

>> PLEASE RISE.

HEAR YE.

HEAR YE.

HEAR YE.

COURT NOW SESSION.

THE GREAT STATE OF FLORIDA.

LADIES AND GENTLEMEN, PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO THIS SESSION OF THE FLORIDA SUPREME COURT.

THE FIRST MATTER OF THE COURT'S AGENDA IS THE AMENDMENTS TO THE FLOOR RULES OF APPELLATE AND THE RULES FOR A CERTIFIED COURT-APPOINTED MEDIATORS.

ARE THE PARTIES READY TO PROCEED?

>> I AM.

>> JUDGE PALMER, ARE YOU GOING FIRST?

>> I AM PRETTY GOOD MORNING.

MAY IT PLEASE THE COURT, I AM JUDGE WILLIAM PALMER FROM DAYTONA BEACH, FLORIDA HERE IN MY ROLE AS CHAIR OF COMMITTEE ON RULES AND POLICIES.

>> ARE YOU GOING TO TALK ABOUT THE DCA DEVIATION PROGRAM.

>> IN LARGE PART OF THE HISTORY OF HOW THESE RULES CAN APART REALLY FLOWS FROM THE PROGRAM THAT WE STARTED IN THE FIFTH DCA BACK IN 2001.

>> BECAUSE I THINK THERE IS, YOU KNOW, THE MISCONCEPTION, THE FOURTH DISTRICT, AS YOU RECALL, HAD A FAILED PROGRAM THAT NELLY WAS VERY HAPPY WITH.

SO YOU WILL TELL US.

>> BOTH THE FOURTH AND THE FIRST HAD PROGRAMS IN THE PAST.

TO A GREAT EXTENT I UNDERSTAND
IT WAS EARLY BUDGETARY
CONSTRAINTS THAT HAD
SOMETHING TO DO WITH THOSE NOT
SUCCEEDING.

AND THOSE WERE BOTH PROGRAMS
THAT USED AN IN-HOUSE STATE
EMPLOYEE MEDIATOR.

SO IN 2001 WHEN THE FIFTH DCA
STARTED LOOKING AT A PILOT
PROGRAM TO DO APPELLATE
MEDIATION WE KNEW THAT WE
HAVE NO BUDGET TO WORK WITH,
AND SO WE STILL LOOK AT WHAT
THEY TYPICALLY WERE USING.
SETTING FOR IT IN THE NINTH
CIRCUIT.

WE BROUGHT IN A NUMBER OF
LAWYERS AND MEDIATORS.

PART OF OUR FOCUS WAS IT WAS
NOT JUST TO CLEAR UP CONGESTION
OF THE COURT.

IT WAS, WHAT WOULD GIVE THE
PARTIES AN OPPORTUNITY TO TRY
AND RESOLVE SOME OF THESE CASES
WITHOUT GOING THROUGH OF THE
EXPENSE.

SO BECAUSE OF THAT WE PUT THIS
PROJECT TOGETHER.

AFTER A YEAR OR SO WE EXPANDED
IT TO THE ENTIRE DISTRICT.

AFTER THREE YEARS WE DECIDED
THAT IT HAD BEEN A SUCCESS, AND
IT WILL GO FORWARD AS A PILOT
PROGRAM, BUT AS A PERMANENT
PROGRAM.

AT THAT POINT TO JUSTICE
SUGGESTED THAT THEY LOOK AT
PUTTING AN APPELLATE PROGRAM
TOGETHER, AND THAT THEY APPOINT
A LIAISON TO OUR SUBCOMMITTEE
ON APPELLATE MEDIATION TO PUT

TOGETHER A SET OF RULES THAT
COULD BE USED STATEWIDE.
AND OVER THE COURSE OF NOW A
FEW YEARS.

>> SIX YEARS.

>> THAT'S RIGHT.

WE PUT TOGETHER A SET OF RULES
THAT STARTED AS THE BASE OF THE
PROGRAM THAT WE WERE USING IN
THE FIFTH BECAUSE WE THOUGHT IT
HAD BEEN SUCCESSFUL.

BY SUCCESSFUL IN AN APPELLATE
PROGRAM WE HAVE ABOUT A 35
PERCENT SUCCESS RATE ON
APPELLATE MEDIATIONS.

WHICH WHEN YOU LOOK AT TRIAL
MEDIATIONS THAT DOESN'T SOUND
LIKE A LOT BECAUSE THEY SETTLE 85
OR 90%.

FOR AN APPELLATE PROGRAM 35%.

>> THIRTY OR 35% OF THE CASES
THAT ACTUALLY GO TO MEDIATION.

>> CORRECT.

>> THAT IS WHAT PERCENTAGE OF
YOUR TOTAL NUMBER OF CASES?

>> IT IS A SMALL NUMBER OF THE
OVERALL PERCENTAGE BECAUSE,
FIRST OF ALL, IT IS ONLY THE CIVIL
CASES.

THAT KNOCKS OUT 60% OF THE
CASES.

WE ONLY DID IT WITH CASES THAT
HAVE LAWYERS ON BOTH SIDES AND
THAT WERE FINAL APPEAL.

IT IS A COUPLE OF HUNDRED CASES A
YEAR IN THE FIFTH.

BUT SO WE USED OUR MODEL, AND
THEN WE ALSO TRIED TO USE THE
FORMAT OF THE CIVIL RULES AS
MUCH AS WE COULD TO TRY AND
FOLLOW THE SAME FORMAT TO SEE

WHAT HAD WORKED AT THE CIVIL COURT LEVEL.

WE SET IT UP WITH A FEW BASIC, A FEW BASIC PREMISES.

NUMBER ONE, WE DID IT VERY EARLY IN THE SYSTEM.

WE DO IT BEFORE ANY RECORDS ARE PREPARED, BEFORE ANY TRANSCRIPTS ARE PREPARED ON THE BASIS THAT ONE OF THE GREAT INCENTIVES FOR THIS TO WORK IS THE EXTENT THAT THE LAWYERS AND THE PARTIES CAN SAVE IN NOT HAVING TO GO THROUGH THAT PROCESS.

NOW, THERE IS OBVIOUSLY A WEIGHING THERE BECAUSE THERE ARE SOME ADVANTAGES TO DOING IT LATER IN THE PROCESS WHERE YOU KNOW THE ISSUES BETTER. FROM WHAT WE DETERMINED EVERY APPELLATE PROGRAM IN THE COUNTRY THAT HAD BEEN SUCCESSFUL REALLY USED THIS EARLY MODEL.

LET'S DO IT AT THE VERY BEGINNING BECAUSE WE CAN SAVE ALL THIS MONEY OF BOTH TRANSCRIPTS AND RECORDS.

LET'S TOLL THE TIME PERIOD FOR EVERYTHING INCLUDING THE BRIEFS WHILE THEY GO TO MEDIATION.

BUT WE WILL PUT IT ON A SOMEWHAT FASTER TIMEFRAME THAN THEY DO IT AT THE CIRCUIT COURT.

YET TO GET THERE WITHIN 45 DAYS. FINISH IT WITHIN 30 DAYS.

DID NOT WANT TO TIE UP THE APPEAL VERY LONG.

THE OTHER THING WE PUT INTO THE PROPOSED RULES IS THE COURT CAN

ALLOW THE PARTIES TO PUT IT OFF UNTIL LATER.

IF YOU HAVE A PARTICULAR CASE WHERE THE PARTIES SAY, WE REALLY THINK THIS IS TOO EARLY THIS IS A CASE WHERE WE NEED TO GET RECORDS, TRANSCRIPTS, SET THE ISSUES.

