

>> WE NOW MOVE TO THE FINAL CASE
ON OUR DOCKET TODAY, ROSHKIND V.
MACHIELA.

>> PLEASE PROCEED.

>> THANK YOU.

MY NAME IS ROBIN AND I REPRESENT
THE PETITIONER, ROBIN ROSHKIND.

BRIEFLY, THE FACTS OF THE CASE
JUST TO REITERATE.

THERE WAS A CONTRACT BETWEEN
ROSHKIND PA AND MS. MACHIELA.

SUBSEQUENTLY, THE TRIAL COURT
DENIED THE MOTION BASED ON THE
FACT THAT THERE WAS NO EXPERT
TESTIMONY THAT COULD CORROBORATE
A REASONABLE FEE.

WE APPEALED TO THE FOURTH
DISTRICT COURT OF APPEALS WHICH
CERTIFIED THIS IS A MATTER OF
GREAT PUBLIC IMPORTANCE.

>> TELL ME WHAT THE STATE OF THE
LAW IS, WHAT CIRCUMSTANCE,
EXPERT TESTIMONY IS REQUIRED
RIGHT NOW IN THE STATE OF
FLORIDA.

CHAPTER SIX --

[AUDIO DIFFICULTY]

IS AN EXPERT REQUIRED IN THOSE
SITUATIONS?

>> PURSUANT TO CHAPTER 61 IT'S
DETERMINED ON ABILITY, NEED AND
ABILITY.

AND AN EXPERT IS NOT REQUIRED --

>> BUT WHAT ABOUT FOR THE
AMOUNT.

>> -- IN THOSE SITUATIONS TO
DETERMINE THE REASONABLENESS OF
THE AMOUNT.

SOMETIMES THE EXPERT IS
REQUIRED --

>> NO.

IS THERE CASE LAW THAT SAYS WHEN
WHAT I CONSIDER TO BE OUTRAGEOUS
FEES THAT PARTIES TO LITIGATION,
THE ATTORNEYS' CHARGE FOR WHAT
THEY'RE DOING AND ONE COMES IN
AND IS TRYING TO GET THESE, IS
IT REQUIRED REASONABLENESS THAT
THERE BE AN ATTORNEY TO TESTIFY
ON BEHALF OF THE PARTY THAT

WANTS THE ATTORNEY'S FEE?

>> IN MY UNDERSTANDING, NOT
UNDER CHAPTER 61.

HOWEVER, I THINK THAT'S A LOT OF
WHAT THE CONFUSION REALLY IS
HERE.

SOME OF THE CASE LAW SAYS WHEN
IT'S A THIRD PARTY PAYER, THERE
IS THAT REQUIREMENT.

IT SEEMS, IT SEEMS A LITTLE BIT
CONFUSING, QUITE FRANKLY.

>> WHAT I WANT TO ASK IN THE
REAL WORLD, YESTERDAY WE HAD A
CASE WHERE WE TALKED ABOUT THE
REAL WORLD.

WHAT I UNDERSTAND HAPPENS IN
THESE DIVORCE CASES PRIMARILY,
PROBABLY THESE OTHER CASES, IS
THAT SOMEONE ASKS FOR A FEE
AFTER, YOU KNOW, THEY PAY \$750
AN HOUR AND THEY TALK ABOUT THAT
THEY SPENT, YOU KNOW, THOUSANDS
OF HOURS, AND THEY COME AND THEY
TALK ABOUT THAT.

AND THEN THEY GET THEIR FRIEND,

OR THEY GET, YOU KNOW, TO COME
IN AND SAY, OH, YES, YOU KNOW,
MS. PARIENTE WAS, SHE DESERVES
EVERY BIT OF THAT \$750 AND ALL
THOSE AMOUNTS WERE REASONABLE.

BASICALLY, TO ME, RATHER THAN --
AND THIS IS A FRIENDLY QUESTION.

>> YES.

>> RATHER THAN BEING SOMETHING
THAT SHOULD BAN PUBLIC TRUST IN
OUR SYSTEM OF JUSTICE, THIS HAS
ALMOST BECOME A SYSTEM TO
DEGRADE OUR SYSTEM OF JUSTICE
WHERE ONE PERSON COMES IN AND
JUST SUPPORTS AN OUTRAGEOUS FEE.

>> THAT'S EXACTLY MY ARGUMENT.

>> I MEAN, BUT THAT SHOULD BE
THEN CHAPTER 61 SAME THING.

I MEAN, THIS IDEA.

NOW, MAYBE I THINK WHEN YOU HAVE
CASES INVOLVING THE MULTIPLIER,
YOU KNOW, YOU HAVE THESE
SITUATIONS WHERE YOU'VE GOT TO
FIGURE OUT COULD SOMEBODY HAVE
GOTTEN OTHER ATTORNEYS WHERE THE

COURT MAY NOT KNOW IT?
AND, OF COURSE, NOTHING
PRECLUDES YOU FROM BRINGING AN
EXPERT IN, BUT THE IDEA THAT WE
WOULD REQUIRE SOMEBODY TO BRING
IN THEIR FRIEND TO MOUTH
WHATEVER THEY'RE GOING TO SAY, I
DON'T SEE HOW THAT FULFILLS ANY
PURPOSE.

DO YOU AGREE WITH THAT?

>> I DO AGREE WITH THAT,
ABSOLUTELY.

>> IN YOUR EXPERIENCE AS AN
ATTORNEY, AND THIS HAS BEEN MY
EXPERIENCE, HAVE YOU EVER SEEN A
SITUATION WHERE A LAWYER CAME IN
AND TESTIFIED THAT THE AMOUNT
SOUGHT BY THE COUNSEL WAS NOT
REASONABLE AND NECESSARY?

>> NOT, NOT THE EXPERT WITNESS
THAT THAT ATTORNEY BROUGHT IN,
NO.

>> THAT HAS NEVER HAPPENED IN
YOUR EXPERIENCE?

>> I'VE NEVER SEEN THAT.

>> I'VE NEVER SEEN THAT EITHER.

>> I'VE NEVER SEEN THAT, AND
THAT'S REALLY THE POINT OF THE
CASE --

>> WELL, WOULDN'T IT MAKE MORE
SENSE IF THERE WERE A NEED FOR
AN EXPERT THAT THE COURT WOULD
APPOINT ONE, MAKING HIM THE
EXPERT, WOULDN'T THERE BE MORE
CREDIBILITY IF THEY'RE SUPPOSED
TO BE DUELING EXPERTS WHO
TESTIFY TO WHATEVER THAT SIDE --

>> YES, I THINK THAT'S
ABSOLUTELY CORRECT.

AND, IN FACT, IF THE ONE PARTY
FEELS -- LET'S TAKE, FOR
EXAMPLE, THE CONTRACTUAL
RELATIONSHIP HERE WITH THE
CLIENT AND THE ATTORNEY.

IN A SPECIFIC NARROW INSTANCE,
IF THE CLIENT FEELS THAT IT IS
UNREASONABLE, WE SUBMIT THAT THE
ONUS SHOULD BE ON THE CLIENT TO
BRING AN EXPERT TO SAY THAT IT
ISN'T UNREASONABLE, THAT IT

SHOULDN'T BE, THAT, BASICALLY,
IT SHOULD NOT JUST BE A RUBBER
STAMP.

>> WELL, IN THIS CASE, HELP ME
MAKE SURE I UNDERSTAND.

THIS CONTRACT, AND I'VE NEVER
SEEN ONE THAT ALLOWS THESE KINDS
OF THINGS.

BUT, YOU KNOW, SO BE IT.

I GUESS I CAN LEARN EVERY DAY.

BUT IT CAME IN ON A WITHDRAWAL
AND WANTED A LIEN AND
ESTABLISHED REALLY NOT WITH AN
EVIDENTIARY KIND OF THING, BUT
WAS EVEN THE CLIENT THERE?

>> AT THE, AT THE HEARING?

>> YEAH.

>> THE CLIENT WAS PRESENT AT THE
HEARING, YES.

>> AND DID THE CLIENT HAVE A
LAWYER THERE WITH HER?

>> YES.

