IN EVERY CASE.
>> ASSUMING YOU COULD GET A CASE TO TRIAL IN 30 DAYS, WHICH I DON'T THINK YOU COULD DO BUT ASSUMING YOU COULD, IF YOU ALLOW A ANSWER TO BE FILED 10 DAYS BEFORE TRIAL YOU'RE JUST GETTING --
>> 10 DAYS FROM WHAT POINT?
IN OTHER WORDS, FIRST HAS TO BE, THEY COME BEFORE YOU, AND WHEN THE APPOINTMENT, 10 DAYS FROM APPOINTMENT OF COUNSEL?
>> NO. 10 DAYS FROM DATE OF SERVICE.
>> WHEN IS COUNSEL APPOINTED IN THAT?
>> COUNSEL IS APPOINTED ACCORDING TO OUR PROPOSED RULE.
AT THE TIME JUDGE DETERMINES PROBABLE CAUSE THAT IS BEFORE SERVICE.
OKAY.
>> YES.
>> SO THERE SHOULD BE AMPLE TIME FOR, FOR AN ANSWER TO BE FILED?
>> ONLY TAKES A FEW MINUTES TO TYPE DENY, DENY, DENY.
THAT IS WHAT YOU MOSTLY SEE.
>> YOU SUGGEST THE TIME PERIOD BE EXTENDED FROM 30 DAYS TO 45 DAYS?
>> WELL, YEAH.
MY EXPERIENCE IS THAT IN FIRST PLACE THE RESPONDENT THESE CASES WAIVE THE 30 DAYS ALMOST IMMEDIATELY BECAUSE YOU JUST CAN'T GET IT DONE IN 30 DAYS.
>> AND IT HAS BEEN MY EXPERIENCE IN PALM -- THAT IS

-- IN PALM BEACH COUNTY WHEN IT CAME INTO EFFECT AND IT WAS, PUBLIC DEFENDER'S OFFICE IN PALM BEACH COUNTY TOOK THE POSITION THEY WERE IN ADVANTAGE AND DEMANDING TO GO TO TRIAL WITHIN 30 DAYS.
I TRIED TWO OR THREE OF THEM WITHIN THE 30-DAY PERIOD.
IT WAS USUALLY THE STATE WHO WAS AT A DISADVANTAGE.
>> WELL THAT'S PROBABLY TRUE.
BECAUSE, SEE THERE IS ONLY A FEW EXPERTS IN THESE CASES AROUND THE STATE.
AND IF ONE OF THEM IS TESTIFYING IN PENSACOLA, IT IS HARD TO GET THEM TO TESTIFY SOMEWHERE ELSE.
>> ISN'T ISSUE ON 30 DAYS, THAT IS THE STATUTORY --
>> THAT IS THE STATUTE.
>> THE WHOLE IDEA WE'RE HOLDING PEOPLE, WE HAVE PRACTICAL PART AND IF IT
IS WAIVED IT IS WAIVED.
I DON'T KNOW WE COULD SAY, PUT IN A RULE THAT IT WILL BE 60 DAYS OR 90 DAYS AS A RULE OF PROCEDURE.
ARE YOU SUGGESTING THAT WE EXTEND THE TIME THAT --
>> YES.
>> TO WHAT?
>> WELL, IT WOULD, I WOULD SAY 90 DAYS.
>> HOW DO -- ISN'T THAT, ARE WE ALTERING WHAT THE LEGISLATURE SET UP?
>> THE LEGISLATURE PASSED A PROCEDURAL STATUTE.
ITS NONE OF THEIR BUSINESS.
IT IS YOURS.
>> IS THAT PROPOSED HERE?
>> NO.
BECAUSE THE COMMITTEE WENT ALONG WITH LEGISLATIVE SCHEME.
>> WE'RE NOT REALLY TALKING ABOUT THAT?
THAT IS EDITORIAL COMMENT WHAT YOU WOULD DO IN SOME OTHER CIRCUMSTANCES.
>> RIGHT.
>> OH, I THOUGHT WE --