THAT IS FINE.

YOU CAN FILE A MOTION WITH THE COURT.

LET'S PUT IT OFF UNTIL DOWN THE ROAD.

>> I KNOW THERE WAS AN ISSUE ABOUT WHETHER THE MEDIATOR SHOULD BE CERTIFIED AS A CIVIL MEDIATOR.

WHAT IS YOUR CURRENT PRACTICE, AND WHAT DO YOU RECOMMEND ON THAT?

>> WHAT WE DID AT THE FIFTH WHEN WE ORIGINALLY SET UP THE PROGRAM AS WE SAID TO BE A CERTIFIED MEDIATOR AND GO ON OUR LIST YOU HAD TO HAVE A CERTIFICATION IN EITHER CIRCUIT, CIVIL, FAMILY, OR DEPENDENCY. YOU HAD TO TAKE A ONE-DAY COURSE ON APPELLATE MEDIATION WHICH WE HAVE ACTUALLY PUT TOGETHER OURSELVES AT THE COURT TO TEACH THINGS LIKE SCOPE OF REVIEW AND STANDARD OF REVIEW AND THE TIME FRAMES. SO AMAZINGLY ENOUGH WE SET UP THE FIRST TRAINING. WE THOUGHT WE WOULD HAVE 30 PEOPLE. WE HAD 230. WE HAVE LOTS OF PEOPLE WHO WERE WILLING TO DO THIS AND A

VERY LARGE LIST THE PARTIES CAN PICK FROM.

THE WAY THESE RULES ARE SET UP. THE WAY WE DO IT IS THE PARTIES FIRST HAVE THE CHANCE TO PICK THEIR OWN MEDIATOR.

WE ONLY APPOINT RANDOMLY IF THEY CANNOT AGREE.

I DON'T THINK WE HAVE RANDOMLY APPOINTED TEN MEDIATORS IN TEN YEARS.

THEY CAN KIND OF PICK THEIR CREDENTIALS.

WE ENDED UP SAYING, YES, YOU HAD TO BE CERTIFIED.

>> IF YOU'RE GOING TO DO IT TO THE COURT-ORDERED PROCESS TO HAVE A CERTIFIED MEDIATOR IF YOU WANT TO DO IT ON THE SIDE OR AT A TIME OR BEFORE YOU GET TO THAT POINT, THAT IS FINE.

BUT THE REAL MOVE HAS BEEN TOWARD IT IS IMPORTANT THAT THEY HAVE SOME OF THIS BASIC TRAINING.

ONE OF THE BIG ARGUMENTS WE HAD WHEN WE WERE PUTTING TOGETHER BOTH THE PILOT PROGRAM AND THESE RULES IS SHOULD YOU HAVE TO BE A LAWYER TO BE AN APPELLATE MEDIATOR. THE ARGUMENT ON THE ONE SIDE BEING APPEALS ARE MUCH MORE LAW INTENSIVE THAN SOME TRIALS. YOU REALLY NEED TO KNOW THE SYSTEM.

THE ARGUMENT ON THE OTHER SIDE BEING SELF-DETERMINATION.

THE PARTIES WILL BE PICKING THEIR MEDIATORS.

IF THEY WANT TO USE ON
NONLAWYER MEDIATOR THEY
OUGHT TO BE ABLE TO DO THAT.
WE ULTIMATELY SAID, OKAY, YOU
DON'T HAVE TO BE A LAWYER.
WE FOLLOWED WITH YOU ALL DID
WHEN YOU WENT TO THE POINT
SYSTEM AND NO WONDER HAD TO
BE A LAWYER TO BE A CIRCUS OF A
MEDIATOR AND SAID IT EITHER
PARTY SAYS THEY WANT OF A
LAWYER MEDIATOR THEY GET A
LAWYER MEDIATOR.

>> AS FAR AS THE QUALIFICATIONS
AND THIS, YOU WOULD BE A CIRCUIT,
FAMILY, OR DEPENDENCY MEDIATOR
PLUS THIS COURSE.

IS THE COURSE THAT YOU PROPOSED
OR IS IT SIMILAR TO WHAT YOU HAVE
OF COURSE.

>> PROPOSED LEARNING OBJECTIVES.
WE ARE REALLY JUST WAITING TO
FINE TUNE IT TO SEE WHAT THE
COURT DOES WITH THIS PETITION
BECAUSE IF YOU TWEAK THE RULE
SOMEWHAT IT MIGHT TWEAK THE
TRAINING.

THE CONCEPT IS VERY MUCH LIKE
WHAT WE DID AT THE FIFTH DCA.
WOULD BE DONE BY PRIVATE
PROVIDERS LIKE TRAINING IS THAT
MANY OF THE OTHER
CERTIFICATIONS.

IT WOULD BE A ONE-DAY COURSE,
AND IT WOULD TEACH BASIC
PRINCIPLES OF APPELLATE LAW,
APPELLATE PROCEDURE, A LITTLE BIT
OF OUR APPELLATE MEDIATION IS
DIFFERENT FROM TRY MEDIATION.
THE COMMITTEE IS TO A POINT
WHERE RELATIVELY QUICKLY THEY
COULD TURN THE TRAINING

STANDARDS INTO A FINAL PRODUCT
ONCE WE WHAT HAPPENS.

>> HAVE YOU LOOKED AT THE
OVERALL FINANCIAL IMPACTS UPON
PARTIES WITH REGARD TO THIS?

WHAT IS THE COST?

WHAT ARE THE CHARGES?

THOSE KINDS OF THINGS?

WE ARE TALKING ABOUT A 35% OF A
SMALL NUMBER.

THE OTHER PERCENT ARE HAVING TO
SPEND, YOU KNOW, MORE MONEY.

SO I THINK, IF IT IS SIGNIFICANT.

THEY DON'T DO THESE THINGS FOR
\$0.15.

IT IS MY EXPERIENCE THAT ALL
FRUSTRATED LAWYERS NOW WANT
TO BE MEDIATORS.

IT IS A FACT.

ALL OF OUR CONTEMPORARIES.

THAT IS WHAT THEY'RE DOING.

IT IS ALMOST A SUBSTITUTE FOR
PRACTICE OF LAW.

>> HERE IS WHAT WE DID IN THE
FIFTH.

HERE IS WHAT THE COURTS COULD
DO.

IN A LOT OF AREAS THESE RULES WE
SET UP RULES THAT SAY UNLESS THE
COURT DECIDES SOMETHING ELSE

HERE IS HOW THIS TO BE DONE.

STILL GIVING THEM A LOT OF
DISCRETION ABOUT DIFFERENT
THINGS.

WHEN IT FIRST CAME UP THAT WAS
A BIG CONCERN OF THE NUMBER OF
THE JUDGES.

ARE WE ADDING A LAYER?

IS IT GOING TO COST A LOT OF
MONEY?

IS IT GOING TO BE A PROBLEM?

IF YOU HIRE SOMEBODY OFF THE LIST THEN IT IS WHATEVER YOU WORK WITH THOSE PEOPLE.

WE HAVE PEOPLE ON THE LIST TO CHARGE LOTS OF DIFFERENT THINGS. PEOPLE TO SOME EXTENT CAN PICK AND CHOOSE.

IF WE RANDOMLY ASSIGN PEOPLE WE HAVE A DEFAULT RATE WHICH IS \$200 AN HOUR.

