The fourth and final case on
today's docket is Chemrock
Corporation versus Tampa
Electric Company.
>> Good morning.
May it please the court.
My name is Jamie Yadgaroff, and
I represent Chemrock Corporation
in this matter.
The sole issue in this case is
how to interpret Florida civil
procedure.
Because this is a certified
conflict issue involving a pure
question of law, I submit that
this case should be subject to
de novo review.
>> I want to ask you about the
underlying facts my
understanding was always at this
particular rule was meant to
make sure they got a trial in a
timely manner.
But when somebody had, when a
litigant aspirate separate trail
than it is really in the courts
hands.
In this case, the case was
originally set in 2003, and it
was continued in 2003 and it was
continued at your request?
>> No Your Honor.
It was actually continued at the
request of --
>> At the request of TECO?
>> My client did agreed to it.
>> The discovery outstanding?
Again was there another request
for a trial date in 2005?
>> Yes, Your Honor.
The previous counsel for my
client is requesting a trial
date of 2005.
>> There is a way under the
rules that you say the case is
at issue.

Was that done in this case?
>> Your Honor what happened was
we did us for a trial date in
2003.
Then there was a continuance.
There was some additional
discovery.
In 2005 waiver to the judge
asking for a trial date.
There were still some
outstanding discovery issues
with regard to --
we were trying to get an expert
report from the other side that
they were not providing.
I know the other side is going
to argue that they were trying
to depose some Chemrock
employees.
>> 2000 by the and three years
or two years and so on, was the
discovery ongoing?
>> There was I believe a pending
discovery motion we had made.
>> I guess what I'm trying to
say, and you go to this hearing
amongst the grace period earring
and you file your pleading and
you've again ask that the action
be set for trial.
>> That is correct.
>> There is no recording of
this.
I'm just trying to understand
why this case didn't get -- and
this is helpful but I don't
understand how this rule is even
being invoked when somebody is
saying, plaintiff as saying we
are ready for trial.
>> Neither do we, Your Honor.
When a continuance was granted
in 2003 the order was
open-ended.
That judge for some unknown
reason Chemrock never set the

case for trial.
It was supposed to be -- the docket was supposed to be reviewed and at some point I submit to you the trial judge should have said it for trial.
>> You don't have any obligation to do anything -- this was an answer to the motion, the thing about dismissal, correct?
They were saying that it -- there was no activity and in your response to that you indicate that there were some discovery that was going on and you say they should be set for trial.
Beyond that, you don't have any obligation to make a motion to set it for trial or call the judge's office and ask for a trial date?
Quite frankly I guess I'm a little concerned because even at that point it seems to me another couple of years go by before we get to the second motion about dismissal.
>> I understand your concurrence and what I would say is yes we probably could have done more to move the case forward.
However by no means did we abandon our case.
We did ask for a trial date several times.
We were still talking to the other side and I think although there should be responsibility on the part of the litigants to move the case forward I submit that there should be some responsibility on the part of the judge to order a case management hearing or set the case for trial and for some

reason there were a couple of.
>> The a trial judge can't
manage the case on behalf of the
plaintiffs.
It is incumbent upon the
plaintiff to monitor what is
going on and it doesn't seem to
me that difficult to really
calendar within a year to file
something to advance the case.
>> And Your Honor the issue is
we could have done more.
That we do not abandon the case
and we did file something
according to the rule.
Rules.
We are filing the rule that
within the 60 day grace period
if you make a record filing your
case should not be dismissed.
>> Let me ask you on that topic.
I have the rules here in front
of me for section E.
How do you interpret the rule?
Do you interpret it to mean that
any filing will do or does there
have to be a filing that is
going to move the case to a
final resolution?
Which way do you interpret the
rule?
>> I'm glad you asked that Your
Honor.
I interpreted according to its
plain language.
I believe that on its face, this
rule speaks to this issue.
It says on the face of the
record is one of the phrases in
the actual rule and it says, it
really just says no record
activity occurs within the 60
days immediately following
service.
>> Nowhere in the rule do the
words final resolution appear.