>> WE SUGGESTED A SCHEME HERE THAT WILL FOLLOW THE STATUTE AS BEST AS WE COULD.
FOR INSTANCE, THERE IS NO STATUTORY PROVISION FOR WHAT HAPPENS IF NO PROBABLE CAUSE IS FOUND.
THE STATUTE ASSUMES THAT PROBABLE CAUSE WILL BE FOUND.
SO WE PREPARED A PROPOSAL HERE ABOUT WHAT TO DO.
>> WELL, BUT ISN'T THAT, YOUR PROPOSAL WHICH WOULD GIVE THE ASSISTANT STATE ATTORNEY A 10-DAY CURE IS DIRECTLY CONTRARY TO OUR CASE LAW?
>> WE PROPOSED THAT BECAUSE IT IS VERY SIMILAR TO THE RULE OF CRIMINAL PROCEDURE THAT SAYS IF THE STATE DOESN'T FILE AN INFORMATION WITHIN 30 DAYS, THEN THE DEFENDANT IS RELEASED FROM CUSTODY.
BUT IT DOESN'T SAY THAT THE CASE IS DISMISSED.
>> OKAY.
THERE WERE TWO PARTS.
THERE WAS ONE, THERE IS ONE WHERE YOU PROPOSED A 10-DAY CURE, I GUESS THAT ONE CONCERNED ME WHERE THE PETITION IS FOUND TO BE FACIALLY INSUFFICIENT.
>> RIGHT.
THAT IS AT THE BEGINNING.
>> ISN'T THAT CONTRARY TO OUR CASE LAW?
>> I DON'T KNOW.
I DON'T KNOW THE ANSWER TO THAT.
>> AND BUT THE OTHER IS, IF NO PROBABLE CAUSE IS ESTABLISHED, RESPONDENT IS RELEASED BUT YOU'RE SAYING DISMISSAL IS NOT REQUIRED?
>> THAT'S OUR PROPOSAL.
>> THAT'S ACTUALLY IN KEEPING WITH THE STATUTE, ISN'T IT?
>> WELL, THE STATUTE DOESN'T SAY.
THE STATUTE IS SILENT ON WHAT TO DO IF NO PROBABLE CAUSE IS FOUND.
>> BUT YOU FEEL THIS RULE, I

GUESS YOUR COMMITTEE HAD MAINLY JUDGES.
DID YOU GET INPUT FROM BOTH PEOPLE THAT HAVE TRIED THESE CASES?
>> OH, YEAH.
OH, YES, BELIEVE ME THEY GET ME ASIDE AT CIRCUIT COURT CONFERENCES AND TALK TO ME ABOUT THIS.
>> AND SEEMS YOU'VE DONE YOUR VERY BEST, YOU HAVE DONE SO MUCH IN YOUR SERVICE TO THIS COURT, TO TRY TO GIVE US THE BEST SET OF RULES THAT UNDER THESE CIRCUMSTANCES THAT YOU ARE ABLE TO PROVIDE?
>> WE, YEAH.
>> I MEAN, I GUESS I'M JUST, AT SOME POINT WE'VE, SHOULD GIVE IT A TRY AND YOU KNOW, TWEAK THEM OVER THE NEXT COUPLE OF.
>> YES, MA'AM.
I AGREE. I THINK, THIS IS, THIS IS A PRETTY GOOD BASE GROUND RULE TO START WITH.
AND TO SEE HOW IT WORKS.
>> THE ONE I'M CONCERNED ABOUT, AND I HAVEN'T REALLY SPENT A LOT OF TIME LOOKING AT IT, IS THIS POST-CONVICTION ISSUE.
ARE YOU SEEING A LOT OF POST-CONVICTION ATTACKS?
>> I PERSONALLY HAVE NOT.
I PERSONALLY HAVE NOT.
>> IDEA WE SET UP LIKE RULE 3.850 OR SET IT UP TO FILE HABEAS PETITION.
>> WE SUGGESTED A HABEAS PETITION SIMPLY BECAUSE THERE IS ONLY ONE ISSUE IN THESE THINGS USUALLY AND, OR TWO, I GUESS, EXISTENCE OF COUNSEL AND WHETHER OR NOT THE PERSON SHOULD --

WE DID NOT REALLY DISCUSS IT.
IT HAS BEEN MY EXPERIENCE THAT WE HAVE ALREADY STIPULATED TO THESE THINGS, SO I DON'T KNOW, BUT IT HAS TO BE IN THE RULE.
BUT, IT IS A GOOD SUGGESTION AND I CERTAINLY DON'T HAVE A PROBLEM WITH HAVING THAT-- INCLUDING THE