THE CLIENT --

>> HAD A SEPARATE LAWYER?

>> HAD A SEPARATE LAWYER.

>> AND THAT LAWYER DIDN'T
QUESTION ANYTHING ABOUT THIS FEE
OR STRUCTURE OR THE
REASONABLENESS OF IT OR THE
NECESSITY OF IT?

>> I'M SORRY, I MISSPOKE.

THERE WAS A LAWYER REPRESENTING
THE ROSHKIND FIRM, THERE WAS NOT

A --

>> RIGHT, THAT'S MY POINT.

THAT'S MY POINT.

WHY SHOULD, WHY SHOULD WE RUBBER
STAMP SOMETHING LIKE THIS?

AND, TO ME, YOU KNOW, I GUESS

THAT'S WHY I'M NOT RICH.

I NEVER, EVER IN MY ENTIRE
EXPERIENCE HAVE EVER SEEN A

CONTRACT LIKE THIS AND A
PROCEEDING LIKE THIS, AND WHEN A

LAWYER'S DISCHARGED FOR
DISSATISFACTION THAT WE JUST,

THAT SOMEBODY COMES BEFORE US
AND SAYS WE SHOULD JUST RUBBER

STAMP THIS NO MATTER WHAT.

>> YOU'RE SAYING RUBBER STAMP

THE AGREEMENT.

>> YEAH.

WELL, RUBBER STAMP THAT THIS IS

WHAT IT WAS, AND THIS IS THE

BILL -- AND YOU DIDN'T OBJECT.

SO, YOU KNOW, YOU'RE OUT.

HERE IS THE LIEN, THERE'S THE

AMOUNT.

WHETHER THAT'S REASONABLE, WHEN

THAT'S NECESSARY.

AND YOU'VE GOT A CLIENT SITTING

THERE THE PUBLIC DOESN'T KNOW.

>> WELL, I THINK YOU HAVE TO

LOOK AT WHAT VALUE IS ADDED BY

THAT EXPERT COMING IN AND

TESTIFYING THAT IT'S REASONABLE.

>> WELL, I TELL YOU, CONTRARY TO

MY COLLEAGUES, I FIND THAT

LAWYERS WILL TELL THE TRUTH IF

SOMEBODY ASKS THEM A QUESTION.

DO -- IS THIS HOW MUCH YOU WOULD

CHARGE FOR DOING THAT?

AND I'VE SEEN EXPERTS THAT SAY,

NO.

ANSWER THE QUESTION.

HAVE YOU PAID CLIENTS FOR TV
SETS AS PART OF THE COSTS THAT
THEY'RE CLAIMING HERE?

NO.

I HAVE SEEN LAWYERS COME IN AS
OFFICERS OF THE COURT CONCERNED
ABOUT THEIR REPUTATION THAT WILL
ANSWER TRUTHFULLY.

IF WE'RE TO ASSUME THAT
EVERYBODY COMES IN AND THEY'RE
JUST GOING TO PROSTITUTE
THEMSELVES AND LIE, THEN YOU'RE
RIGHT.

>> I, I AGREE WITH YOU, YOU
CAN'T ASSUME PEOPLE ARE GOING TO
COME IN AND LIE.

BUT THE FACT OF THE MATTER IS
THE ATTORNEY IS RESPONSIBLE FOR
BRINGING IN THAT EXPERT.

AND THE ATTORNEY IS GOING TO --

AND THIS IS HOW I BELIEVE IT
HAPPENS IN PRACTICE, MY

EXPERIENCE, EXPERIENCE I

UNDERSTAND ATTORNEYS HAVE -- YOU
NEED AN EXPERT WITNESS.

YOU GO TO AN ATTORNEY FRIEND,
AND YOU SAY, WILL YOU LOOK AT
THIS AND SAY --

>> WELL, THAT'S TRUE.

BUT YOU HAVE A PROCEEDING WHERE
ON THE OTHER SIDE THE CLIENT AT
LEAST GETS THE OPPORTUNITY WITH
A LAWYER --

>> AND I DON'T --

>> -- TO CONTEST WHAT'S GOING
ON.

I JUST DON'T UNDERSTAND HOW THIS
HAPPENS.

NOT IN OUR SYSTEM TODAY.

>> WELL, RESPECTFULLY, THE
ARGUMENT, I THINK, IS NOT THAT
IT SHOULDN'T HAPPEN IF THERE IS
AN UNREASONABLENESS.

IF, IN FACT, SHE CLAIMED IT WAS
UNREASONABLE, IF, IN FACT, THE
CLIENT IS SAYING IT ISN'T
UNREASONABLE, WE ARE NOT SAYING
THEY'RE PRECLUDED FROM BRINGING
IN SOMEBODY TO SAY THAT.

WE'RE SIMPLY SAYING THERE'S NO

VALUE ADDED TO HAVING SOMEBODY

COME IN WHO'S A FRIEND --

>> WELL, I UNDERSTAND, I

UNDERSTAND THAT THAT'S WHAT

YOU'RE SAYING.

>> AND, IN FACT, TO TAKE IT A

STEP FURTHER --

>> THAT DOESN'T MAKE IT TRUE

NECESSARILY.

JUST BECAUSE SOMEBODY SAYS IT

DOESN'T NECESSARILY MAKE IT

TRUE.

BECAUSE I WOULD HOPE, AND I'M,

I'M CONCERNED THAT WE WOULD SAY

THAT LAWYERS COME IN AND LIE

JUST TO HELP A FRIEND.

BECAUSE THAT REALLY IS SAYING

OUR PROFESSION IS REALLY SICK.

THAT'S WHAT YOU'RE SAYING.

>> I'M NOT SAYING THAT ANYBODY'S

GOING TO COME IN AND LIE.

>> THAT'S EXACTLY WHAT YOU'RE

SAYING.

YOU'RE SAYING WE DON'T NEED 'EM

TO COME IN BECAUSE THEY'RE NOT

GOING TO ANSWER QUESTIONS ON
CROSS-EXAMINATION.

THEY'RE NOT GOING TO BE
TRUTHFUL.

THEY JUST COME IN AND SUPPORT
WHAT THE LAWYER WHO ASKED THEM
TO COME SAYS.

>> I BELIEVE THAT THEY'RE NOT
GOING TO COME IN AND JUST SAY IT
AND LIE.

I BELIEVE THAT THE LAWYER THAT
ASKS THEM TO SUPPORT IT IS GOING
TO FIND SOMEONE WHO TRUTHFULLY
AGREES WITH WHAT THEY'RE DOING
IS APPROPRIATE.

>> CAN I ASK, CAN I ASK YOU
ABOUT AN ANALOGOUS CONTEXT?

>> YES.

>> OTHER PROFESSIONAL SERVICES;
ACCOUNTING SERVICES, MEDICAL
SERVICES.

WHAT ARE THE RULES THERE WITH
RESPECT WHEN THERE'S A DISPUTE
OVER A BILL IN A PROFESSIONAL
SUIT.

DOES A PHYSICIAN OR AN
ACCOUNTANT WHO SUES A CLIENT
BECAUSE THE BILL HASN'T BEEN
PAID HAVE TO BRING IN AN EXPERT
WITNESS TO TESTIFY TO ESTABLISH
THE APPROPRIATENESS OF THE --

[INAUDIBLE]

DO YOU KNOW?

>> I DON'T KNOW DEFINITELY,
BUT I ASSUME IF YOU'RE GOING
BACK TO CONTRACT PRINCIPLES AS
WE DO IN ALL OTHER AREAS, WE SAY
YOU CAN HAVE A CONTRACT, YOU GET
THE BENEFIT OF THE BARGAIN.
JUST BECAUSE IT'S NOT A FAIR
CONTRACT, IT DOESN'T MEAN IT'S
NOT SOMETHING THAT YOU BARGAINED
FOR.

HOWEVER, IN THE CASE --

>> WELL, IN A LOT, IN A LOT OF
CIRCUMSTANCES I WOULD ASSUME
THAT THERE MAY NOT BE A WRITTEN
CONTRACT.

IT MAY BE MORE LIKE WHAT'S THE
USUAL AND CUSTOMARY CHARGES ARE.