Am I correct?
>> That is correct, your honor and I submit that this court's interpretation in Wilson B. Salomon should be applicable for this court sets forth a bright line test and said either there is activity on the record or there isn't.
If we are going to take away any of the subjectiveness of this analysis.
>> As you know probably the present rule it is a one-year thing and if there is no record activity then they motioned -- so the only difference that I am seeing between the prior rule, the 2005 rule and the present rule is that the present rule added this grace period to it.
To make a two-minute warning type of thing.
>> And also I believe the time was reduced from 12 months down to 10 months.
>> 10 months as to this activity that is when you are going to get the notice, and tell me something.
The two-minute warning is telling you he better do something or something that is going to happen to your case.
We still have the one year.
The 10 months in the 60 day grace period.
I did not see a change because Wilson was decided just a couple of months before we change the rules in 2005.
And I guess this is helpful to you.
Wilson said if we have a bright line rule that you file anything to get you past the rule.

We didn't change the language in the rule.
So I would think that based on what the rule reads today there is no need for any pleading to have any necessity to move the case forward to defeat the rule.
Am I making sense?
>> I think I understand what you are saying.
>> I think I understand is what worries me.
It is a favorable question.
>> I understand.
I think that is right.
I think that could be right.
I think the 60 day provision is only under the newly amended rule.
I think that it is clear on its face and if you interpret it via Wilson, there is nothing that changes the definition of record activity in this rule.
It doesn't say it has to be this kind of activity during the 60 days or that kind of activity.
There is no specificity here.
It just says record activity which actually really does gel with the intent of the rule and it really does gel with the intent behind Rosen which is to have the case decided on their merry.
>> What did you tell the court by pleading in the 60 day period?
>> I filed what was called a motion in opposition to their motion to dismiss for lack of prosecution and showing good cause by the action should remain pending.
The reason I did this is because I didn't want to just respond

and say no don't dismiss it.
I wanted to actually make a
motion.
>> Where's the record activity?
If you are saying a motion in
opposition, that is not record
activity.
You are just responding to a
motion.
If you had said a deposition or
said we have had to do this
interrogatory, anything.
I'm trying to see maybe in the
last part where you you are
requesting a trial date and
whether that is a request to set
the case for trial because of
had said a separate pleading
that would have not been only
record activity but it would
have moved the case along.
I am trying to figure out how
the trial judge is supposed to
know.
You sort of are saying that this
is what has happened up until
2005.
>> I don't see the activity
unless you interpret the last
wherefore clause.
>> The motion is on the record
as a filing.
>> In opposition to a motion to
dismiss even under Wilson
wouldn't be record activity.
The contemplation was there
would be something filed to say
whether you moved it along or
not, interrogatories or
discovery depositions.
I mean you are just saying
something about what happens and
according to this record was in
2005.
>> As I said Your Honor,
possibly we could have done more

in the case.
>> But you didn't do anything.
>> We did.
We filed during the 60 days this
motion.
We have been ready for trial
since 2003.
We try to tried to get a trial
date set.
>> You don't know under the
rules that all you have got to
do is file a rule 1.430 demand
for jury trial and that goes to
the first office in the matter
gets that?
>> Your Honor I think
essentially our motion was the
equivalent of asking for a trial
date.
>> You were ready in 2007, you
are ready to go to trial.
And we don't have a record.
You told the judge and that
hearing that you were ready to
go to trial?
>> In which hearing?
>> Did the judge dismiss it
dismissed at her with their
hearing where they just decided
it was going to get
dismissed are not?
>> At the trial court level
there was a, I guess you would
call it a hearing.
>> Again we don't have a record.
I'm asking you as a officer of
the court was it represented as
ready for the court?
>> Yes Your Honor, it was.
>> Is that the motion of
February the 27th?
>> Yes, that is correct Your
Honor.
>> And number 12, plaintiff has
been ready to proceed and
remains ready.