RULES.
>> I GUESS I WANT TO SAY, YOU ARE WELL INTO YOUR REBUTTAL IF YOU WANT TO SAVE SOME TIME.
>> THANK YOU.
>> ROBERT FRIEDMAN ON BEHALF OF THE PUBLIC DEFENDER'S OFFICE.
WHILE WE ARE IN GENERAL AGREEMENT WITH COMMITTEE RULES, SOME OF THE LANGUAGE THAT WE DISAGREE WITH, AND THAT IS THE QUESTION AS TO THE COMPETENCY, ONE OF THE ISSUES I RAISED IN MY RESPONSE TO THAT, THERE IS NO RULE ON DETERMINING COMPETENCY AND I AM PROPOSING THAT THE COURT ADOPT A RULE THAT WOULD BE SIMILAR TO THE RULE IN CAPITAL POSTCONVICTION PROCEEDINGS AND THE CASE LAWS THAT HAVE COME OUT OF THE SECOND DISTRICT.
THE ANALYSIS WAS CAPITAL POSTCONVICTION.
THE RESPONDENT HAS A RIGHT TO BE COMPETENT AS OPPOSED TO MATTERS OF RECORD.
FOR EXAMPLE, OBVIOUSLY THERE WAS A PLEA FOR THE PREVIOUS TRIAL IN THE PRIOR CONVICTION.
THAT WOULD BE A MATTER OF RECORD, BUT IT WOULD BE ON A CHARGE, UNCORROBORATED, AND AS A LAWYER I WOULD NEED INPUT FROM MY CLIENT.
IN ADDITION--
>> LET ME MAKE SURE I UNDERSTAND.
YOU ARE ASKING US TO ADOPT WHICH RULE FOR COMPETENCY?
>> RIGHT NOW THERE IS NO-- THERE IS NO PROPOSED RULE FOR COMPETENCY.

WHEN I FOLLOWED MY COMMENTS WITH THE COMMITTEE, I REQUESTED THAT A RULE BE CONSIDERED AND THE COMMENTS THAT THEY FILED, THE COMMITTEE'S POSITION IS ESSENTIALLY THAT WE WILL LEAVE IT UP TO THE TRIAL COURT TO DETERMINE COMPETENCY.
MY POINT IS THAT-- THE POINT HAVING RULED IS TO HAVE UNIFORMITY IN THE STATE.

>> THE SCOPE EXAMINATION REPORT, THAT IS THE CRIMINAL RULE OF COMPETENCY PROCEEDINGS.
>> I DON'T THINK THERE IS A--
>> I MEAN, THE END OF THE ACTUAL RULE THAT THEY FILED, THEY DID NOT-- THEY DID NOT HAVE ONE THERE, BUT MORE IMPORTANTLY, I MEAN MORE IMPORTANTLY, I THINK THIS IS WHY I AM SUGGESTING THAT THE COURTS ADOPT RULES IN A POSTCONVICTION PROCEEDING BECAUSE THIS IS A LITTLE BIT OF A DIFFERENT POSTURE.
>> HAVE WE DETERMINED THAT COMPETENCY TO PROCEED IN THESE JIMMY RYCE PROCEEDINGS ARE THE SAME AS COMPETENCY IN A CRIMINAL CASE?
>> THE TWO CASES FROM THE SECOND DISTRICT DO NOT REACH THIS COURT.
>> ALTHOUGH THE IDEA OF HAVING HAD A RULE ABOUT HOW IT WOULD BE DETERMINED, THE ACTUAL REAL ISSUE OF WHAT WAS, WHAT WOULD BE COMPETENCY, WE CAN'T PUT SOMETHING IN THAT WE HAVEN'T DECIDED.
>> OTHER THAN THE COURT WOULD RELY ON THE TWO CASES FROM THE SECOND DISTRICT.
THOSE ARE THE ONLY CASES THAT HAVE DECIDED THE ISSUE.
>> AGAIN, WITHOUT THAT, RIGHT NOW NOTHING WAS PROPOSED AND WE WOULD WANT TO HEAR FROM THE STATE AS TO WHETHER THEY THINK THERE IS A DIFFERENT STANDARD.