SOMETIMES THERE MIGHT BE.

BUT REGARD -- WHETHER THERE'S A
CONTRACT OR NOT A WRITTEN
CONTRACT, I'M ASKING WHAT --
BECAUSE THIS IS AN EVIDENTIARY
BURDEN THAT IS PLACED ON
ATTORNEYS WHO ARE SEEKING TO
COLLECT FEES.

AND I'M JUST TRYING TO FIND OUT
IF A SIMILAR EVIDENTIARY BURDEN
IS PLACED ON OTHER PROFESSIONALS
WHO ARE ATTEMPTING TO COLLECT
FEES.

I DON'T THINK THAT'S ADDRESSED
IN THE BRIEF, AND IF YOU DON'T
KNOW --

>> RIGHT.

IT'S NOT ADDRESSED IN THE BRIEF,
BUT I DON'T BELIEVE IT IS
SIMILARLY ADDRESSED.

WE ARE NOT SAYING, THE ARGUMENT
IS NOT THAT THE FEES SHOULDN'T
BE REASONABLE.

CERTAINLY, WE HAVE --

>> WELL, I CERTAINLY DIDN'T MEAN

TO SUGGEST IN MY QUESTION THAT
YOU WERE.

>> SURE.

SURE, I JUST WANTED TO SORT OF
SEGWAY AND MOVE ON TO --

>> WELL, BEFORE YOU MOVE ON, LET
ME SEE IF I UNDERSTAND EXACTLY
WHAT WENT ON HERE.

BECAUSE SHE DIDN'T PAY HER FEE,
THE ATTORNEY FILED THIS CHARGING
INFRACTION.

AND IT WAS SET FOR SOME KIND OF
HEARING.

>> CORRECT.

>> AND BOTH THE ATTORNEY AND
FORMER CLIENT WERE NOTICED THAT
THIS WAS A HEARING ABOUT FEES,
CORRECT?

AND SO THE CLIENT, THE FORMER
CLIENT CAME TO THE HEARING
WITHOUT AN ATTORNEY.

>> CORRECT.

>> BUT HAD AN OPPORTUNITY TO
BRING AN ATTORNEY.

>> CORRECT.

>> AND SO IN A NORMAL CHARGING LIEN CASE WOULD THE JUDGE SIMPLY GO WITH THE FEE THAT IS IN THE FEE AGREEMENT, OR IS THIS CASE OUTSIDE OF THE NORM AND ASKING THE ATTORNEY TO HAVE SOME EXPERT TESTIMONY CONCERNING THE AMOUNT OF THE FEE?

>> WELL, WHAT THE FOURTH DCA --

>> NO, I'M ASKING OTHER CIRCUMSTANCES.

THAT'S MY QUESTION.

IN OTHER CIRCUMSTANCES DO YOU NORMALLY HAVE TO HAVE AN EXPERT IN A CHARGING LIEN, OR DO YOU NORMALLY JUST GO WITH WHAT IS IN THE CONTRACT?

>> QUITE FRANKLY, I THINK THAT'S PART OF THE CONFUSION WHEN YOU SAY "NORMALLY."

MANY TIMES PEOPLE DO BRING IN AN EXPERT TO SUBSTANTIATE BECAUSE THERE IS THIS IDEA IF THERE IS A THIRD PARTY PAYER, YOU NEED TO HAVE IT CARRIED OVER --

>> WHO IS THE THIRD PARTY PAYER?

>> WELL, NOT IN THIS CASE, BUT
IN OTHER CONTEXTS.

WHEN YOU'RE ASKING ME DOES IT
NORMALLY HAPPEN, I THINK AS A
MATTER OF PRACTICALITY, YES, IT
USUALLY HAPPENS.

BUT WHAT WE ARE SAYING IS THAT'S
NOT USEFUL AND WHAT IT IS, IN
FACT, DOING IS IT IS INCREASING
THE FEES TO THE LITIGANTS.

>> NORMALLY, IN CHARGING LIEN
CASES YOU HAVE ATTORNEYS
FIGHTING OVER A FEE, RIGHT?

>> CORRECT.

>> ONE LAW FIRM AGAINST ANOTHER
LAW FIRM, SO YOU'VE GOT AN
OPPOSING PARTY WHO CAN COME IN
WITH AN EXPERT TO CONTEST
WHATEVER'S BEING PUT ON.

>> CORRECT.

>> IN SUPPORT OF THE FEE.

BUT IN THIS CASE WHEN YOU'RE
DEALING WITH THE CLIENT, IT
SEEMS LIKE A DIFFERENT

CIRCUMSTANCE.

>> RIGHT.

AND THE DIFFERENT CIRCUMSTANCE
HERE IS THAT THE CLIENT HAS
AGREED TO THIS CONTRACT, AND
JUST AS THE FOURTH DCA MENTIONED
IN MASCOLA, IT'S REALLY THE
CONTRACT PRINCIPLE THAT
CONTROLS.

AND IN THAT CASE THEY
DISREGARDED THE EXPERT WITNESS.

>> WELL, SO IF THEY DISREGARD,
IF THEY'RE FREE TO DISREGARD,
THEN IN THIS CASE COULD THE
JUDGE AFTER HEARING THAT THIS
WAS \$65,000 WORTH OF FEES IN SIX
MONTHS, I MEAN, I WOULD HAVE
SAID I'M NOT GOING TO ALLOW THE
FEE, BUT I DON'T THINK THIS IS
REASONABLE.

I THINK THIS IS AN --

>> ABSOLUTELY.

>> -- UNREASONABLE FEE, THAT
THERE WAS CHURNING IN THIS CASE
OR WHATEVER IT IS.

CAN THE JUDGE ON HIS OR HER OWN
EVALUATE THIS BASED ON HIS OR
HER OWN EXPERIENCE?

>> ABSOLUTELY.

AND, IN FACT, WE SUBMIT THAT THE
JUDGE IS MORE QUALIFIED TO DO
THIS AND VERY OFTEN DISREGARDS
THE EXPERT TESTIMONY, AND THAT
IS WHY THERE IS NO VALUE ADDED
TO THIS EXPERT TESTIMONY.

>> AND AS FAR AS -- OKAY.

AND AS FAR AS THIS ISSUE,
BECAUSE I AM VERY MUCH IN --
JUSTICE LEWIS AND I MAY DISAGREE
WITH HOW WE'RE CHARACTERIZING
WHAT THESE EXPERTS IN THESE
KINDS OF CASES DO, BUT AS FAR AS
THIS ISSUE AS TO WHETHER THERE
SHOULD HAVE BEEN A, YOU KNOW, AN
ABILITY TO CLAIM THE ENTIRE FEE
OR WHETHER THERE SHOULD BE
QUANTUM MERUIT, ALL THOSE ISSUES
SHOULD BE ABLE TO BE LITIGATED
AS TO WHETHER THIS IS A
REASONABLE FEE.

>> YES.

WE ABSOLUTELY AGREE THOSE ISSUES
SHOULD BE LITIGATED.

THE SIMPLE FACT OF THE MATTER IS
THE EXPERT WITNESS DOES NOT ADD
THE VALUE AND, IN FACT, HARMS
THE LITIGANTS OVERALL.

>> HOW DOES THAT OCCUR?

>> BECAUSE THE VERY THING WE'RE
TRYING TO DO BY SAYING, WE'RE
SAYING WE DON'T WANT AN
EXCESSIVE FEE.

AND, YOU KNOW, THE RULES THAT
THE FLORIDA BAR HAS COME 4-1.5,
WE, OBVIOUSLY, WANT TO MAKE SURE
THAT'S NOT HAPPENING.

>> SO TO SEE THAT THAT'S NOT
HAPPENING, YOU DON'T WANT AN
EXPERT TO COME IN, ADD A COUPLE
OF THOUSAND DOLLARS TO AN
OTHERWISE OUTRAGEOUS FEE.

>> EXACTLY.

YOU'VE GOT JUDGES THAT ROTATE.
IN FACT, MEMBERS OF THIS COURT
WANT TO INSIST ON ROTATION.