Is that what you are saying?
>> Yes, that is correct.
>> That sort of bears down into
at.
>> And in the wherefore clause
we asked to set the case for
trial.
>> And after two years when it
wasn't -- as time went on, I
guess I am really concerned that
you feel like you can just file
this motion and the part of it
at the end you asked that the
case be set for trial.
But then months go by and
nothing happens and so nothing
is incumbent upon the plaintiff
of that point to say judge I've
asked for a jury trial or
whatever kind of trail it is
that you ask for and nothing has
been done?
Can you give us a date?
You seem to say that I could
just sit back now from that
point and do nothing.
>> If that is the impression I'm
getting, that is not the
impression I need to convey.
I don't say that it is her
attitude that we can sit back
and do nothing.
>> You filed something and maybe
it wasn't done exactly the right
way, but you did file something
saying we want a trial.
>> That is correct, and that is
exactly my point.
The Florida decisions that say
that if you file a notice for
trial that you do not have to do
anything further by case law.
If you file a notice for trial
you do not have an affirmative
obligation to go further even
under her own case law.

Are you aware that?
>> Yes, Your Honor.
>> Why did you argue that?
>> That is what I was saying in
the beginning.
I will go back and look, there's
case law that says these rules
for dismissal for lack of
prosecution do not apply when a
litigant has said they are ready
for trial by filing a formal
pleading.
You filed one back in 2003.
I guess did you not argue that
for the first District?
>> I believe I did Your Honor.
I did argue to the first
District that we were ready for
trial.
That is part of my argument all
along and still is that we are
ready for trial.
>> In the issue about what his
record activity become somewhat
moot if this case is ready for
trial and has been requested it
be set for trial.
>> I don't know but his moot or
not he can is this is before the
court.
>> It is definitely wise for you
that it can be decided on the
basis that this is ready for
trial and you indicated it was.
Council that wants to go to
trial you expect Gee it is
another year or two years and we
wonder what is happening but
that is another issue.
>> I guess what concerns me and
what is concerning a lot of us
is typically what happens is as
soon as the case is issued
somebody files an answer.
As soon as the plaintiff gets
that answer the next day there

is a notice of trial filed.
If that lawyer doesn't get a
trial date within a month or so,
they are before that judge.
How come I don't have my trial
date?
It seems here you kind of just
sneaked in and the wherefore
clause.
By the way we want a trial and
then just let it sit there.
You filed this case.
>> I have asked for a trial a
couple of different times.
>> There were other hearings
after that?
>> I asked in 2003.
That is in the record.
I asked in 2005 via letter.
>> But after the continuance was
granted you asked for a trial?
In 2003, you asked for a trial.
There was a continuance at some
point in 2003 also, correct?
Was there another request for
the trial after a continuance?
>> There was another request for
a trial in 2005 a for a revote
in letter to the judge.
>> You are now down to 2.5
minutes of your total time so
you are well into your rebuttal.
>> I would like to reserve the
rest of my time for rebuttal.
Thank you.
>> May it please the court?
Pedro Bajo for Tampa Electric
Company.
>> Let me ask you if the record
activity within the 60 day grace
period?
If that means the same as the
record activity and prior 10
months under Wilson?
Is the pleading filed by your
opponent sufficient tube

constitute record activity?
>> If Wilson were to apply where
it says any piece of paper that
goes into a court file is record
activity, yes.
That seems to fly in the face of
the Amendment to the rule.
>> The Amendment to the rule is
exactly what the court did, was
pushed back to do it in 10
months rather than two years.
And then get get people not as
because it was coming up on the
year and there is not a change
in in the language at all.
Why would we resolve all the
answer can be to be and all the
subjectivity in one month and
then the next month with -- put
all that subjectivity back into
the rural?
>> In the committee notes to the
rolled.
>> The committee doesn't pass
the rule, the court passes the
row.
>> Understood that but in Wilson
and footnote 1 this court said
that there should be difference
in consideration at least given
to the committee notes in order
to address the purpose behind
the rule.
>> Isn't the reality that we
pass a rule.
We should say what we mean and
then we should follow what we
have said in the rule.
And it seems to me that you look
at this rule and the text of the
rule and what you would conclude
from that is, if you look at the
earlier version and the new
version, you conclude they have
done something here to help
avoid a trap for the unwary and