I ASSUME THEY DON'T AGREE WITH YOU.
>> I MEAN, I FOR ONE PROPOSED THAT THE COMMITTEE CONSIDER A COMPETENCY RULE.
THE COMMITTEE CAME BACK.
THERE IS NO SPECIFIC RULE IN WHAT THEY FILED OTHER THAN A COMMENT, STATING THAT, TO LET THE TRIAL COURTS, ON THEIR OWN, DECIDE.
THAT RAISES ISSUES.
IN AN INSTANCE WHERE, OKAY IN THE REGULAR CIVIL CASE ARE WE

GOING TO JUST APPOINT A GUARDIAN AD LITEM?
THE POINT OF HAVING RULE IS CONFORMITY.
>> IT IS INTERESTING THAT NO REPRESENTATIVE FROM THIS STATE IS HERE TO-- USUALLY THEY, AND IF THEY DON'T LIKE SOME OF THEIR RULES AND IT IS HELPFUL TO HAVE THAT SIDE.
ARE THERE OTHER AREAS OTHER THAN THE COMPETENCY?
>> YEAH, ANOTHER CONCERN IS RULE 4.360, EXAMINATION OF THE RESPONDENT.
THE COMMITTEE AGREED WITH MY POSITION THAT THE RESPONDENT CANNOT BE HELD TO SUBMIT TO AN EXAMINATION.
ALTHOUGH, GIVEN THAT, I DISAGREE WITH THE LANGUAGE IN THE PROPOSED RULE.
MY POSITION IS THAT, SINCE THE STATUTE CREATES SUBSTANTIVE RIGHTS TO BE FREE FROM A COMPULSORY EXAMINATION, THERE ARE ONLY TWO THINGS THAT CAN HAPPEN.
PRIOR TO THE FOLLOWING-- FILING OF A PETITION-- WHEN THE RESPONDENT IS A EXAMINED BY A STATE PSYCHOLOGIST, IF HE REFUSES TO SUBMIT TO AN EXAMINATION, THEN WHAT THE COMMITTEE DID PUT IN THERE WERE THE TWO OPTIONS THAT THE STATE

WOULD HAVE, WHICH I GUESS WOULD BE SIMILAR TO A SITUATION WHERE, HEY, THE TRIAL COURT IS IN ORDER, THAT THE WITNESS, AN EXPERT WITNESS FOR THE RESPONDENT, BE EXCLUDED OR HAVE THE RESPONDENT TURN OVER TESTING DOCUMENTS AND SO FORTH.
MY POSITION IS THAT THE STATE CANNOT, UNDER ANY CIRCUMSTANCE, GO INTO COURT AND SHOW GOOD CAUSE AND REQUEST A COMPULSORY EXAMINATION OF THE RESPONDENT.
I WOULD SUGGEST THERE BE LANGUAGE TO THE EFFECT THAT THE STATE ATTORNEY MAY NOT REQUEST RESPONDENT SUBMIT TO AN

EXAMINATION BY A STATE MENTAL HEALTH EXPERT, HOWEVER, EXAMINATION MAY BE AGREED TO BY THE RESPONDENT AND HIS/HER ATTORNEY AFTER THE PETITION IS FILED.
SO, IF IT IS CREATING SUBSTANTIVE RIGHT NOT TO BE FORCED TO UNDERGO A MENTAL HEALTH EXAMINATION, THEN WHAT CIRCUMSTANCE CAN THE STATE GO TO TRIAL COURT AND SHOW GOOD CAUSE?
>> THIS REALLY BRINGS UP A QUANDARY FOR MY REPORT.
WHAT HAPPENED?
I THOUGHT BEFORE YOU EVEN FILED A PETITION IN THIS CASE, THE DEFENDANT HAS TO BE EXAMINED BY A MULTIDISCIPLINARY TEAM.
IS THAT CORRECT?
AND, INCLUDED IN THAT TEAM IS THE PSYCHIATRIST OR PSYCHOLOGIST OR SOME KIND OF MENTAL HEALTH EXPERT, CORRECT?
>> RIGHT.
>> SO, IF THE DEFENDANT DOES NOT COOPERATE WITH THE EXAMINATION OF THIS MENTAL HEALTH EXPERTS, WHAT HAPPENS WITH THIS REPORT THAT THE DISCIPLINARY TEAM IS SUPPOSED TO GIVE TO THE STATE IN ORDER FOR THEM TO GET SOME PROBABLE CAUSE TO PROCEED?