AND JUSTICE LABARGA, LET'S

ASSUME, NEVER WAS INVOLVED IN A
DOMESTIC CASE.

ALWAYS WAS A STATE ATTORNEY OR A
PUBLIC DEFENDER, WENT ON THE
BENCH AND WAS ASSIGNED TO
CRIMINAL DIVISION.

THE FIRST DAY HE'S ASSIGNED TO
THE CIVIL DIVISION HE'S GOT THIS
CASE.

AND I WOULD THINK HE WOULD SAY
YOU WOULD CHARGE ADMINISTRATIVE
PROCESSING FEES ON TOP OF A \$400
FEE?

YOU CHARGE THIS AMOUNT FOR A
PARALEGAL THAT DOESN'T EVEN
REQUIRE A COLLEGE EDUCATION?
AND SO HE HAS NO PLACE TO TEST
THAT.

>> I BELIEVE THAT HE CAN THEN
RELY ON THE CLIENT -- EXCUSE ME,
ON THE ATTORNEY'S TESTIMONY --

>> WELL, YEAH, CERTAINLY.

YOU CAN ALWAYS DO THAT.

>> AND I DON'T BELIEVE --

>> THE QUESTION IS, DO YOU HAVE ANY VALUE BY HAVING SOMEONE THERE WHO MAYBE HAS AN OUNCE OF HONESTY IN THEM TO RESPOND TRUTHFULLY TO A JUDGE? AND TO SIT AND SAY, WELL, THAT DOESN'T ADD ANYTHING.

>> WELL --

>> I DON'T KNOW OF ANY LAWYERS IN DADE COUNTY THAT CHARGE TO COME IN AND ACT AS A WITNESS. SO IT DOESN'T ADD COST ON TOP OF COST.

>> RESPECTFULLY --

>> YOU DO THAT FOR THE BAR.

>> RESPECTFULLY, UNFORTUNATELY, I DON'T KNOW OF ANY ATTORNEYS THAT DON'T CHARGE TO COME IN.

>> WELL, MAYBE YOUR GENERATION OUGHT TO LOOK BACK AT WHAT SOME OF THE OLDER LAWYERS USED TO DO. WE DO IT AS A SERVICE TO THE COURT, AS A SERVICE TO THE BAR.

>> AND I, AND I AGREE THAT'S A LOFTY PRINCIPLE.

WHAT WE'RE ARGUING IS THAT'S NOT

WHAT'S HAPPENING IN REALITY.

AND IN REALITY IT IS ADDING

FEES, AND IT IS ADDING TAXABLE

COSTS TO THE LOSING PARTY, THE

CLIENT.

LET ME JUST --

>> I JUST WANT TO LET YOU KNOW

YOU'RE NOW DOWN TO ABOUT TWO AND

A HALF MINUTES OF YOUR OVERALL

TIME.

YOU'RE WELL INTO YOUR REBUTTAL.

>> THANK YOU.

>> COULD THE TRIAL JUDGE HAVE

SAID INSTEAD OF SAYING I'M NOT

GOING TO GIVE YOU THIS BECAUSE

YOU DIDN'T BRING AN EXPERT IN,

COULD THE TRIAL JUDGE HAVE SAID,

LOOK, I'M CONCERNED ABOUT THE

OUTRAGEOUSNESS OF THIS FEE.

YOU BRING IN AN EXPERT.

>> YES.

THAT'S EXACTLY CORRECT.

THE TRIAL JUDGE CAN ALWAYS SAY

WE WANT TO HEAR TESTIMONY, WE

NEED AN EXPERT IN THIS

PARTICULAR CASE.

AND THE CLIENT OR THE OTHER

PARTY CAN ALWAYS BRING IN AN

EXPERT TO SAY IT'S UNREASONABLE.

WE'RE JUST SAYING THE ONUS

SHOULD NOT BE ON THE ATTORNEY TO

BRING SOMEBODY IN THAT'S NOT

GOING TO ADD VALUE.

IT'S BETTER TO LOOK OUT FOR THE

INTEREST OF THE LITIGANTS IN

THIS REALITY --

>> LET ME JUST GO BACK TO YOUR

VALUE THING.

IT COULD ADD VALUE, BUT GOING

BACK TO WHAT JUSTICE CANADY

SAID, THE QUESTION IS, IS IT AN

EVIDENTIARY REQUIREMENT

NECESSITY?

AND I THINK THAT'S WHERE WE'RE

MISSING THE POINT.

MAYBE THERE IS, THERE ARE

PEOPLE, AND THEY WOULD ADD VALUE

TO AN EVIDENTIARY HEARING AND

MAKE IT WHETHER IT WAS AN

ACCOUNTANT, AN ATTORNEY OR A
DOCTOR AND GIVE THE JUDGE MORE
INFORMATION.

THE ISSUE HERE I THOUGHT WE'RE
TALKING ABOUT IS IT AN ABSOLUTE
REQUIREMENT THAT WITHOUT IT YOU
CAN'T GO FORWARD?

ISN'T THAT WHAT WE'RE REALLY --
ISN'T THAT TRUE?

>> YES.

>> SO TO SAY IT NEVER HAS VALUE,
I THINK, IS A GROSS
OVERSTATEMENT.

>> AND THE ISSUE ON TOP OF THAT
IS, TRULY, IT'S A
JUDICIALLY-CREATED RULE.

>> YES.

>> IT'S NOT A EVIDENTIARY IN THE
TRUE SENSE.

BUT AT ONE POINT IN OUR STATE'S
HISTORY THE JUDICIAL BRANCH FELT
IT WAS IMPORTANT ENOUGH THAT WE
HAVE THAT, AND NOW YOU'RE SAYING
IT'S NOT IMPORTANT ENOUGH TO
HAVE IT.

IT'S NOT THAT IT'S -- WE ALL
RECOGNIZE THAT IT WAS NOT PART
OF, LIKE, DOCTORS DON'T HAVE TO
BRING IN -- JUSTICE CANADY ASKED
YOU THE QUESTION, YOU SAID, NO,
OF COURSE, YOU DO NOT HAVE TO.
YOU MAY, BUT YOU DO NOT HAVE TO.
RIGHT.

BUT THE JUDICIAL BRANCH DECIDED
AND ALL THE REASONS, SO, YOU
KNOW, YOU KEEP ARGUING NO VALUE
ADDED AS THE ONLY REASON THAT WE
SHOULD ABROGATE THAT KIND OF
RULE.

>> WELL, IN REALITY LET ME JUST
CLOSE BY SAYING THE HARM TO THE
CLIENT IS MORE LIKELY TO RESULT
IN WHAT I SEE AS A SELF-SERVING
PRACTICE IN OUR PROFESSION OF
CHARGING LITIGANTS FOR EXPERT
WITNESS TESTIMONY THAT DOES NOT
TRULY SHED REASONABLENESS ON THE
FEES.

IT'S NOT JUST NO VALUE ADDED,
BUT THERE'S HARM CREATED BY THIS

RULE, BY THIS, WHAT THE FOURTH
DCA HAS BASICALLY SAID IN OTHER
CASES, THE ANTIQUATED RULE.

THANK YOU.

>> YOU HAVE USED ALL YOUR TIME.

I'LL STILL GIVE YOU A MINUTE FOR
REBUTTAL.

>> THANK YOU.

>> PLEASE THE COURT, I'M WITH
PETERSON AND MEYERS OUT OF
LAKELAND, FLORIDA, AND I
REPRESENT BELINDA MACHIELA.

CONCERNING WHETHER OR NOT EXPERT
WITNESS FEES OUGHT TO BE
REQUIRED OR CONTINUE TO BE
REQUIRED IN FLORIDA IN ORDER TO
SUPPORT AN ATTORNEY'S FEE CLAIM.

>> NOW, CAN YOU ANSWER THE
QUESTION FOR ME, IF THIS LAW HAD
BEEN CHAPTER 61 AND MS. ROSHKIND
HAD CONTINUED AS THE ATTORNEY
AND NOW WAS SEEKING TO OBTAIN
THE ATTORNEYS' FEES FROM THE
HUSBAND, ARE YOU -- DO YOU DO
FAMILY LAW?