to give people a chance.
They get a warning and then come
in and do something but the
something that they would need
to do would be pretty minimal
under the rule.
Before I give you the chance to
answer that may say I am not
sure the way the rule is set up
is a very good idea.
It allows these two languish in
sit there and sit there and sit
there and maybe what we do need
it is a different sort of rule.
We don't have a rule like that
and we made it very clear in
Wilson that we don't have a rule
like that and it seems to me
that if we are going to have a
system that is consistent with
the rule of law we ought to
follow what we have said.
Why am I wrong?
>> I think the committee notes
are instructive in that regard.
With the committee notes say is
that the rule was amended in
order to provide notice and I
don't disagree that providing
notices a good idea.
In the provision of notice
being, in order to enable the
party to recommence prosecution
of the action.
>> I guess now going to that,
the way I envisioned this rule,
first of all the old rule was
definitely a gotcha and we were
saying any pleading will suffice
but this idea of the 60 days in
my view and I don't know if
anyone joins in my concurrence
but Florida concurrence in
Wilson is that at that point, in
that 60 days after something is
filed, the trial court has a

stat hearing and figures out is
this going to be tried in the
next millennium or in the next
year?
And so for the life of me I
don't understand if somebody is
saying I want to go to trial in
2003.
I want to go to trial in 2005
and now I want to go to trial in
2007 what would cause a trial
judge to dismiss the case?
>> Well Your Honor, what
happened in this case.
>> Again and can you tell me if
one somebody has filed a demand
for a jury trial, they have and
whether it is right or wrong it
is up to the trial court or the
clerk to set a date for trial.
That is how rule 1.430 works?
>> Is said 1.430 or 1.400 that
you are looking at?
>> There is only one rule for
demand for trial.
>> 430, demand for jury trial.
>> The rule-setting trial
requires two things.
It has to be an issue and it has
to be ready for trial.
And there are cases that say
they have to be strictly
construed.
Just because something is at
issue does not necessarily mean
they can be set for trial.
>> But that is not in the
context of the dismissal rule.
In the context of the dismissal
rule Florida law very clearly
says that if a claimant files
that notice, I am ready for
trial that the one your lack of
prosecution does not run even if
the trial is not set for two
years.

Do you agree with that?
>> I agree with it if it is not withdrawn her on her.
What happened in this case was it was set for trial in 2003.
A motion for continuance was a joint motion.
It was not a motion for continuance from peoples gas or Tampa Electric Company.
It was on both parties.
The trial court was trying to administer its docket.
It is headed for trial and then the parties came in and said we need more time.
The court enters an order and establishes a procedure to set this case for trial.
I am going to require a proper motion for trial to be filed.
>> Is that what it says?
>> Yes, the case can be reset upon any party filing a proper motion for trial.
It never was done in.
>> They motion that was filed during a 60 day period asks for a setting of the trial so why doesn't have complied with what the trial judge required?
>> Because that is not a proper motion set for trial under the rule.
When you have a proper motion to set up for trial you need to identify whether it is a jury trial or a non-jury trial.
>> Isn't the real question whether it is record activity?
Forgive me.
It may be inept record activity but if it is record activity it is record activity.
>> Okay and I think there are two steps here.

We filed a notice of intent to
dismiss for failure to prosecute
triggering the 60 days.
Within those 60 days they filed
their motion in opposition.
It isn't an opposition to
establish good cause.
>> We didn't file a motion to
dismiss at that point.
>> They filed something in the
60 days after we gave them
notice.
16 months go by.
Nothing.
>> In that filing did they ask
in both the pleading and
wherefore cause said it for
trial?
>> I believe it was in the
wherefore clause.
>> Your position is that is not
a technical compliance with rule
1.3 or 1.4 or whatever?
>> It is not in compliance with
the procedure established by the
judge and the case in section E
The word activity appears three
times.
Nowhere in the rules does it say
moot case go with the final --
where'd you get that from?
>> I get it from the committee
notes and as well the language
of the rule is somewhat
inconsistent if you try to apply
Wilson to it.
Because the language of the rule
says, it talks about getting an
order for a stay.
Well, if all you need is any
piece of paper whatsoever, in
filing a motion for a stay is
just as good as getting an order
but that is not what you are
rule says.
>> Excuse the time if you have a