>> THEY BASICALLY FILE AND PLACE IT ON RECORD REVIEW ALONE.
I MEAN, IF THIS WERE LITIGATED UNDER DIFFERENT CIRCUMSTANCES, IT WOULD BE A VIOLATION UNDER EPA'S CODE OF ETHICS BECAUSE, ALTHOUGH THEY MADE REASONABLE EFFORTS TO MEET WITH THE INDIVIDUAL AND ASSESS THE INDIVIDUAL, THEY COULD BASICALLY SEND OUT TO A PSYCHOLOGIST BASED ON THE RECORDS PROVIDED BY FDOT AND FILE AN AFFIDAVIT BASED ON THE RECORD REVIEW IN THE ACTUARIAL INSTRUMENT AND MAKE A RECOMMENDATION TO COMMIT.
>> ARE YOU SAYING THAT WE HAVE TO BE VERY CAREFUL IN THIS AREA OF EXAMINATION OF THE RESPONDENT BECAUSE YOU PERCEIVE THERE TO BE

A STATUTORY RIGHT THAT THE
RESPONDENT HAS NOT TO BE
EXAMINED BY STATE EXPERTS?
>> CORRECT.
>> SO THAT REALLY, AGAIN, IN A
SITUATION WHERE-- DOESN'T THIS
STATUTE CONTEMPLATE THAT THE
RESPONDENT WILL PARTICIPATE IN
THE EXAMINATION WHILE, AS
JUSTICE QUINCE WAS REFERRING TO,
THAT MULTIDISCIPLINARY REPORT.
I MEAN, ISN'T THAT WHY?
>> NOT NECESSARILY, BECAUSE I
THINK-- I WILL GIVE AN EXAMPLE
FROM LEON COUNTY AND ATTACH ITTO
MY RESPONSE.
EVEN WHEN A PSYCHOLOGIST-- THE
INDIVIDUAL, IF THEY SHOW A RIGHT
TO REFUSE FORMER CONSENT, SO IT
IS PRETTY MUCH UP TO--
A PSYCHOLOGIST GOES THROUGH THIS
WITH THE RESPONDENT.
>> IN CASES IN THE LAST TEN
YEARS, HAVE COURTS BEEN ORDERING
THE RESPONDENT TO BE SUBJECTED
TO A MENTAL EXAMINATION?
>> I TRIED ABOUT TEN OF THESE IN
LEON COUNTY AND, OTHER THAN MY
ACTUALLY AGREEING WITH THE
STATES TO GO SEE, MAYBE I HAVE

AN EXPERT WHO SAYS SOMETHING
FAVORABLE, SO RATHER THAN HAVE
THE REMEDY OF KEEPING MY EXPERT
OUT, I MAY TALK TO STATE AND
UPON AGREEMENT, I ALLOWED THE
STATE EXPERT TO GO MEET WITH THE
PERSON.
I GUESS THAT IS WHY I AM
SAYING--
>> YOU KNOW, I GUESS I'M A
LITTLE DISTURBED HERE BECAUSE
HOW DO YOU PROCEED IF THE
DEFENDANT HAS THE RIGHT NOT TO
PARTICIPATE IN A
MULTIDISCIPLINARY TEAM?
HE HAS A RIGHT NOT TO BE
EXAMINED ANYWHERE ALONG THE
LINE.
A DECISION IS JUST MADE ON ALL
THE PAST INFORMATION ABOUT THE
DEFENDANT'S MENTAL HEALTH?
>> I MEAN I AGREE IT IS
PROBLEMATIC, BUT ESSENTIALLY,

ESSENTIALLY WHAT GOES ON--
I BROUGHT UP THE POINT ABOUT
WHAT RULES AND ETHICS ARE FOR A
PSYCHOLOGIST.
AS LONG AS THEY MAKE REASONABLE
EFFORTS TO MEET WITH THE GUY, IT
IS NOT IMPROPER TO RELY ON
RECORD INFORMATION IN RENDERING
AN OPINION.
>> THE DISINCENTIVE FOR THE
DEFENDANT AND CIRCUMSTANCES OR
THE RESPONDENT IN CIRCUMSTANCES
SUCH AS THAT IS THAT THE
PRESENTATION OF EVIDENCE BY HIS
EXPERTS CAN BE LIMITED.
YOU KNOW, IF YOU AREN'T GOING TO
COOPERATE WITH THE STATE'S
EXPERTS, THEN WE ARE GOING TO
LIMIT YOUR EXPERTS AS A
DISINCENTIVE BUILT IN.
THE PENALTY, REALLY, FOR
REFUSING TO COOPERATE.
>> RIGHT, SIMILAR TO THE CAPITAL
CASE.
>> WE HAVE TRIED TO MAKE
SUBSTANTIVE LAW.
IT IS CLEAR THAT OVER TEN YEARS,