>> NO, I DON'T, BUT I AM
FAMILIAR WITH THE ISSUE YOU'RE
ASKING.

>> OKAY.

IS IT REQUIRED AS TO THE
REASONABLENESS TO BRING IN AN
EXPERT?

>> NO.

THERE ARE ACTUALLY THREE
EXCEPTIONS TO THIS RULE THAT ARE
ALL STATUTORILY CREATED.

>> STATUTORILY CREATED?

>> STATUTORILY CREATED.

CHAPTER 61 SAYS YOU DO NOT NEED
TO BRING AN EXPERT WITNESS IN
WHEN, SAY, THE HUSBAND IS
SEEKING FEES FROM THE WIFE.

>> SO THAT'S, THE LEGISLATURE
DECIDED DESPITE ALL OF THIS THAT
THERE IS THE BELIEF THAT THIS
COURT HAD THAT AN ATTORNEY WOULD
ONLY BE SELF-SERVING THAT
ACTUALLY THEY MADE A POLICY
DECISION, EVIDENTIALLY, THAT
IT'S ACTUALLY NOT REQUIRED.

>> YES.

AND THAT'S PART OF MY ARGUMENT
HERE TODAY, JUDGE, IS THAT THE
LEGISLATURE HAS MADE SPECIFIC
FINDINGS VIS-A-VIS ATTORNEYS'
FEES.

>> BUT THEY DIDN'T.

>> WHAT IS AND WHAT IS NOT
REQUIRED.

>> OKAY.

SO THAT'S NUMBER ONE EXCEPTION.

WHAT'S NUMBER TWO?

>> THE OTHER TWO ARE ESSENTIALLY
ONE, SECTION 702065 AND SECTION
687.06.

THESE STATUTES SET THRESHOLDS
FOR ATTORNEYS' FEES IN MORTGAGE
FORECLOSURES AND PROMISSORY
NOTATIONS.

AS LONG AS THE ATTORNEY'S FEE
DOES NOT EXCEED 3% OF THE RATE,
THEN IT IS DEEMED REASONABLE
AND, THEREFORE, YOU DO NOT NEED
AN EXPERT IN THIS CASE.

>> THIS IS AN ISSUE NOT OF

WHETHER THE FEE IS REASONABLE IN THIS CASE, AND THERE IS PLENTY OF REASON TO ARGUE THAT MAYBE THIS FEE WAS UNREASONABLE, AND I DON'T KNOW WHAT THAT THAT WAS ONE OF THE THE ISSUES RAISED ON APPEAL.

THE QUESTION IS, AND, AGAIN, I WILL REITERATE.

I MEAN, CHARGING FOR YOUR ASSISTANT, YOUR SECRETARY OR YOUR -- IT'S JUST -- BUT IN TERMS OF THE INTEGRITY OF THE PROCEEDING AND THE NECESSITY OF HAVING TO BRING IN AN EXPERT OR YOU -- TELL US IN THE RULE THAT WAS ESTABLISHED 30, 40 YEARS AGO, HOW IS THAT RULE STILL VIABLE, IMPORTANT AND SOMETHING THAT THIS COURT SHOULD REAFFIRM WHEN THE SAME ATTORNEY WHO IF THEY HADN'T WITHDRAWN THE SPEAKING FEE AGAINST THE HUSBAND WOULDN'T HAVE TO BRING IN AN EXPERT, ACTUALLY HAS TO BRING IN

AN EXPERT TO ESTABLISH THE FEE
THAT THEY ARE OWED UP TO THAT
POINT?

>> THE RULE'S IMPORTANT FOR
SEVERAL REASONS.

NUMBER ONE, THE RULE WAS
ESTABLISHED IN 1964 IN THE
SECOND DCA IN THE LYLE CASE.

THE RULE HAS BEEN DEVELOPED BY
THE BENCH AND THE BAR IN AN
EFFORT TO SELF-POLICE ATTORNEYS'
FEES.

>> NOW, LET ME ASK YOU THIS
QUESTION, AND, AGAIN, I DON'T
WANT TO -- YOU KNOW, DADE COUNTY
MAY BE DIFFERENT THAN PALM BEACH
COUNTY, AND I HAVEN'T BEEN, I
HAVEN'T PRACTICED FOR A LOT OF
YEARS.

BUT MY UNDERSTANDING IS WHEN I
LEFT PALM BEACH COUNTY THAT,
AND, YOU KNOW, I HAVE FRIENDS
THAT CONTINUE TO PRACTICE THAT
IN THIS AREA IT REALLY IS
SOMEBODY DOES, MAY DO IT AS A

FAVOR SAY, LOOK, AND I THAT I

SAY, YEAH, I CAN TESTIFY TO

THAT.

HOW DOES THAT, IF THAT'S WHAT'S

ESSENTIALLY GOING ON, HOW DOES

THAT MAKE IT A NECESSITY IN

ORDER FOR A TRIAL JUDGE TO REACH

A DECISION ON THE REASONABLENESS

OF A FEE?

>> ALREADY A COUPLE OF REASONS.

NUMBER ONE, I'LL ANSWER THAT

QUESTION WITH MY OWN EXPERIENCE.

I PRACTICE IN POLK COUNTY, HAVE

MY ENTIRE CAREER.

I ALSO PRACTICE IN HILLSBOROUGH,

HARDEE, HIGHLAND AND ALL THE

SURROUNDING COUNTIES.

AND MY EXPERIENCE IN THOSE

SURROUNDING COUNTIES IS THAT,

ONE, LAWYERS TESTIFY FOR OTHER

LAWYERS AS A MATTER OF

PROFESSIONAL COURTESY GRATIS.

ONLY THE VERY COMPLEX CASES ARE

AN EXCEPTION TO THAT GENERAL

RULE.

NUMBER TWO, OUR FIRM DOES A
SIGNIFICANT AMOUNT OF EMINENT
DOMAIN WORK WHICH MEANS THAT WE
LITIGATE ATTORNEYS' FEES A LOT,
AND WE HAVE TO GO BEFORE THE
COURT AND ROUTINELY PRESENT
EXPERT TESTIMONY REGARDING THOSE
FEES.

AND OFTEN TIMES THE EXPERT THAT
OUR FIRM HIRES COMES IN AND HAS
CRITIQUES ABOUT OUR BILL.

AND SO MY PRACTICE BEING WHAT IT
IS, THAT LEADS ME TO A COUPLE OF
CONCLUSIONS.

NUMBER ONE, THE EXPERT WITNESS
PROVIDES PROTECTION TO THE
LAWYER THAT HIRES THE EXPERT,
THAT BRINGS THE EXPERT IN.

>> NOW, THERE'S NOTHING IN ANY
OF THIS THAT THE FOURTH DISTRICT
HAS TALKED ABOUT, THE FIFTH
DISTRICT HAS TALKED ABOUT THAT
WOULD PREVENT A LAWYER FROM
BRINGING IN AN EXPERT.

>> THAT'S TRUE.

>> OKAY.

SO THAT'S GONE.

CERTAINLY, I WOULD, AS A

CONSCIENTIOUS LAWYER, I'D WANT

TO BRING IN AN EXPERT MYSELF WHO

MAKES SURE THAT IF I'M ATTACKED,

THAT I HAVE SOMEBODY ELSE.

AND I'D BRING IN, YOU KNOW,

JUSTICE LEWIS OR JUSTICE LABARGA

TO, HOPEFULLY, BACK ME UP.

AND IF THEY SAID SOMETHING IN MY

BILL, YOU KNOW, LOOKS FISHY OR

NOT DOCUMENTED, I'D EITHER

DOCUMENT IT OR NOT CLAIM IT.

>> RIGHT.

>> SO I THINK THAT'S A GOOD

PROTECTION FOR THE LAWYER.

>> SO THAT IS AN ADDED BENEFIT

ACROSS THE BOARD.

AND I'LL TALK ABOUT IN A FEW

MOMENTS WHY THAT'S AN ADDED

BENEFIT AND WHY IT'S IMPORTANT

FOR PURPOSES OF MAKING THIS AND

RETAINING THIS AS A RULE ACROSS

THE BOARD.