BUT WE ALSO HAVE A VERY GENEROUS PRO BONO RULE IN WHICH WE SAY IF YOU WANT TO BE ON OUR LIST OF APPROVED MEDIATORS YOU WILL AGREE TO TAKE AT LEAST TWO CASES A YEAR IF WE ASK YOU TO THAT ARE PRO BONO.

IF A PARTY FILES A MOTION WHICH SAYS IT WILL BE A FINANCIAL HARDSHIP FOR ME TO GO THROUGH THIS MEDIATION.

HERE IS AN AFFIDAVIT THAT SHOWS. WE CAN THEN GRANT PRO BONO STATUS.

WE ARE RELATIVELY LIBERAL ABOUT DOING THAT UNDERSTANDING IS CONCERNED.

>> HOW LONG DO THE MEDIATIONS IN THE APPELLATE CONTEXT THAT YOU ARE PERSONALLY FAMILIAR WITH.

>> THEY VIRTUALLY NEVER LOST MORE THAN A DAY.

>> THEY LAST A DAY THEN, \$200 AN HOUR, YOU'RE TALKING \$1,600.

>> WE GET REPORTS FROM THE MEDIATORS.

WE ASK THEM TO TELL US HOW MUCH TIME THEY SPENT AND WHAT IT COST.

WE DO THAT ALL OF OUR CASES.

AND THEY WOULD GENERALLY RUN FROM AT THE LOW END FIVE OR \$600, NOT VERY USUAL, TO A HIGH-END OF MAYBE \$6,000.

I THINK I HAVE SEEN ONE OR TWO THAT HAVE GONE BEYOND ONE DAY. THAT IS THE GENERAL RANGE.

>> I THINK 2,500.

>> SOMEWHERE IN THAT RANGE COSTS.

WHEN YOU LOOK AT IT IN THE CONTEXT OF WHAT THEY'RE GOING TO PAY FOR A TRANSCRIPT AND LAWYER ALTHOUGH IT THROUGH THAT IS THE BALANCING.

>> 65% OF THOSE PEOPLE ACTUALLY DO END UP PAYING THE MONEY AND THE MONEY FOR THE TRANSCRIPT BECAUSE THE MEDIATION FAILS AND THEY END UP HAVING TO GO THROUGH THE ENTIRE APPELLATE PROCESS.

>> ABSOLUTELY.

NO QUESTION ABOUT THAT.

>> WHAT HAS BEEN, THE OTHER, YOU KNOW, ONE OF THE THINGS THAT YOU HAD STARTED IT WAS TO SEE IF THE OTHER APPELLATE COURTS WERE INTERESTED.

YOU HAD LIAISONS FROM EACH OF THE APPELLATE COURTS FROM THE SUBCOMMITTEE, CORRECT?

>> CORRECT.

>> WHY IS IT SINCE YOUR CIRCUIT AND YOUR DISTRICT IS VOLUNTARY DO YOU KNOW WHY THE OTHER APPELLATE COURTS HAVE NOT INSTITUTED?

I GUESS, AGAIN, WE DON'T WANT TO DO AN EXERCISE IN FUTILITY.

IT DOESN'T MATTER IF WE HAVE NICE RULES, IF IT IS NOT MANDATORY.

WE ARE NOT MANDATING IT.

COULD YOU SPEAK TO THE -- ARE
THEY WAITING FOR THESE RULES?

DID YOU TELL US WHAT THE
SITUATION IS THERE?

>> THERE ARE A COUPLE OF DCAS
THAT HAVE INDICATED THEY REALLY
JUST HAVE NO INTEREST.
THEY PROBABLY WON'T DO IT UNDER
ANY CIRCUMSTANCES.

I THINK PART OF THAT IS AT THE
LOOK AT THEIR CASELOAD AND
THINK THEY DON'T NEED TO CLEAR
UP A BUNCH OF CASES ON THEIR
DOCKET.

THEY DON'T HAVE A BACKLOG.
THEY ARE LOOKING AT IT FROM THAT
STANDPOINT.

AS I SAID, WE TRIED TO LOOK AT IT
NOT JUST FROM THAT STANDPOINT
BECAUSE WE THINK THERE IS
BENEFIT TO THE PARTIES.

I THINK THERE ARE A COUPLE OF A
DCAS WHO HAD EXPRESSED SOME
INTEREST AND MAY JUST BE WAITING
TO SEE HOW IT ALL SORTS OUT
BECAUSE THEY OBVIOUSLY HAVE
NOT STARTED ANYTHING YET.

AT LEAST I KNOW THE FOURTH HAS
INDICATED, I THINK, THAT THEY HAVE
SOME INTEREST.

I WOULD NOT BE SURPRISED IF THEY
END UP IMPLEMENTING SOME
PROGRAM.

>> TO ALLOW FOR PERMIT.
THE CIRCUIT COURT OF APPEALS.
WHY NOT ALLOW PARTIES?

>> THE RULE DOES NOT ALLOW IT
WITHOUT A COURT ORDER, BUT
DOES ALLOW IT WITH A COURT
ORDER.

SOME I KNOW THE 11TH CIRCUIT
DOES DO IT BY TELEPHONE.

WE IN OUR COURTS ALLOW IT BY
TELEPHONE WITH PERMISSION OF
THE COURT.

WE INITIALLY SAID WE WOULD LEAVE
IT UP TO THE MEDIATORS.

THE MEDIATOR SAID WE DON'T
WANT TO LOSE THAT NEUTRAL
POSITION.

THE COURT HAS AN INTEREST IN
THESE THINGS BEING MOST
SUCCESSFUL.

THE COURT CAN ALLOW IT.

THE DEFAULT POSITION IS ABSENT
THE ORDER THEY SHOULD BE THERE
IN PERSON.

IT IS MORE LIKELY TO BE TO RAISE
SUCCESSFUL MEDIATION.

>> IS THAT THE CASE?

IS THAT THE CASE THAT FACE-TO-
FACE MEDIATION IS MORE LIKELY TO
BE SUCCESSFUL THAN TELEPHONIC?

>> I DON'T KNOW THAT THERE IS ANY
STATISTICS SPECIFICALLY IN THE
APPELLATE AREA.

I KNOW IN SOME AREAS I THINK
THERE IS.

AND THE NEW FORECLOSURE
MEDIATION RULES THAT YOU JUST
APPROVED YOU HAVE ALLOWED THE
PETITIONER TO SHOW UP BY
TELEPHONE.

I DON'T THINK YOU ALLOW THE
OTHER SIDE.

I THINK THERE IS SOME
RECOGNITION THAT THERE IS SOME
ADVANTAGE OF HAVING FOLKS
THERE IN THE ROOM.

AND I THINK THAT IS ONE OF THOSE
THINGS THAT, WITH SOME
OVERSIGHT BY THE COURT, THEY

CAN LOOK AT IT ON A CASE-BY-CASE BASIS.

WE TEND TO GRANT THOSE OF THE SEEMS TO BE ANY KIND OF LEGITIMATE REASON.

IF WE GET MOTIONS THE SAY I AM IN CALIFORNIA.

WE ARE FAIRLY GENEROUS IN GRANTING THEM.

IF YOU GET ONES THAT LOOK MORE LIKE THEY ARE JUST GOING TO ALWAYS ASK TO COME BY TELEPHONE BECAUSE IT IS EASIER.

>> DO YOU DO FAMILY CASES?

HAVE YOU PICKED OUT?

IT SEEMS TO BE IF THERE IS ONE TYPE OF CASE THAT WOULD BENEFIT FROM THAT HAVING TO GO THROUGH IT WOULD BE CASES INVOLVING MAYORS AND THOSE KINDS OF THINGS.