A LOT OF LAWS HAVE BEEN MADE AND
MOST OF OUR CASES HAVE TO DO
WITH WHETHER THE STATE-- IT
DOESN'T START INITIATING THESE
PROCEEDINGS AT A TIME OR MANNER
WHERE RECENTLY INITIATED AGAINST
SOMEONE WHO ENDS UP-- SO WE
HAVEN'T GOTTEN INTO A LOT OF
THESE, AND I DON'T KNOW WHAT
CONSTITUTIONAL IMPLICATIONS
THERE ARE BECAUSE THEY ARE
DEALING WITH THIS HYBRID KIND OF
CASE.
BUT WHAT WOULD YOU SAY, WITH
YOUR LIMITED TIME, YOU BROUGHT
UP THE COMPETENCY ISSUE AND YOU
BROUGHT UP THIS ISSUE OF
EXAMINATION.
THERE WERE TWO AREAS, ONE WHERE
ABOUT THE TEN-DAY CURE PROVISION
WHERE THE JUDGE FINDS-- AND THEN
THE OTHER AREA, WHERE PROBABLE
CAUSE IS NOT ESTABLISHED AND THE
RESPONDENT IS RELEASED.
>> WITH RESPECT TO-- I THINK I
FILED SUPPLEMENTAL AUTHORITY TO

WHAT OTHER STATES HAVE DONE.
MY POSITION WOULD BE, IF THERE WAS A FINDING OF NO PROBABLE CAUSE FOLLOWING AN ADVERSARIAL PROCEEDING, THE PETITION SHOULD BE DISMISSED AND I THINK I FILED SUPPLEMENTAL AUTHORITY WITH RESPECT THAT HAPPENED IN ILLINOIS, CALIFORNIA.
>> ISN'T IT A LEGISLATIVE DECISION?
>> WELL, THE STATUTE IS SILENT ON THAT.
IF THE STATUTE SAYS SOMETHING OTHER THAN THIS COURT, IT WOULD BE CONSTITUTIONAL.
>> I SUPPOSE IF WE EITHER SAY THAT IT IS ONLY THAT THEY WERE RELEASED BUT NOT DISMISSED, ARE WE NOW, AGAIN, MAKING LAW IN AN AREA THAT WE HAVE NOT HAD A FULL BRIEFING ON?
I AM CONCERNED ABOUT THAT.
>> I RECOGNIZE THE COURT'S

CONCERN, BUT, NONETHELESS, I MEAN, WHEN I FIRST READ THEIR RULE, I MEAN, IT SEEMS TO ME THAT STATUTORILY PART OF MY POSITION IS THE STATE HAS 545 DAYS BEFORE IT IS RED-FLAGGED TO PROCEED WITH THESE PROCEEDINGS, AND AFTER AN EVIDENTIARY HEARING IF PROBABLE CAUSE WAS NOT FOUND AND HE WAS NOT SUPPOSED TO HAVE--
>> GOING BACK, BECAUSE THIS IS TROUBLESOME FOR FOLKS WHO HAVE NOT DELVED INTO THIS AREA.
IT IS IMPORTANT TO KEEP IN MIND THAT THESE ARE WHAT WE CALL CIVIL COMMITMENTS.
THEY ARE NOT CRIMINAL CASES.
THE INITIAL MULTIDISCIPLINARY REPORT THAT IS PREPARED WHEN THE RESPONDENT DOES NOT WISH TO COOPERATE, THEY DO RELY ON HIS DISCIPLINARY RECORD IN PRISON, SEXUAL CONTACT WITH OTHER PRISONERS, THEY LOOK AT THESE REPORTS.
NOW, IN THE BAKER ACT PROCEEDINGS, WHICH ARE ALSO CIVIL COMMITTEE PROCEEDINGS,

THERE ARE NOW IN MANY INSTANCES, THE PSYCHOLOGISTS DON'T GET TO-- BECAUSE THEY ARE SO FAR GONE. THEY RELY UPON RECORDS OF PAST BEHAVIOR, TAKE TESTIMONY FROM WITNESSES AS TO BEHAVIOR PROBLEMS AND SO ON, SO I DON'T THINK THIS IS REALLY NECESSARY FOR THE MULTIDISCIPLINARY RULE TO ACTUALLY INTERVIEW THE PERSON TO ASSESS WHETHER OR NOT HE SHOULD BE CIVILLY COMMITTED OR NOT, SO I DON'T KNOW THAT THAT-- BEAR IN MIND IT IS A CIVIL COMMITMENT.
DO YOU AGREE?
>> WELL, I MEAN I THINK WHILE WHAT YOU ARE SAYING MAY IN FACT BE TRUE, THAT IS, DEFENSE ATTORNEY MATERIAL FOR A CROSS-EXAMINATION WITHOUT