proper motion for stay.
What is unclear about that?
>> It doesn't say if you have a
proper motion to stay.
It says that this day is
centered.
>> Well, the motion itself is
not self-executing.
You have to have it entered or
it says if good cause is shown.
Well there is no reason to have
a hearing and establish good
cause if all you have to do is
file a motion that says it.
The rule itself indicates
further steps.
What this court needs to decide
is what the effect of this rule
is going to be in the state of
Florida.
I think there are a lot of
people waiting to see is this
rule going to have effects on
advancing cases on the docket or
is it just going to bring
everything to a screeching
hault?
>> Are we going to return to the
day where we will fight more
over pleadings where do we do
cases moving?
The good old days come the
statute was removed.
Now you want to go back.
I think your better argument is
what they filed was not what was
contemplated by the rule rather
than something else.
>> Well Your Honor I think the
old rule is actually more
effective than the current rule
if you are going to require any
piece of paper whatsoever.
I don't think it is a bad idea
to give people 60 days notice to
recommence as it says in the

note.
>> Let me ask you on this
posture because you alerted me
to something and now I'm looking
back.
You filed your motion to dismiss
for lack of prosecution.
In 60 days there is this motion
opposition that is filed in
February of 2007.
You don't do anything more,
nothing more is done on this
case from February of 2007 until
16 months later we file a motion
to dismiss?
>> Yes, Your Honor.
>> So why isn't the argument
that starts triggering another
10 months or 60 day window.
What was the basis?
>> That was the argument that we
made and the rule says upon a
period.
>> In my position no it didn't.
>> You are saying whenever it
happened a to your nap before
that you didn't bring to the
judge's attention was enough to
cause the dismissal of this
case?
>> It was in our pleading.
It was in our filing.
>> What I'm asking is why if you
didn't think what they filed in
February of 2007 was sufficient.
Both parties have some
obligations here.
>> Because it was paper in the
file Your Honor.
>> My understanding was to be
that there is 10 months and a
two months after not just
another paper gets put in the
file.
The judge says because it is now
been brought to the judge's

attention gets the parties in
front of the judge.
If nothing is filed in the case
gets dismissed.
It is not the idea that it is
not the other side who wanted to
dismiss would wait another 16
months, and you nothing.
I am just concerned about that
and I will look at the
pleadings, why you would have
waited another 16 months to get
the judge to dismiss this case?
>> Your Honor the case didn't
move.
Nothing happened.
>> Did you think it was inept
because if the wherefore clause
had been a notice under a demand
for jury trial under rule 1.430,
would there have to have been
anything else in the next 16
months to be legally ready for
trial?
>> To be legally ready for
trial?
They would have to have it
ordered by the trial.
>> I notice under rule 1.430
requires that it be called up
for hearing before the judge.
>> I think we may be referring
to two different rules.
I'm referring to 1.40B and C on
setting a case for trial.
>> A notice for trial and I'm
looking at demand for trial.
I have been saying 1.430.
I apologize.
We are talking about rule 1.44
oh, the notice for trial.
It says actually that the clerk
shall submit the notice in the
case filed in the court.
So this wouldn't have been
legally sufficient because this

would not have alerted the clerk
to let the judge know.
>> That is accurate and in
subsection C, the court has to
have a hearing to determine it
is ready for trial and the case
is interpreting that rule say
that.
The problem is you already had a
case set for trial.
The judge set the established
procedure.
>> Does he say that the judge
has to hold a hearing on setting
up for trial?
>> He has to make a
determination he is ready for
trial.
That doesn't necessarily mean
the hearing but the issues that
required the joint motion to be
filed in the first place remain
today, so if the case wasn't
ready for trial when the parties
filed a joint motion, how is it
ready for trial today?
They have kept saying that they
were done with discovery.
Yet, they make comments about
not being able to take TECO's
expert witness.
How can you be done with
discovery if you are taking
someone's deposition?
>> There has been nothing else
filed by the trial court.
>> Absolutely not.
Since they filed a motion
opposition 16 months went by
before we filed a motion to
dismiss.
We felt the case had been
abandoned.
>> Was anything going on behind
the scenes during that 16
months?