ARE THOSE INCLUDED IN WHAT YOU MEDIATE?

AND HAVE THOSE BEEN, HAVE YOU FOUND, HAVE YOU FOUND THE PARTICULAR TYPE OF CASE THAT IS MORE SUCCESSFULLY, MORE LIKELY TO BE SUCCESSFUL MEDIATION OR DOES IT DEPEND ON, YOU KNOW, THE PERSONALITIES?

>> WE DO FINAL CIVIL, FAMILY.

I TEND TO SEND FAMILY MORE BECAUSE I THINK THEY ARE MORE AMENABLE TO MEDIATION BOTH BECAUSE OF TRYING TO DEAL WITH THE CONFLICT AND BECAUSE THERE ARE MULTIPLE ISSUES THAT ALLOW A BETTER CHANCE TO MEDIATE.

MY EXPERIENCE IS WHEN I LOOK AT THE RESULTS AS THEY COME BACK THROUGH THERE REALLY AREN'T SIGNIFICANT DIFFERENCES WHERE

YOU CAN SAY IT WORKS WAY BETTER
IN FAMILY LAW.

WE TRIED TO LOOK AT, ARE THERE
CERTAIN AREAS WHERE IT DOES
WORK AND IT DOESN'T WORK.

ABOUT THE ONLY CONCLUSION WE
WERE ABLE TO COME TO IS
MEDIATIONS THAT INVOLVE AN
ADMINISTRATIVE AGENCIES SEEM TO
HAVE A PARTICULARLY LOW
PERCENTAGE CHANCE OF SUCCESS
OF MEDIATION.

BUT THE OTHER ONES TEND TO, IT IS
REALLY VERY FACT INTENSIVE.

>> INTERNAL RULES ABOUT
SCREENING CASES FROM
MEDIATION.

THE SCREENING PROCESS IS NOT
INCLUDED IN THE RULES.

YOU'RE LEAVING THAT TO THE
INDIVIDUAL COURTS, CORRECT?

>> CORRECT.

WE HAVE THREE JUDGES TO EACH
SCREEN A THIRD OF THE CASES.
SHOULD THIS OR SHOULD THIS NOT
GOOD MEDIATION.

WHY OR WHY NOT.

WE MAKE THOSE DECISIONS ON
WHETHER THEY SHOULD GO.

THE RULES OF NOT REALLY ADDRESS
THAT.

WE THOUGHT THAT WAS ONE OF
THE FANS THAT OUGHT TO BE THAT.

>> HOW CAN AN APPELLATE JUDGE
LOOKING AT JUST A FINAL
JUDGMENT HAVING NO RECORD, NO
FILE, NO NOTHING MAKE A DECISION
ON THIS OUGHT TO GO?

>> WELL, WE CAN LOOK AT SOME
AND BASED ON WHAT REASONS
THEY GIVE US WE CAN DETERMINE

THIS IS NOT A SUFFICIENT REASON
NOT TO GO.

FOR EXAMPLE, WHEN THE
QUESTIONNAIRE SAYS, IS THIS
APPROPRIATE FOR MEDIATION AND
WHY NOT.

THEY SAY IT IS NOT BECAUSE
SOMEBODY HAS ALREADY WON.

WELL, THAT IS NOT A VERY
CONVINCING ARGUMENT.

EVERY APPEAL IS LIKE THAT.

ON THE OTHER HAND WHEN WE GET
ONE THAT SAYS WE ARE LOOKING TO
GET AN OPINION BECAUSE WE HAVE
100 CASES IN THE PIPELINE AND THIS
IS GOING TO BE PRECEDENTIAL, IT IS
MORE LIKELY NOT TO GO.

AS OPPOSED TO LOOKING AT IT TO
SAY IS THIS A GOOD ONE TO GO TO
MEDIATION I THINK WE MORE LOOK
AT IT FROM IS THERE A LEGITIMATE
REASON NOT TO SEND THIS ONE.

>> BASED UPON THE
REPRESENTATIONS OF THE PARTIES
AND NOT -- IT CAN'T BE BASED ON
THE ACTUAL RECORD.

IT HAS TO BE THE SUBJECTIVE
STATEMENTS.

>> CORRECT.

>> OKAY.

>> RELATIVELY SHORT STATEMENT.
WHAT WE DID NOT WANT IS MORE
THAN TO BE FILING A FIRST BRIEF TO
TRY AND GET A FIRST CRACK AT THE
COURT.

THEY ARE RELATIVELY SHORT.

WE WILL GET THINGS.

IF THERE IS A HISTORY OF DOMESTIC
VIOLENCE, FOR EXAMPLE, THAT
WOULD BE.

IF IT IS CLEAR THAT THE PARTIES ARE
TALKING TO EACH OTHER, HAVE

LAWYERS THAT ARE TALKING TO EACH OTHER AND ARE DOING A LOT OF NEGOTIATION THAT IS AN VACATION THEY CAN DO IT ON THEIR OWN AND WE MIGHT DEFER TO THAT ON THAT REGARD.

>> BUT YOU ARE WELL INTO YOUR REBUTTAL IF YOU WANT TO SEND THE LAST COUPLE OF MINUTES.

>> I THINK I WAS JUST SAVE THE TIME FOR REBUTTAL.

THERE ARE A FEW ISSUES THAT WERE RAISED BY THE APPELLATE SECTION.

A COUPLE OF THE RULE CHANGES THEY HAVE SAID MAKES SENSE.

A COUPLE WE HAVE SAID WE DON'T THINK ARE NECESSARY.

IF YOU WANT TO MAKE THE CHANGES WE ARE OKAY.

A COUPLE LIKE THE TELEPHONE AND THE CERTIFIED MEDIATOR WE HAVE SET FORTH IN THE PAPERS WHY WE THINK THEY'RE PROBABLY NOT APPROPRIATE.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS PAUL REAGANS.

TODAY I AM APPEARING ON BEHALF OF THE APPELLATE COURT RULES COMMITTEE.

I DO NOT SPEAK FOR THE APPELLATE SECTION.

THEY HAVE NOT TAKEN AN OPPORTUNITY OR HAD AN OPPORTUNITY TO SPEAK IN THIS.

I WOULD LIKE TO START BY GOING BACK ONE WEEK WHEN YOUR HONORS ENTERED --

>> YOU SAID THEY HAVE NOT HAD AN OPPORTUNITY.

THIS HAS BEEN AROUND SINCE 2004.

YOU FEEL IT HAS NOT BEEN
PROPERLY AIRD?

I JUST WANT TO MAKE SURE ABOUT
THAT.

>> I WOULD BE LESS THAN CANDID IF
I SAID -- WELL, LET ME SAY THIS.
THE APPELLATE LAWYERS WERE NOT
SIGNIFICANTLY INCLUDED IN THIS
PROCESS.

MY NOSE IS NOT A JOINT.

WHAT HAPPENED IS ALL THROUGH
'04, '05, '06, '07, '08 AS IT WAS BEING
CIRCULATED TO THE APPELLATE
JUDGES AND BEING CIRCULATED IN
THE MEDIATION OR IT NEVER GETS
CIRCULATED TO THE APPELLATE
LAWYERS, ANY GROUP OF APPELLATE
LAWYERS.

NO APPELLATE LAWYER SERVED ON
THIS COMMITTEE.

NO PRACTICING LAWYER SERVED ON
THIS COMMITTEE.