RENDERING THIS TYPE OF OPINION DOES NOT MAKE ANY EFFORT TO GO EVALUATE THE INDIVIDUAL AND, AS I INDICATED, I HAD HAD INSTANCES WHERE WHEN THAT HAS BEEN ATTEMPTED UNDER DIFFERENT CIRCUMSTANCES, WHERE THEY MAY TRY AND BRING IN ANOTHER EXPERT OUT OF THE BLUE BUT MAKE NO EFFORT TO INTERVIEW THE CLIENT AND I HAVE THE AMERICAN PSYCHOLOGICAL ASSOCIATION ETHICAL RULES, AND IS THAT ETHICAL?
YOU REALLY HAVE THE CREDIBILITY OF THE WITNESS.
>> ONE THING IN THE RULES, WHEN YOU FIRST-- THE CIVIL RULES OF PROCEDURE APPLY AND THE RULES ARE EVIDENCE DON'T APPLY UNLESS THERE IS THIS MANIFEST ADJUSTMENT OR WHATEVER.
IN THE BEGINNING, WHEN THE STATUTE FIRST CAME OUT, THERE WASN'T MUCH CASE LAW IN HOW TO DEAL WITH THAT.
THERE HAS BEEN A LOT OF CASES NOW.
BUT, IN SITUATIONS WHERE A PSYCHOLOGIST IS RELYING ON THE TESTIMONY OF A THIRD PERSON AS TO WHAT THIS PERSON MAY HAVE

DONE 20 YEARS AGO, THERE IS NOTHING IN YOUR RULES.
THERE HAVE BEEN SOME CASES THAT THERE IS A LIMIT TO THIS HEARSAY THING.
BUT, IF THERE IS NOTHING IN THE PROPOSED RULES TO HELP DEAL WITH THAT.
>> ESSENTIALLY, I MEAN, IN THAT INSTANCE, CRAWFORD WOULD APPLY BECAUSE IT WAS A CIVIL PROCEEDING.
THE ONLY CASE LAW THAT HAS BEEN OUT THERE IS JUST BASICALLY THAT UNTESTED HEARSAY IS WHAT CAN BE RELIED UPON, WHETHER THROUGH A PLEA OR AN ADVERSARIAL TRIAL.
>> WITH THAT, YOU HAVE EXCEEDED

YOUR TIME.
YOU CAN MAKE ONE STATEMENT TO WRAP UP.
>> I JUST WANTED TO MAKE ONE QUICK STATEMENT.
WITH RESPECT TO THE POSTJUDGEMENT HABEAS CORPUS, I WOULD SUGGEST THAT THERE BE TWO YEARS, IF THE COURT IS GOING TO FOLLOW THIS 3850 STATUTE, THAT THERE SHOULD BE TWO YEARS FOR THE INDIVIDUAL TO BE ALLOWED TO FILE VERSUS THE ONE YEAR AND THE ONLY OTHER STATEMENT I WOULD MAKE IS THAT, IN RULE 4.240 WITH RESPECT TO TRIAL PROCEEDINGS, I PUT THAT IN MY COMMENTS, THAT THERE WAS SOME DISCUSSION ABOUT THE 30-DAY RIGHT TO TRIAL AND THE CURRY THAT SAYS YOU CAN RECAPTURE THAT, EVEN IF IT IS WAIVED UP FRONT, SIMILAR TO THE CRIMINAL PROCEEDING WAIVED BEFORE A TRIAL YOU CAN FILE A DEMAND.
>> THANK YOU VERY MUCH.
JUDGE EATON.
>> WE CONSIDERED THE RECAPTURE PROBLEM, AND IT WAS TO SAY THAT THE TRIAL SHOULD BE SCHEDULED NOT LESS THAN 90 DAYS FROM THE TIME OF THE DEMAND FOR THE RECAPTURE, SO OUR APPROACH WAS STILL DIFFERENT THAN WHAT COUNSEL JUST SUGGESTED.