Were you still doing discovery?
Had whatever problems been resolved or trying to resolve them?
>> Ms. Yadgaroff will be able to speak to that better than I because one of my colleagues was handling the case out of Jacksonville.
She has indicated that she left telephone messages for her I believe a couple of times to discuss something.
>> I'm so confused with this issue, which is that, were you seeking to dismiss the case based on emotion to dismiss that was filed in 2007 with the response being the February 2007 letter or pleading or where you seeking when he filed a motion the motion to dismiss at June of 2008 to say that there have been 16 months or now from the time of this pleading in 07 that nothing had happened?
>> What we said was we filed a notice under the rule.
Not a motion, a notice that gave them 60 days.
What it says you do within the 60 days.
They filed their opposition.
And then nothing.
>> So 16 months go by.
>> 16 months with no activity and we filed a motion to dismiss.
>> Whether the pleading in 07 was adequate?
>> It was two-pronged and now we are getting to where I think we have -- there are two real issues here to decide.
Number one, what happened with that original time period but

then additionally you have
another 16 months so you have
two time periods, significant
time periods of inactivity.
The cases that have been cited
in a court by everyone and that
are applying Wilson they don't
really address this kind of
factual scenario.
>> But they do.
In other words I thought we have
had so many of these cases over
the years and I can't believe we
have them back again.
If there had been a year
somewhere two or three years
before where nothing had
happened and then things start
happening and nothing happens
and something starts happening
you can't go back and say this
in that year nothing was
happening that isn't sufficient.
I think what I'm concerned about
is I thought the rule would
operate where once that 10
months and then the 60 day grace
period would be there, the judge
on the parties request that's
this for a hearing to decide is
that there isn't it ready?
I think you would have to then
because you didn't try to get
resolution on the prior one
would have to give them another
60 day grace period.
>> That is an issue this court
needs to decide and that we made
as part of our motion and we
briefed to the first DCA.
You will end up with what I was
trying to say to Justice Lewis
the old rule is better than the
new one if you are going to
apply something like those in
because every time there is 10

months of inactivity, you send
your notice, he given
interrogatory and then somebody
sits back and does nothing and
then there were 10 are 10 months
of more inactivity.
I send a notice and I get a
request for production.
>> Does that happen under the
rules that existed as it was
interpreted by Wilson?
>> I would not have to had to
send a notice.
>> Essentially this activity
that is record activities but
which does not really move the
case forward could still happen
and you could have a series of
instances like that?
>> The idea behind the rule is a
good one.
Provide notice in 60 days.
It has to be to recommence
prosecution.
>> In June of 2008 is when you
filed her motion to dismiss.
Assuming that was a notice to
dismiss or whatever the rule
requires, when did they file
anything after that point?
Was it within the 60 day window
because I know it was sometime
in August but I'm not exactly
sure what is the date so what
they filed after your second
filing is within the 60 day
window?
>> I believe that it was.
I don't have the exact date but
it was more than five days
before the hearing and I do
believe that was within the 60
days.
And then they filed an
affidavit.
>> The first District was

looking at that first period
were they not?
That is what they were looking
at.
This is a separate argument from
what the first District how they
approach the case.
They did not go down that path.
>> The first of not go
down that path.
But I think that they did try to
reconcile the rule and give it
some meaning to effect if we
manage and allow trial court
judges to manage their dockets.
As it stands it is a lot more
difficult for them to do it with
this new rule.
Any piece of paper whatsoever.
>> Except if you called it up
for a hearing back in 2007 and
they said we wanted to go to
trial.
The judge would say is it ready
for trial?
Wouldn't that be the way we
would hope this would work?
Not another 16 months on the
judges docket?
>> That is exactly right Your
Honor but after you have 16
months of no activity we go from
a period of 13 months of no
activity and beget a piece of
paper.
Then there is 16 months of no
activity.
These rules need to applied to
the benefit of defendants as
well.
They are stuck in a case that
the cause of action essentially
according to their pleading
started in 2000.
The initial complaint was filed
in 2002.