SOMETHING I THINK YOU MIGHT
WANT TO ADDRESS IN THE FUTURE.
THERE SHOULD BE REAL LAWYERS ON
THIS COMMITTEE.

THE APPELLATE COURT RULES
COMMITTEE, AND I WAS THE ONE
WHO PICKED IT UP A BIT, GOT THIS
ISSUE IN APRIL OF 2009 WITH A
RESPONSE DATE OF MAY 15TH OF
2009.

THAT IS WHAT WE PUT TOGETHER,
THIS PRODUCT WITHIN THAT
AMOUNT OF TIME.

SO I'M NOT SUGGESTING WE HAVE
NOT HAD A CHANCE TO LOOK AT IT.
WE CAME VERY LATE TO THE TABLE
AT A POINT IN TIME WHEN THE RULE
WAS LARGELY CHISELED IN STONE.

WE ARE TRYING TO UN-CHISEL A PORTION OF IT, NOT UNDO THE RULE, JUST CHANGE IT.

I WOULD LIKE TO START --

>> I THOUGHT THAT THE APPELLATE RULES BASIC OBJECTION WAS TO HAVING UNIFORM RULES AT ALL AND THAT YOU THOUGHT IT SHOULD BE LEFT TO EACH APPELLATE COURT TO MAKE ITS OWN RULES ABOUT HOW MEDIATION IF THEY WANTED TO DO IT.

>> I DON'T THINK THAT WAS OUR MAIN POSITION.

THAT MAKES MORE SENSE BECAUSE I DON'T HAVE A STRONG FEELING ALL OTHER FOUR DISTRICTS PLUS THIS COURT WANT APPELLATE MEDIATION STRONGLY.

OUR MAIN POSITION WAS THIS.

AND IT GETS TO THREE POINTS.

A WEEK AGO YOUR HONORS ISSUED ANOTHER ORDER ON MEDIATION DEALING WITH MARKETING OF MEDIATION.

A MUCH MORE NARROW TOPIC.

I WAS PLEASED TO SEE IN THAT OPINION WHERE YOU TALK ABOUT THINGS MEDIATORS SHOULD NOT DO, AS THE MOST IMPORTANT THING YOU PUT ON THE LIST YOU LISTED FIRST THAT THEY CAN DO ANYTHING TO DIMINISH THE IMPORTANCE OF A PARTY'S RIGHT TO SELF-DETERMINATION.

THAT IS ABSOLUTELY CORRECT BECAUSE MEDIATION MORE THAN ANY OTHER PART OF THE PROCESS IS THE PARTY'S DECISION.

IF YOU HAVE EVER SAT THROUGH MEDIATION THE FIRST THING IN THE

MEDIATION SAYS IS, I'M NOT GOING TO DO ANYTHING TODAY.

YOU ARE GOING TO MAKE THE DECISION TODAY.

THAT IS WHAT IT SHOULD BE.

FRANKLY THE LAWYERS DID NOT HAVE THE OPPORTUNITY TO PUT IN THEIR \$0.2 AS TO WHAT THEIR CLIENTS MIGHT WANT UNTIL LONG AFTER THE PROCESS.

MEDIATORS DID.

THEY ARE THE LEAST IMPORTANT.

MEDIATOR IS GETTING PAID TO DO A JOB.

THEY HAVE NO INDEPENDENT TESTERS.

JUDGES, APPELLATE JUDGES, HAVE NO INTEREST AT THE MEDIATION STAGE AND HOW A DECISION COMES OUT.

THEY JUST WANT TO GET RID OF CASES AT THAT POINT.

IT GETS TO THEM FOR A DECISION THEY BECOME CRITICALLY IMPORTANT IN THE RESOLUTION, BUT THEY DON'T REVIEW MEDIATIONS FOR FAIRNESS.

THE PEOPLE WHO WANT THE MEDIATION TO WORK WELL ON THE PARTIES AND THE LAWYERS THAT REPRESENT THEM.

THE APPELLATE RULES COMMITTEE AT THREE OR FOUR PRIMARY CONCERNS WHERE IF THE PARTIES AGREED TO SOMETHING THEY SHOULD BE ABLE TO GET IT THE WAY THEY WOULD LIKE IT.

THE FIRST IS THE TIMING OF THE MEDIATION.

THE VAST MAJORITY OF APPEALS PROBABLY ARE SMALL APPEALS.

COST BECOME A SIGNIFICANT PART OF THE CALCULUS.

IT CERTAINLY MAKES SENSE TO TRY TO GET THOSE FIRST.

THAT IS FINE.

THAT CAN BE THE DEFAULT POSITION HOWEVER, JUSTICE PARIENTE AND I ARE OPPOSING COUNSEL.

WE SAY THIS CASE NEEDS TO BE DEVELOPED.

>> WHY DID YOU PICK ME?

>> I DON'T KNOW.

YOU ARE THE LEAST REASONABLE.

I HAVE NO IDEA.

MOST REASONABLE.

[LAUGHTER]

IF TWO LAWYERS, THIS CASE NEEDS DEVELOPMENT.

LET'S NOT DO IT AT THE BEGINNING.

THINK OF ALL THE REASON WHY.

NEW APPELLATE LAWYER HAS NOT EVEN READ THE TRANSCRIPT, HAS NOT DEVELOPED THE ARGUMENT, HAS NOT DEVELOPED THE CLIENT RELATIONSHIP YET WHERE HE OR SHE IS, TO TRY TO CONVINCING THE CLIENT TO PAY \$20 MILLION TO SETTLE THIS CASE.

>> ISN'T THEIR SOME BUILT-IN IN THIS RULE THAT YOU CAN ASK THAT MEDIATION TAKE PLACE AT A LATER POINT?

>> YOU CAN ASK.

THE POINT IS THE PRINCIPLE OF SELF-DETERMINATION, OF BOTH ATTORNEYS COME TO THE COURT, AND THAT IS WHAT OUR PROPOSALS SAYS.

WHEN BOTH COUNSEL COME TO THE COURT AND SAY WE THINK IT IS BETTER TO DO IT LATER LET US DO IT

LATER THE COURT SHOULD SAY,
WELL, WE WILL THINK ABOUT IT.
THE COURT SHOULD SAY, YOU'RE
RIGHT.

THERE ARE MULTIPLE BENEFITS.
THERE IS NO AUTOMATIC TOLLING.
THE WAY THE RULES COMMITTEE
PUT IT TOGETHER THERE IS AN
AUTOMATIC 75 DAY DELAY IN THE
PROCESS WHILE EVERYTHING
STANDS BACK.

BEFORE THE LAWYERS, ESPECIALLY
THE NEW APPELLATE LAWYERS
KNOW WHAT IS GOING ON.
WE PROPOSE TO THAT THE CASE RUN
IF THE PARTIES SO CHOOSE.

>> HOW DOES IT WORK IN THE 11TH
CIRCUIT?

>> EARLY ALSO.

>> DO THEY HAVE THE OPTION?

>> I AM SURE THEY HAVE THE
OPTION TASK.

I DON'T KNOW THAT THEY CAN
CONTROL THAT.

TO ME IT JUST MAKES SO MUCH
SENSE.

IF THE PARTIES WANT THAT TO BE
DONE TO DATE WE HAVE SAID IT SO
THAT THE MEDIATION WOULD
HAPPEN NO LATER THAN 20 DAYS
AFTER THE BRIEFING IN.

THE COURT'S ACTIVITY REALLY HAS
NOT STARTED AT THAT POINT.