YOU'RE CORRECT.

THIS IS A SUBSTANTIVE RULE OF
EVIDENCE.

IT IS A MODICUM OF PROOF THAT IS
NECESSARY TO MAKE A PRIMA FACIE
CASE.

THE TRIAL JUDGE ISN'T BOUND BY
IT, BUT IT IS A MODICUM OF PROOF
UNDER THE LYLE DECISION.

>> DO BUT IT'S A
JUDICIALLY-CREATED RULE THAT HAS
NO BASIS IN THE RULES OF
EVIDENCE.

>> YES.

>> IS THAT CORRECT?

>> PERHAPS I MISSPOKE.

UM, IT HAS A BASIS MORE IN
PUBLIC POLICY THAN ANYTHING
ELSE.

AND SO AS I SAID BEFORE, IT
PROTECTS THE LAWYER THAT HIRES
THE PERSON.

>> BUT WE'RE NOT, WE'RE NOT HERE
IN THE BUSINESS AS JUDGES OF
TRYING TO PROTECT THE LAWYER

THAT'S TRYING TO SEEK AN
EXORBITANT FEE FROM THE CLIENT
OR A REASONABLE FEE.

THAT'S NOT OUR JOB.

THE FLORIDA BAR, IF THE FEE IS
EXCESSIVE, THEY PROSECUTE.

IF THE DEFENDANT, THE PERSON
WHO'S BEING SUED, YOU KNOW, THEY
CAN BE DEFENDED IN COURT.

BUT WE'RE NOT HERE TO HELP THE
LAWYER MAKE SURE THEY CAN GET
THE BIGGEST FEE FROM THEIR
CLIENT, ARE WE?

>> NO.

AND I'M NOT ASKING THE COURT TO
PROTECT THE LAWYER.

WHAT I'M ASKING THIS COURT TO DO
IS TO PROTECT THE INDEPENDENCE
OF THE JUDICIARY.

BECAUSE IF WE DO NOT FIND A WAY
TO SELF-POLICE OUR ATTORNEYS'
FEES -- AND THIS IS ONE WAY TO
DO IT --

>> WELL, WHY DON'T WE JUST SAY
THAT IN THESE CASES A FEE OVER

\$250 YOU'RE GOING TO CLAIM THAT
HAS TO BE TESTIFIED TO BY THREE
ATTORNEYS.

ONE AS JUSTICE PERRY SAID, AN
INDEPENDENT COURT EXPERT AND
HAVE THAT BE THE RULE, THAT WE
SAY NOTHING OVER A CERTAIN
AMOUNT CAN BE SOUGHT IN A
DOMESTIC RELATIONS CASE?

WOULDN'T THAT BE BETTER?

I MEAN, THE FEES THAT ARE BEING
CHARGED, AT LEAST IN SOUTH
FLORIDA, ARE EXORBITANT, IN MY
VIEW.

THEY ARE OUT OF PROPORTION.

THESE CASES AND DESPITE THE
MATRIMONIAL LAWYER'S ATTEMPT, IT
DOESN'T SEEM TO BE GETTING ANY
BETTER.

WOULDN'T THAT BE BETTER?

WHY DON'T WE JUST HAVE A SET
FEE?

WHY DOESN'T THE LEGISLATURE SET
THE FEE?

>> REMEMBER, IF YOU ARE

REFERRING TO ATTORNEYS' FEES
AWARDED TO THE HUSBAND FROM THE
WIFE OR TO THE WIFE FROM THE
HUSBAND, REMEMBER, THOSE FEES
ARE NOT SUBJECT TO EXPERT
TESTIMONY ACCORDING TO --
>> WELL, THAT'S ALL THE MORE
REASON THAT THIS IS DEALING WITH
SOMETHING, THIS PARTICULAR
SITUATION IS DEALING WITH JUST A
LITTLE, A LITTLE TIDBIT OF THE
BIGGER PROBLEM.
AND THE FACT THAT YOU'VE GOT TO
BRING IN AN EXPERT IN THIS
SITUATION WHEN, LET'S SAY,
YOU'VE BEEN FIRED AND YOU
DON'T -- IF YOU CONTINUE TO
HAVE, REPRESENT THE PERSON,
SHOWS TO ME THE LOGIC OF THE
RULE IN LIGHT OF NOW THIS
SUBSEQUENT CHAPTER 61 AMENDMENT.
IT'S NOT, IT'S NOT, NOT DOING
WHAT IT WAS DESIGNED TO DO
BECAUSE THE LEGISLATURE DECIDED
THAT SELF-SERVING TESTIMONY

WOULD BE FINE.

>> WELL, AND THE LEGISLATURE

DECIDED THAT SELF-SERVING

TESTIMONY WOULD BE FINE, AND

UNDER YOUR EXAMPLES ATTORNEYS'

FEES AWARDED AGAINST A HUSBAND

OR WIFE HAVE GONE UP.

SO MY ARGUMENT WOULD BE THAT THE

LEGISLATURE'S CURE OF

ELIMINATING EXPERT WITNESS

DIDN'T WORK.

>> WELL, THEN GO OVER TO THERE

AND TELL THEM WHAT ELSE THEY

NEED TO DO.

>> IT SEEMS TO ME THAT YOUR BEST

ARGUMENT IS THAT IN THIS CASE

YOU'VE GOT A CLIENT, AND THE

INTEREST OF PROTECTING THE

CLIENT WOULD CALL FOR THE USE OF

AN EXPERT AND THE REASONABLENESS

OF FEES.

CONTRAST IT TO A SITUATION WHERE

YOU MAY HAVE LAW FIRMS FIGHTING

OVER CHARGING LIEN OR OTHER

CIRCUMSTANCES IN WHICH YOU HAVE

ATTORNEYS' FEES BEING SOUGHT
AGAINST ANOTHER PARTY IN WHICH
YOU HAVE THE ADVERSARIAL SYSTEM
BRINGING TO BEAR THE USE OF
EXPERTS GOING AT IT IN THE
BATTLE OF EXPERTS AS WE'VE DONE
IN OUR CASE TO CONTEST THE
AMOUNT AND REASONABLENESS OF THE
FEES.

BUT IN THIS CASE IT SEEMS LIKE A
DIFFERENT CIRCUMSTANCE WHERE YOU
HAVE A CLIENT WHO'S DEALING WITH
THEIR FEES AND THE
REASONABLENESS OF THAT.

SO IT SEEMS LIKE A BETTER
ARGUMENT, TO ME AT LEAST, IS
THAT THIS IS PROTECTION OF THE
PUBLIC OR PROTECTION OF THE
CLIENT THEMSELVES FROM FEE.

>> YES.

AND THAT'S WHAT WE LED OFF WITH
IN THE BRIEF, YOUR HONOR.

WHEN THE LAWYER SIGNS THE
CONTRACT WITH THE CLIENT, THE
LAWYER IS THE CLIENT'S

FIDUCIARY.

WHEN THE LAWYER'S REPRESENTING
THE CLIENT AND RUNNING UP THE
BILL, THE LAWYER IS THE CLIENT'S
FIDUCIARY.

AND WHEN THE LAWYER COMES TO
COURT TO ASK THE TRIAL JUDGE TO
BLESS HIS OR HER FEE, THE LAWYER
REMAINS THE FIDUCIARY.

PERHAPS NO LONGER REPRESENTING
THE CLIENT, BUT THE LAWYER NOW
IS NOT ONLY THE FIDUCIARY OF THE
CLIENT, BUT THE LAWYER'S A
FIDUCIARY AND AN OFFICER OF THE
COURT.

>> SO WOULDN'T A BETTER RULE BE
THAT IN THAT SITUATION WHERE YOU
HAVE A CLIENT WHO'S
UNREPRESENTED AS HAPPENS HERE
AND YOU HAVE, AS THE TRIAL
JUDGE, A CONCERN THAT THE FEE
SEEMS OUT OF PROPORTION OR THE
FEE AGREEMENT SEEMS UNREASONABLE
TO SAY I AM GOING TO APPOINT AN
INDEPENDENT EXPERT?