>> I could notice it for trial
but --
>> Why would I have set a case
for trial that on the face of
the record and what it looks
like to everyone else has been
abandoned.
They haven't done anything for
three or four years.
>> They are not ready and the
judge enters in your favor.
This is becoming a game again
and this is exactly what Wilson
was designed to stop.
You can set these cases for
trial.
>> Your Honor I can tell you
that I think that their rule, if
it were applied to recommence
prosecution makes a lot of sense
and I think the notice makes a
lot of sense.
It can't be a continual notice
every single time.
You basically get your one
notice.
You have been warned, don't let
it happen again.
>> Where does the rule say that?
>> It doesn't say that Your
Honor.
It is what needs to make a
determination.
>> You have used your time.
Thank you.
>> My clients followed the rule
to the letter.
>> This isn't a sympathetic
situation to me.
If somebody wants to get the
trail you don't wait for seven
years and keep on going.
I wonder why it is not set for
trial.
This is in Jacksonville the
fourth circuit.

There is a rule and I kept
saying it is 1.430 this is how
do you file a notice for trial?
I don't find this to be your
client is chomping at the bit to
go to trial and has been
thwarted by TECO trying to use
everything they can to prevent
you from going to trial.
>> That Your Honor, if this case
gets done this, this is
basically a surprise dismissal
and we will be deprived of our
rights to due process and are
case being heard on the merits.
We have made a record filing in
60 days.
>> You think, you filed that and
would like it to go to trial in
2007.
Now months and months go by and
you think it is still on the
docket.
You are going Gee, one is it
going to be set for trial.
File something to call this
court and say why isn't set for
trial?
Anything of that nature?
>> I did has to go for trial and
they did ask for it in my motion
both in the substance and the
wherefore clause.
>> Do you know under Florida
rules that would not be
sufficient to alert the judge?
It is filed in the court file.
The clerk doesn't know unless it
is filed under rule 1.440 that
it is ready for trial.
>> And to your point, under rule
1.440 the judge could have set
the case for trial and probably
should have.
>> How could you think that the
judge is going to take this

pleading if no one calls this up
for a motion if they didn't call
it up or you didn't call it up
and asked the judge you know how
to get a motion hearing and a
motion heard her go and asked
the judge to set it for trial.
The judges and going to know
unless the clerk sends it up in
the clerk is not going to send
it up unless it is under rule
1.400.
>> Are you beyond the statute of
limitations?
If it would be dismissed it
would be without prejudice but
if it is extreme prejudice it
would be beyond the statute.
>> I believe that I am, Your
Honor.
It has got to be.
>> Is your client ready to go to
trial?
>> Yes, my client is ready to go
to trial and your are honored
you said so yourself in your
concurring opinion in Wilson
that although most of the
responsibility is on the parties
to move the case forward, that
the trial judge has some
responsibility to make sure the
cases don't languish on the
dockets and my answer is that
there is a safeguard here which
is either the parties can ask
for a case management or the
judge can order a case
management or set the case for
trial and that didn't happen
here.
>> Did you ask for one?
This is your case.
This is not the judges case.
>> I understand that and I could
say most of the burden is on the

litigants and as I said I did
ask for a trial in my motion.
>> The problem is was it called
up.
>> What do you mean called up?
>> Did the judge hear the
motion?
>> Yes.
>> We are talking back in 2007
you filed your notice there was
a hearing?
>> Do you mean when it was in
front of the court in Duval
County?
>> One it was before the court
on their motion that was filed
in December of 2006, that said
there has been no record
activity for 10 months.
You've been filed your motion.
Was there any kind of hearing on
his notice in your motion?
>> There was, yes, there was.
>> Not until 2008 after another
16 months had gone by.
>> After another motion.
I am talking about 2007, was
there any kind of hearing before
the judge to discuss why there
have been no record activity for
that 10 month period?
>> We had an oral argument with
the judge.
I participated via phone
actually.
>> Was that 2007 or 2008?
>> I am not positive.
I believe it was 2007.
>> Then the judge didn't dismiss
the case in 2007?
Is there an order answered?
We will see whatever is in the
record is in the record and your
affidavit will speak for itself
is what I'm understanding is
that nothing happened until they

filed something again in 2008.
So you are out of your time.
>> Thank you.
>> We thank you.
The court is now adjourned.