NO ONE HAS WRITTEN A MEMO FOR
THE BENCH.

LET THE PARTIES CONTROL THROUGH
THEIR SELF-DETERMINATION.

>> AFTER THE PARTIES FILED THEIR
BRIEFS WE HAVE ALREADY GONE
THROUGH THE EXPENSE OF DOING
THE TRANSCRIPT.

THERE ARE LAWYERS TIME AND EFFORT PUT INTO DOING THE BRIEFS. I AM SURE SOMEONE IS GOING TO BE BILLED FOR THAT.

YOU KNOW, IT SEEMS TO ME THAT AT THAT POINT YOU'RE NOT SAVING A LOT.

IF THAT IS THE POINT THAT YOU'RE GOING TO START THE MEDIATION. >> YOU MAY BE RESOLVING THE CASE IN THE APPROPRIATE WAY.

THE ONLY PURPOSE IS TO SAVE MONEY AND DO IT ON WFSU AND FORCE THE LAWYER TO MAKE A DECISION ON MEDIATION AND TRY TO CONVINCHE HIS CLIENT THAT HE DOES NOT EVEN KNOW YET ARE THE ISSUES TO DO IT ON THE ONE. THE PURPOSE IS NOT JUST TO SAVE COSTS.

IT IS TO REDUCE COST INAPPROPRIATE BUT TO LET THE PARTIES SELF DETERMINE WHEN AN APPROPRIATE CASE IS TO LET IT WORK A WHILE LONGER.

THAT IS ABSOLUTELY CORRECT.

>> I CANNOT IMAGINE A DISTRICT COURT OF APPEALS ON THEY CONSENTED MOTION OR AGREED UPON MOTION SOMEHOW DENYING THAT.

HAS THAT BEEN YOUR EXPERIENCE?

>> I HAVE NEVER HAD THAT EXPERIENCE.

>> THE OTHER PROBLEM IS IT SEEMS TO ME, ACCORDING TO PROFESSIONAL LAWYERS WHERE YOU HAVE A STIPULATION THAT WOULD WORK JUST FINE.

AMAZINGLY ENOUGH THERE ARE FIGHTS BETWEEN LAWYERS AS TO

WHETHER THERE IS AN AGREEMENT
SOMEWHAT REGULARLY.

>> OF COURSE.

>> DOESN'T THAT THEN PRESENT
ANOTHER ISSUE THAT WE COULD
AVOID BY HAVING A COURT ORDER
RESOLVE THIS?

>> WELL, THERE WOULD BE A COURT
ORDER.

WE COULD NOT AGREE TO DO IT
LATER AND YOU WANTED TO RUSH IT
THROUGH YOU HAVE YOUR \$10
MILLION JUDGMENT, YOU DON'T
WANT ME TO FIND THAT THERE.
YOU OPPOSE GOING LATE.
SURE.

I FILE A MOTION AND SAY, HERE IS
WHY IT IS APPROPRIATE.

PLEASE LET ME GO LATER.

WE CAN DO THAT NOW.

THE POINT IS IF YOU AND I AGREE
WHY SHOULD THERE BE ANY
UNCERTAINTY?

LET ME GET TO THE SECOND ISSUE.

THAT IS SELECTING THE MEDIATOR.

WITH ALL DUE RESPECT, IF THIS
COURT DOES NOT REALIZE THAT
THERE IS A DIVIDE IN THE PRACTICE
OF LAW AS TO WHETHER A
MEDIATOR CERTIFIED AND TRAINED
IS ALWAYS THE BEST PERSON TO
MEDIATE THE MANY LAWYERS THINK
IT IS NOT ALWAYS THAT CASE.

I HAVE BEEN TRAINED AS A
MEDIATOR.

I HAVE HAD TREMENDOUS
DISCUSSIONS COMMAND WE
DISAGREE.

OUR POSITION IS SIMPLY THIS.

IF THE TWO PARTIES AGREE BY THEIR
SELF-DETERMINATION TO SELECT A
NON CERTIFIED MEDIATOR IT IS NOT

THAT WE SHOULD HAVE THE OPPORTUNITY TO ASK.

IF WE AGREE THAT IS THE BEST PERSON TO MEDIATE THIS CASE WHETHER IT BE AN EXPERIENCED APPELLATE LAWYER OR A LAWYER EXPERIENCED IN THE SUBJECT MATTER THAT WE ARE FIGHTING, THAT SHOULD BE OUR DECISION. THAT PERSON MAY BE A RETIRED JUDGE.

IF THAT IS OUR DECISION WHAT INTEREST IS IT OF THE MEDIATORS OR THE COURT AS FAR AS THE MEDIATION GOES TO STOP US.

>> IT IS PERMITTED IF WE REQUESTED.

THE COURT DOES NOT HAVE TO ALLOW IT.

THEIR IS A COMMENT THAT THEY HAVE ADDED WHICH SORT OF SOFTENS THE RULE.

YOU CAN ONLY GET A CERTIFIED MEDIATOR.

A WONDERFUL CONCEPT.

RESPECTFULLY MANY GOOD MEDIATORS DON'T BECOME CERTIFIED FOR DELIVERY TREES IS BECAUSE THAT IS NOT THEIR STYLE OF MEDIATION.

ALL WE ASK ON THE SECOND POINT IS SELF-DETERMINATION.

IF YOU AND I AGREE TO A PARTICULAR MEDIATED AND IT WILL BE RETIRED JUDGE JUSTICE PARE. WHY SHOULD NOT WE BE ALLOWED TO DO THAT?

THE THIRD POINT IS THE ISSUE RAISED CONCERNING APPEARANCE AT THE MEDIATION.

IF WE AGREE THAT THE PARTIES SHOULD NOT HAVE TO, AND CAN

APPEAR BY PHONE WHO HAS A
GREATER INTEREST THAN THE
PARTIES AGREE?

WE HAVE ASKED IN OUR PAPERS TO
ALLOW THE PARTIES TO AGREE TO
NOT HAVE TO COME IN PERSON,
ESPECIALLY IF IT IS AN EARLY
MEDIATION.

THEY HAVE JUST MEDIATED THE
TRIAL PROCEEDING.

THEN THEY HAVE COME DOWN AND
SAT THROUGH A FOUR WEEK TRIAL
AND LOSE A BUNCH OF MONEY OR
WIN A BUNCH OF MONEY.

AT THE VERY BEGINNING OF THE
MEDIATION THEY ARE BEING
COMMANDED TO COME BACK.

IF THEY CHOOSE NOT TO AND THE
PARTIES AGREE WHY SHOULDN'T
THEY HAVE THAT RIGHT TO BACK.

>> CONSIDERING A RESET.

MUCH SMALLER THAN ONE IN
THREE.

YOU MAKE A VERY COMPELLING
ARGUMENT OF THE EXCEPTION.
BUT THE APPELLATE LAWYERS HAVE
AN INTEREST.

IT MAY COME AT TIMES, THE
SEPARATE FROM THE CLIENT.

YOU MAY NOT AGREE WITH THAT.

>> A PERSONAL SELFISH INTEREST.

THE WORLD IS THE WORLD.

A GOOD LAWYER SHOULD NEVER
HAVE THAT INTEREST.

AN APPELLATE LAWYER COULD
PUMP THE CASE THROUGH
MEDIATION.

>> YOU ACT AS IF THE COURT AND
JUSTICE ONLY TO TRY AND CLEAR ITS
DOCKET.

WE ALL KNOW THAT IF MEDIATION IS
DONE PROPERLY IT IS NOT ABOUT
THE LEGAL ISSUES.