IS THERE -- BECAUSE I THINK
YOU'VE RAISED, I THINK THIS IS A
GOOD POINT, THAT THIS IS A
CONCERN.
WOULDN'T THAT BE THE WAY TO
REGULATE THAT SITUATION WHEN YOU
DON'T HAVE THE PERSON
REPRESENTED BY AN ATTORNEY ON
THE OTHER SIDE, THEY DIDN'T
BRING IN THEIR OWN EXPERT, OR
THEY DON'T KNOW HOW TO
CROSS-EXAMINE SO THEY,
PRESUMABLY, WON'T BE ABLE TO
CROSS-EXAMINE THE EXPERT BROUGHT
IN BY THE ATTORNEY TO BUTTRESS
THEIR CLAIM.
HIRE SOMEBODY WHO -- OR THE
COURT APPOINTS ITS OWN EXPERT TO
LOOK AT THIS.
BECAUSE, YOU KNOW ME, I'M
CONCERNED WITH IT.
WHY ISN'T THAT -- YOU KNOW,
WE'RE GOING TO BE PLAYING WITH
THE RULES, WHY WOULDN'T THAT BE
A BETTER RULE?

>> THE PROBLEM WITH THAT RULE,
JUDGE, IS IT RELIES ON THE
DISCRETION OF THE TRIAL JUDGE TO
DECIDE WHEN HE OR SHE NEEDS AN
EXPERT OR WHEN SHE OR SHE
DOESN'T.

>> BUT ISN'T THAT WHERE IT
ULTIMATELY STOPS ANYWAY?

>> IT DOES.

>> YOU KNOW, WHEN I WAS A TRIAL
JUDGE, I HAD DOMESTIC CASES, AND
ATTORNEYS CAME IN WITH
EXORBITANT FEES WHETHER THEY HAD
AN AGREEMENT OR NOT, AND I SAID
YOU GOT TO BE KIDDING ME, RIGHT?
I MEAN, A THOUSAND DOLLARS TO
DEPOSE A TREE, A DOG, A CAT?
I MEAN, I SIMPLY WOULDN'T
APPROVE IT.

>> THE PROBLEM THAT WE HAVE WITH
RELYING ON EACH INDIVIDUAL TRIAL
JUDGE TO DECIDE WHEN HE OR SHE
NEEDS AN EXPERT AND WHEN HE OR
SHE DOESN'T IS TWOFOLD REALLY.
ONE IS CONSISTENCY.

BECAUSE, REMEMBER, THE PRIMARY
REASON THAT THE SECOND DCA GAVE
FOR ORIGINATING THIS RULE WAY
BACK IN 1964 WAS THE PUBLIC
PERCEPTION.

AND SO NOW WE'VE GOT --

>> PUBLIC PERCEPTION OF LAWYERS?

>> PUBLIC PERCEPTION OF LAWYERS
AND THE JUDICIAL SYSTEM ITSELF.

AND NOW YOU'RE GOING TO HAVE --

>> OKAY.

SO YOU CAN HELP ME SOLVE THE
PUBLIC PERCEPTIONS OF LAWYERS?

THAT'S WHAT YOU'RE TELLING ME?

>> WHAT I'M TELLING YOU IS THIS
RULE IS PART OF THE MILIEU

THAT'S NECESSARY TO HELP THAT
PROCESS, YOUR HONOR, ABSOLUTELY.

>> MAYBE THE BETTER THING WOULD
BE FOR THE FLORIDA BAR TO GET
INVOLVED IN REGULATING THESE
KINDS OF THINGS JUST LIKE THEY
GOT INVOLVED WITH CONTINGENCY
CONTRACTS.

WHY DON'T THEY GET INVOLVED IN

REGULATING THE KINDS OF FEES
THAT ARE BEING CHARGED IN FEE
AGREEMENTS IN DISSOLUTION OF
MARRIAGE CASES WHEN CLIENTS ARE
AT THEIR MOST VULNERABLE?
GOING BACK TO THIS IDEA THAT
THIS QUESTION IS GOING -- WE
SHOULDN'T ALLOW DISCRETION, WHAT
JUDGE GROSS SAID IN ONE OF HIS
CONCURRENCES IS THE FALLACY WITH
ALL OF THIS WE SAY THE JUDGE AS
THE FACT FINDER HAS DISCRETION
TO DISREGARD ALL OF IT.
SO WE'VE GIVEN THE JUDGE THE
DISCRETION TO SAY I DON'T BUY --
JUST WHAT JUSTICE PERRY SAID --
AND THE GOOD JUDGES ACTUALLY,
WHETHER THEY JUST GOT ON THE
BENCH OR, YOU KNOW, THEY'VE BEEN
ON FOR A FEW WEEKS, THEY GET THE
GAME.
AND THEY ARE ABLE TO IN PLACES
PUT A STOP TO SOME OF THIS AND
SAY, NO, IN MY COURTROOM, IN
THIS COURT SOMETHING THAT IS

OVER \$350 AN HOUR OR WHATEVER IT
IS, \$250 AN HOUR, IS NOT A
REASONABLE FEE.

YOU GO, YOU WANT TO TAKE ME UP
TO THE FOURTH DISTRICT?

TAKE ME UP THERE.

IN MY -- THAT'S HOW WE'VE GOT TO
GO.

IF THE JUDGE THEN -- THE ONLY
WAY THE JUDGE IS GOING TO BE
ABLE TO DO THAT IS HAVE SOMEONE
BACK THEM UP ON THE OTHER SIDE.

SO, AGAIN, I SAY IF THE JUDGE
SAYS, YOU KNOW WHAT?

I KNOW THAT FRED LEWIS IS ALWAYS
SOMEBODY THAT'S A STRAIGHT
SHOOTER, AND I'M GOING TO CALL
FRED LEWIS AS MY OWN EXPERT TO
COME IN AND EVALUATE THIS
BECAUSE THIS CLIENT NEEDS
PROTECTING.

>> THE PROBLEM WITH, OF RELYING
ON THE DISCRETION OF THE TRIAL
COURT IS EXACTLY WHAT YOU
DESCRIBE WHICH IS APPELLATE

PROCESS.

THE STANDARD OF REVIEW ON APPEAL
IS ABUSIVE DISCRETION.

AND SO IF THE JUDGE DECIDES I
NEED AN EXPERT OR I DON'T NEED
AN EXPERT AND HE DECIDES I DON'T
NEED AN EXPERT BECAUSE I KNOW
WHAT REASONABLE ATTORNEYS' FEES
ARE WHEN I SEE 'EM, THE JUDGE'S,
THE TRIAL JUDGE'S EXPERIENCE AT
THAT POINT NOW BECOMES VERY
IMPORTANT.

>> YEAH, BUT --

>> AND NOT PART OF THE RECORD.

[INAUDIBLE CONVERSATIONS]

>> YOU JUST SAID IF, IF YOU
REQUIRE AN EXPERT, THE JUDGE CAN
DISCOUNT AND NOT EVEN CONSIDER
IT ANYWAY.

SO, I MEAN, WHAT -- YOU'RE GOING
TO CREATE A RULE -- I DON'T
QUITE UNDERSTAND HOW THIS RULE
SHOULD BE PROMULGATED TO INSURE
THAT JUDGES HAVE NO DISCRETION.

>> WELL --

>> IN THESE MATTERS.

>> WELL, THE RULE EXISTS TODAY.

RIGHT NOW IF YOU SEEK ATTORNEYS'

FEEES OTHER THAN IN THE

DISSOLUTION PROCEEDINGS UNDER

CHAPTER 61 BREACH OF CONTRACT, I

HAVE A CONTRACT CASE AGAINST A

DEFENDANT, I WIN, THE CONTRACT

SAYS I GET ATTORNEY'S FEES.

IF I GO AND PURSUE FEE AGAINST

THAT DEFENDANT, I MUST BRING AN

EXPERT WITH ME.

AS PART OF THE MODICUM OF PROOF

THAT IS NECESSARY FOR ME TO MAKE

A PRIMA FACIE CASE.

THAT'S THE STATUS OF THE LAW

RIGHT NOW, AND EVERYBODY

ESSENTIALLY AGREES WITH THAT

INCLUDING THE FOURTH WHICH HAS

BEEEN VERY VOCAL IN CRITICIZING

IT.