I HAVE STUDIED THE THREE, THE THREE STATUTES FROM ARIZONA, CALIFORNIA AND ILLINOIS, WHERE THEIR STATUTES SAY THAT, IF PROBABLE CAUSE IS NOT FOUND THEN THE CASE IS DISMISSED, BUT ALL THREE OF THOSE STATES HAVE A DIFFERENT APPROACH THAN WE DO.
IN ARIZONA FOR INSTANCE, THE FIRST THING THAT HAPPENS IS THE TRIAL JUDGE MAKES A PROBABLE CAUSE DECISION AS TO WHETHER THE CASE SHOULD GO FORWARD.
THEN THERE IS ANOTHER PROBABLE CAUSE HEARING AND, AT THAT NEXT

PROBABLE CAUSE HEARING, THERE IS NO NECESSITY FOR ANY ADDITIONAL EFFORTS TO BE PRESENTED, WHEREAS OURS IS AN ADVERSARIAL HEARING.
IN CALIFORNIA, THE RESPONDENT HAS TO BE PRESENT AT THE TIME WITH HIS LAWYER, AT THE TIME THE JUDGE MAKES THE INITIAL PROBABLE CAUSE DECISION, SO THAT IS DIFFERENT FROM THE WAY WE DO IT.
IN ILLINOIS, ALSO NO NEW EVIDENCE CAN BE PRESENTED AT THE PROBABLE CAUSE HEARING, SO THEY ARE NOT ADVERSARIAL HEARINGS.
OURS IS DIFFERENT.
IT HAS JUST BEEN POINTED OUT TO ME THAT THERE REALLY ISN'T A TYPO, THAT "NOT" SHOULD BE IN THERE.
THE STATUTE IS SILENT ON WHAT SHOULD HAPPEN, AND NO PROBABLE CAUSE IS DECIDED, SO SOMEBODY'S GOING TO HAVE TO COME UP WITH A RULE.
>> IT ALWAYS CONCERNS ME THOUGH, IF WE HAVE NOT DECIDED THE ISSUE THEN, AND THERE IS CONTROVERSY ABOUT IT, THAT WE TYPICALLY DON'T MAKE A SUBSTANTIVE DECISION, A PRETTY SIGNIFICANT SUBSTANTIVE DECISION IN A RULES CASE.
>> WELL, I GUESS YOU COULD WAIT UNTIL SOME JUDGE DECIDES THERE IS NO PROBABLE CAUSE AND NOBODY KNOWS WHAT TO DO.
THAT IS WHAT IT IS GOING TO BE.
>> IN PROVIDING THE SUGGESTED

FORMS SUCH AS THE-- FORM ONE OF
THE ISSUES IS, YOU KNOW, THE
JURY, IF THEY DON'T COME BACK
WITH A MAJORITY 3-3, THEN THE
PERSON IS RELEASED TO COMMIT, TO
NOT COMMIT THAT THEY CAN
BASICALLY BE TRIED AGAIN.
THE RULE HAS COME INTO COURT--
THE JURY, TO HAVE THREE CHOICES.
ONE TO COMMIT, ONE NOT TO
COMMIT.
IN MANY INSTANCES I TAKE THE

POSITION THAT THAT INVITES THEM
TO COME BACK, SO I JUST DID--
IF THEY ARE AT A DEADLOCK, THEY
ARE NOT GOING TO LET THE VERDICT
TELL THEM, GIVE ME THE NUMERICAL
DIFFERENCES AND DECIDE WHETHER
OR NOT A CASE SHOULD BE TRIED
AGAIN OR NOT.
WHAT DO YOU SUGGEST AS FAR AS
THE VERDICT IS CONCERNED?
>> I WOULD SUGGEST THE
INTERROGATORY REQUEST COME FROM
THE JURY.
THAT WAY YOU WILL KNOW.
WE VOTE SIX FOR COMMITMENT, FOUR
FOR COMMITMENT, THREE FOR
COMMITMENT, 6-2, WHATEVER IT IS.
[INAUDIBLE]
>> IT SHOULDN'T TAKE MORE THAN
30 MINUTES TO COME UP, IT
SHOULDN'T BE A PROBLEM.
>> YOU WOULD SUGGEST THE INITIAL
VERDICT GOING BACK TO THE JURY
ON THE NUMERICAL DIFFERENCES?
>> ABSOLUTELY.
YOU HAVE TO KNOW WHAT THE VOTE
WAS IN ORDER TO DECIDE WHETHER
OR NOT THE CASE COULD BE
RETRIED.
>> THANK YOU VERY MUCH.
I THANK YOU, BOTH OF YOU, FOR
YOUR OWN ARGUMENTS.
THE COURT WILL BE IN RECESS
UNTIL TOMORROW MORNING.
>> PLEASE RISE.