IT IS A WAY TO GET AT THE HEART OF
WHY THE PARTIES ARE IN
DISAGREEMENT.

>> I DID NOT MEAN TO MAKE THE
COURTS RULED THE MINIMUS.
THE COURT DOES NOT SURPRISE THE
RESULT.

THE PARTIES DICTATE THE RESULTS.
SELF-DETERMINATION SHOULD
CONTROL.

THE CIVIL RULES ALLOW THAT.

I DON'T KNOW WHY THE APPELLATE
RULE CHANGES.

IT MAKES NO REAL COMPELLING
SENSE.

SELF-DETERMINATION, YOUR HONOR
SAID IT A WEEK AGO.

THE FOURTH POINT, THOSE ARE THE
THREE COMPELLING POINTS THAT
THE APPELLATE COURT RULES
COMMITTEE ATTEMPTED TO MAKE.
THE FOURTH POINT WAS THAT THE
PARTIAL LISTING OF EXCLUDED CASES
IS BY NO MEANS COMPLETE.

I THINK THE FIFTH DISTRICT'S
PRACTICE HAS WORKED VERY WELL.
THEY DON'T HAVE A HARD AND FAST
RULE.

I WOULD DELETE THAT SECTION
ENTIRELY AND LEAVE IT TO EACH
COURT IF YOU DECIDE TO IMPOSE IT
ON THE APPELLATE COURT.

THERE IS NO REASON TO TRY TO LIST
SOME.

THERE ARE A LOT OF CASES THAT ARE
INAPPROPRIATE.

SOME THAT PROBABLY COULD HAVE
BEEN INCLUDED.

WE WOULD NOT PUT A PARTIAL LISTING OF THOSE WHICH ARE EXCLUDED.

THE OTHER THING THAT THE APPELLATE COURT RULES COMMITTEE DID WAS TO IN THE TIME THAT WE HAD AVAILABLE GO THROUGH THE REST OF THE RULE. I DON'T SUGGEST WE ARE ALL EXPERTS BELIEVE WE DRAFT A LOT OF RULES.

PERHAPS THE ALTERNATIVE RESOLUTION THE COMMITTEE DOES NOT ATTRACT AS MANY.

THERE ARE SOME THINGS IN THE PROPOSED RULE THAT ARE NOT VERY RULE LIKE.

IT SAYS THAT SOMEBODY SHOW PROMPTLY FILE A RESPONSE.

WELL, THE RULES OF PROCEDURE DON'T USE WORDS LIKE PROMPTLY. YOU HAVE GOT TEN DAYS OR TEN DAYS AFTER SERVICER SOMETHING. WE HAVE GONE THROUGH AND TAKEN THE WILL.

WE ARE NOT AGAINST MEDIATION. IT IS A GOOD CONCEPT.

ESPECIALLY WHEN YOU REEMPHASIZE SELF-DETERMINATION. AS TO THE 35 PERCENT SUCCESS RATE, WITH ALL DUE RESPECT TO THE STATISTICS, SOME OF THE CASES SETTLE BEFORE MEDIATION.

NOW, THE FIFTH DISTRICT LIKES TO TAKE CREDIT AND SAY THE REASON WE SETTLE IS BECAUSE WE SEND OUT THAT NOTICE OF MEDIATION. MAYBE.

SOME APPELLATE CASES JUST SETTLE BECAUSE PEOPLE GO AWAY AND WORK IT OUT.

SOME OF THE CASES SETTLE AFTER MEDIATION.

IN THAT NUMBER WHICH IS A LITTLE BIT LESS THAN 35%, SOME OF THOSE WERE SETTLED IN MEDIATION.

MEDIATION SHOULD GET A CHECK MARK FROM THAT.

DOES NOT MEAN THEY SHOULD HAVE SETTLED WITHOUT MEDIATION BECAUSE GOOD LAWYERS, WE HAVE A CASE.

HOPEFULLY WE WILL TALK ABOUT TRYING TO RESOLVE IT BEFORE WE SPEND THE CLIENTS' MONEY.

NOW, IF WE ARE GOING TO WRITE RULES BECAUSE WE THINK ALL APPELLATE LAWYERS TRY TO PUMP THEIR FILES AND WE HAVE A SAD STATE.

DON'T THINK THAT IS THE CASE.

>> YOU NEED TO BRING YOUR ARGUMENT TO A CLOSE.

YOU ARE WELL PAST YOUR TIME ALLOTTED FOR ARGUMENT.

>> WE ARE NOT ARGUING.

WE ARE MAKING COMMENTS TO THIS WILL.

>> LOOK, BRING YOUR COMMENT TO A CLOSE.

>> THAT IS AN EXCELLENT POINT.

LET ME BRING MY COMMENTS TO A CLOSE SIMPLY BY SAYING THAT I DON'T KNOW WHETHER THIS IS A GOOD IDEA FOR THE OTHER FOUR DISTRICTS.

I HAVE SOME THOUGHTS, BUT THEY ARE ANECDOTAL.

AS TO UP OF LAWYERS WHO ARE REALLY THE CLOSEST THINGS TO THE CLIENTS THE CLIENT, THE PUBLIC, AND THE LAWYERS TO REPRESENT

THEM SHOULD BE MORE INVOLVED
IN THE PROCESS EARLIER.

SINCE THIS COURT HAS RECOGNIZED
THE CRITICAL IMPORTANCE OF SELF-
DETERMINATION IN THIS PHASE OF
THE APPELLATE PROCEEDINGS
MEDIATION IT IS THE CLIENT PART,
NOT THE MEDIATORS, NOT THE
JUDGES.

PLEASE FOCUS ON THE THREE
THINGS.

DO WE HAVE TO DO IT EARLY?

DO WE HAVE TO HAVE A CERTIFIED
MEDIATOR?

DO WE HAVE TO BE PRESENT IF WE
AGREE THAT WE DON'T HAVE TO BE?

>> WITH THAT THANK YOU VERY
MUCH.

JUDGE PALMER.

>> THANK YOU.

IT SEEMS TO BE THE MOST
IMPORTANT THING TO SAY IS THAT
THE CONTEXT IN WHICH THESE
RULES ARE LIKELY TO BE APPLIED ARE
NOT LIMITED TO CASES WHERE
PARTIES HAVE GONE OUT AND GOT
NEW APPELLATE LAWYERS.

THEY WILL INCLUDE CASES WHERE
THERE ARE NO LAWYERS.

IN OUR CASE WE DON'T DO IT RIGHT
NOW WITH PRO SE.

UNDER THE RULES YOU COULD DO.

A NUMBER OF THESE RULES WITH
THE ARGUMENT IS THAT THE PARTIES
DO IT WHENEVER WHERE THEY
WANT, JUST STAY OUT OF IT, I THINK
IF YOU ARE GOING TO BE DEALING
WITH PRO SE MAYBE IT MAKES SENSE
TO HAVE MORE COURT
INVOLVEMENT.

IF YOU HAVE THE PROBLEM THAT
THE APPELLATE LAWYER IS NOT UP

TO SPEED, THAT IS ONE MORE EXPENSIVE SAVE IN ADDITION TO THE TRANSCRIPT AND THE RECORD.

>> IF AN APPELLATE LAWYER, WE HAVE AN APPELLATE LAWYER.

AT THAT EARLY STAGES SEEMS LIKE IT IS QUITE DIFFICULT FOR THE APPELLATE LAWYER TO NECESSARILY ADEQUATELY EVALUATE THE CASE AND DETERMINE THE LIKELIHOOD THAT HIS CLIENT OR HER CLIENT WILL PREVAIL ON APPEAL.

IT JUST SEEMS TO ME THAT YOU CAN, GET THEM TO THE TABLE.

IF THEY COME TO THE TABLE WITHOUT KNOWING EVERYTHING THEY NEED TO KNOW I AM NOT SURE HOW HELPFUL THAT IS.

WHEN THEY FEEL THAT THEY DON'T KNOW EVERYTHING THEY NEED TO KNOW.

>> ONE OF THE WAYS WE DEAL WITH THAT IN THE RULE IS TO MAKE IT CLEAR THAT TRIAL COUNSEL CAN DO THE APPELLATE MEDIATION OR APPELLATE COUNSEL CAN DO IT OR BOTH CAN DO IT.

THEY DON'T HAVE TO BE THERE.

IF YOU'RE GOING TO MEDIATION WITHIN 30 DAYS YOU DON'T HAVE THE RECORD, BUT YOU HAVE THE ABILITY TO TALK TO TRIAL COUNSEL. YOU CAN GET SOME FEEL FOR WHAT THE ISSUES ARE.

>> IT SEEMS TO ME THAT MOST EVALUATIONS AT THE APPELLATE LEVEL REALLY COME NOT ONLY AFTER THE RECORD COMES, BUT AFTER YOU SEE ARTICULATED FOR YOU WHY YOU'RE GOING TO LOSE THIS CASE IN THE BRIEF ON THE OTHER SIDE.

THAT IS WHEN YOU ARE REALLY
AREN'T GOING TO MAKE INFORMED
DECISIONS.

I HAVE SOME CONCERN HAVING
DONE PRIMARILY APPELLATE
PRACTICED.

THESE ARE THE KINDS OF THINGS
FROM AN APPELLATE PERSPECTIVE
FOR THE CLIENTS BENEFITS, I
UNDERSTAND COURTS.

HOW MANY HAVE YOU CLOSED?

WHERE ARE YOU ON THAT.

THAT SHOULD NOT BE, SHOULD IT,
THE REAL GUIDING PRINCIPLE?

>> ABSOLUTELY NOT.

WE DID NOT SET UP OUR PROGRAM
TO SEE HOW MANY CASES WE CAN
GET RID OF.

WE SET IT UP TO BE A BENEFIT TO
THE CLIENT TO HAVE AN
OPPORTUNITY TO DO THIS BEFORE
ALL OF THOSE EXPENSES ARE
INCURRED.

I THINK THE WAY THE RULE IS
DRAFTED WHICH ALLOWS THE
PARTIES TO COME TO THE COURT
AND SAY THIS IS WHY THIS ONE
OUGHT TO BE PUT OFF GIVES THE
COURTS THE DISCRETION.

GIVES THAT SHOT TO THE CLIENT.

>> COULD I ASK A QUESTION?

THIS IS SORT OF PREMISED ON THIS
IS GOING TO BE ORDERED AND
BECAUSE THE DCA WANTS IT.

THIS COURT HAS NOT VOTED THAT IT
WANTS OR DEMANDS IT.

WHAT IS THE STATUS ON THAT?

ARE WE TALKING ABOUT

SOMETHING THIS MORNING WE WILL
BE PASSING SOME KIND OF

MANDATORY KIND OF SOMETHING
THAT COURTS THAT DON'T REALLY

EVEN WANT TO DO IT OR THE OTHER FOUR DON'T WANT TO DO IT SO WE ARE HERE TALKING ABOUT WHAT THE FIFTH WANTS TO DO.

>> THE VERY FIRST RULE SAYS THE COURT MAY ON ITS OWN.

>> I UNDERSTAND.

WHAT IS THE LANDSCAPE?

>> THE LANDSCAPE IS THAT WE KNOW IT HAS BEEN SIX YEARS SINCE CHIEF JUSTICE PARIENTE SUGGESTED TO THE COURTS LOOK AT IT AND THEY HAVE NOT.

WE ARE THE ONLY ONE WHO IS DOING IT AT THIS POINT.

IT MAY PROVIDE A FRAMEWORK AND A STRUCTURE THAT WOULD ENCOURAGE OTHER DCAS COULD DO IT IF THEY END UP NOT DOING IT.

IF THEY ARE INTERESTED IN DOING IT IS MUCH EASIER TO IMPLEMENT A PROGRAM WITH A FRAMEWORK IN PLACE THAN SIMPLY HAVING TO START FROM SCRATCH.

>> THE LANDSCAPE I WAS ASKING ABOUT.

DO THESE OTHER DISTRICT COURT'S WANT TO DO THIS?

>> I AM GUESSING THAT IF A SET OF RULES WAS IN PLACE ONE OR TWO MIGHT DO IT.

>> WE DON'T KNOW THAT.

WE HAVE NOT HAD RESPONSES.

>> THEY ALL HAD LIAISONS.

>> THAT WAS NEVER VOICED, NEVER DISCUSSED.

>> THEY VOICED APPROVAL OF THE WAY THE RULES WERE PUT TOGETHER.

THEY DID NOT VOICE IN THE CONTEXT OF IF THEY ARE PUT IN PLACE WE WILL SET UP A PROGRAM.

>> I WANT TO MAKE SURE WE HAVE REPRESENTATION.

>> ABSOLUTELY.

>> THIS IS IF THE DISTRICT WANTS TO DO THE PROGRAM HAVING SAID IT UP.

YOU COULD JUST RESPOND.

IS THERE A REASON WHY IF PARTIES STIPULATE THAT THEY WANT TO DO IT LATER, HAS THAT HAPPENED IN THE FIFTH?

>> I HAVE NEVER DENIED A MOTION TO CONTINUE A MEDIATION THAT HAS COME BEFORE ME IN THE FIFTH.

>> SHOULDN'T WE JUST MAKE THAT CLEAR SO THAT CERTAINLY THIS MAKES SENSE?

>> MY ONLY CONCERN WOULD BE YOU COULD GET INTO SOME SORT OF ABUSE SITUATIONS WHERE SOMEBODY IS DOING IT IN EVERY CASE IN AND IF THEIR CASES WEREN'T SETTLING AND THEY WERE DOING IT FOR CONVENIENCE AND THERE IS SOMETHING TO INDICATE --

>> IF BOTH SIDES HAVE TO STIPULATE.

>> AND IF THE LAWYER CONVINCES THE PRO SE, FOR EXAMPLE, WE OUGHT TO JUST PUSH THESE THINGS OFF.

IF YOU HAVE A MORTGAGE FORECLOSURE FIRM AND THEY'RE DOING IT EVERY TIME MAYBE THE COURT OUGHT TO BE IN THAT POSITION TO SAY MAYBE WE OUGHT TO LOOK AT SOMETHING DIFFERENT. I THINK IT IS MUCH LESS LIKELY A CHANCE FOR ABUSE.

THERE IS ALWAYS STILL SOME.

>> WITH THAT THANK YOU VERY MUCH.

THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.
WE REALLY APPRECIATE YOUR
THOUGHTS ON THIS MATTER.
I UNDERSTAND THAT WE HAVE A
GROUP OF PAGES HERE FROM THE
CAPITAL.

WE WANT TO WELCOME YOU TO THE
FLORIDA SUPREME COURT AND HOPE
THAT YOU ENJOY YOUR STAY HERE
WITH US AND LEARN SOMETHING
ABOUT OUR COURT SYSTEM.