>> LET ME ASK YOU ONE THING THAT

I FIND TROUBLING.

I KNOW YOU SAID AT THE BEGINNING

THAT YOU DO NOT PRACTICE FAMILY

LAW.

>> YES, MA'AM.

>> DO YOU KNOW ENOUGH TO TELL US
WHETHER THIS IS A STANDARD KIND
OF CONTRACT IN THESE FAMILY LAW
SITUATIONS?

IT SEEMS A LITTLE --

[INAUDIBLE]

>> WELL, AND THIS IS WHY I

DETAILED THE CONTRACT IN MY
BRIEF.

BECAUSE THIS IS, IN MY VIEW FROM
A CONTRACTUAL STANDPOINT, A
WORST CASE SCENARIO AS FAR AS
WHY WE NEED EXPERT TESTIMONY.

BECAUSE THE EXPERT HELPS THE
LAWYER WHO'S HIRED THE EXPERT
SELF-ADJUST.

THE EXPERT HELPS THE JUDGE HAVE
A JUSTIFICATION FOR WHERE HE'S
GOING TO GO, HE OR SHE,
ESPECIALLY IN A STATE THAT HAS
EXPLODED IN POPULATION.

SINCE 1964 OUR STATE HAS TRIPLED
IN SIZE.

SINCE 1964 OUR BAR HAS

QUINTUPLED IN SIZE.

WE ARE MORE SPECIALIZED AS

LAWYERS, WE ARE MORE SPECIALIZED

AS JUDGES.

I CAN'T REMEMBER WHO MENTIONED

IT EARLIER, BUT THIS COURT IS

EVEN IN FAVOR OF JUDGES ROTATING

AROUND.

AND SO A JUDGE MAY BE IN THE

CRIMINAL DIVISION, FELONY

DIVISION FOR YEARS AND NEVER

HAVE ANYTHING TO DO WITH

ATTORNEYS' FEES HIS FIRST WEEK

ON THE JOB.

HE'S STUCK LISTENING TO AN

ATTORNEY FEE ISSUE.

>> LET ME ASK YOU THIS QUESTION,

ALTHOUGH YOU DON'T DO

MATRIMONIAL LAW.

YOU DO DO OTHER LITIGATION.

>> YES, SIR.

>> DO YOU ENTER INTO CONTRACTS

FOR FEES WITH CLIENTS?

>> ROUTINELY.

>> HAVE YOU EVER SEEN IN YOUR
LEGAL PRACTICE A CONTRACT SUCH
AS THIS AT \$400 HOUR DISCOUNT,
PARALEGAL CHARGES, SECRETARIAL
CHARGES, 10% ADMINISTRATIVE
OVERHEAD CHARGES PLUS ALL THE
OTHERS, THEN A CHARGING LIEN
THAT YOU CAN'T EVEN CONTEST
ACCORDING TO THE CONTRACT WHAT
MY BILL IS?

HAVE YOU EVER SEEN --

>> NOT UNTIL THIS CASE, YOUR
HONOR.

BUT, BUT THE POINT --

>> LET ME GO BACK TO THAT.

BECAUSE IF YOU HAVEN'T, HERE IS,
HERE'S THE PROBLEM.

YOU'RE IN, YOU'RE MAKING, YOU
KNOW, VERY GOOD POINTS, YOU'RE
ARGUING PROFESSIONALLY, AND I
APPRECIATE YOUR INSIGHT ON THIS.
BUT WE GO NOW, AND WE'RE BACK
DOWN TO PALM BEACH COUNTY.
SOMEONE COMES IN AND -- SAY IT'S
A LAWYER THAT CHARGES ACTUALLY

\$700 AN HOUR USUALLY.

AND THERE ARE LAWYERS DOWN THERE
THAT, UNFORTUNATELY, DO THAT.

AND THEY SAY THE SAME THING.

HOW HAS PROCESS, HOW IS THERE
MORE INTEGRITY?

IF THE JUDGE ISN'T

CROSS-EXAMINING THE INITIAL

LAWYER ON IT, IF THE OTHER SIDE

DOESN'T HAVE A LAWYER TO BE ABLE

TO CROSS-EXAMINE, I DON'T SEE

WHERE THE INTEGRITY OF THE

PROCESS IS HELPED.

THAT'S WHY I SAY ISN'T IT BETTER

SERVED IF THERE WERE TO BE A

RULE TO SAY THAT IF THERE IS A

FEE OVER A CERTAIN AMOUNT THAT A

EXPERT SHOULD BE CALLED BY THE

COURT TO ADVISE THE COURT ON

WHAT'S STANDARD IN ALL THAT?

>> CERTAINLY, THAT RULE IS

AVAILABLE.

BUT I THINK THAT THE EXPERT

WITNESS, AS I SAID BEFORE,

PROVIDES ANOTHER SET OF EYES.

AND I'M A BIT OF AN OPTIMIST
FROM THAT STANDPOINT, MAYBE
COCK-EYED IN THAT REGARD.
IN THAT IN MY WORLD WHERE I
PRACTICE THE EXPERTS THAT I'VE
HIRED MYSELF HAVE COME TO COURT
AND TOLD THE TRUTH.

THE EXPERTS THAT MY PARTNERS
HAVE HIRED THEMSELVES HAVE COME
TO COURT AND TOLD THE TRUTH
ABOUT WHAT THEY FEEL ABOUT THE
EXPERT, EXCUSE ME, ABOUT THE
ATTORNEY'S FEES.

AND --

>> SO YOU DON'T THINK
MS. ROSHKIND COULD HAVE GOTTEN
AN EXPERT IN PALM BEACH COUNTY
TO SAY THESE ARE -- I MEAN, DO
WE HAVE ANY RECORD THAT WOULD
EVEN SUGGEST THAT?

>> I DO NOT KNOW WHETHER THEY
COULD OR NOT.

I CAN ONLY ASSUME THAT THEY
COULD HAVE.

BUT I DON'T THINK THAT WE OUGHT

TO THROW THE BABY OUT WITH THE
BATH WATER HERE.

I DON'T THINK THAT WE OUGHT
TO -- AS I SAID BEFORE, IT'S
BEEN DEVELOPED OVER FOUR DECADES
IN ORDER TO SELF-POLICE
ATTORNEYS' FEES.

IF WE DON'T FIND A WAY TO DO
IT -- AND THERE ARE A NUMBER OF
OTHER WAYS TO DO IT.

SOME OF THE -- YOU GUYS HAVE
PROBABLY READ THE ARTICLE THAT
CAME OUT IN THE LAW JOURNAL
THAT, I THINK, WAS CITED IN THE
BRIEFS.

THERE ARE A NUMBER OF WAYS THAT
THE COURT IN ITS RULEMAKING
POSITION CAN DEAL WITH THIS
ISSUE.

ONE WAY WOULD BE IF YOU ARE
GOING TO SEEK ATTORNEYS' FEES,
YOU MUST SEND A DETAILED BILL TO
THE OTHER SIDE SHOWING WHAT
YOU'RE SEEKING IN A CERTAIN
PERIOD OF TIME.

THEY MUST COME BACK AND SAY
THAT'S NOT REASONABLE, THIS IS
REASONABLE.

>> WELL, THEN IN PRACTICE --

[INAUDIBLE CONVERSATIONS]

>> SUMMARY SUBJECT PROCESS WE
USE ALL THE TIME IN OTHER
CONTRACT CASES.

>> THAT'S RIGHT.

>> THAT'S EXACTLY HOW THEY GET
DONE.

>> AND IF YOU KNOW WHAT YOU'RE
FIGHTING, ACTUALLY, INSTEAD OF
\$60,000 I THINK \$40,000 WOULD BE
REASONABLE.

NOW WE KNOW WHAT WE'RE FIGHTING
ABOUT.

WE'RE FIGHTING ABOUT \$20,000.

IS IT WORTH GOING TO AN
EVIDENTIARY HEARING AT THAT
POINT?

SO THERE ARE OTHER PROCEDURAL
MECHANISMS THAT THE COURT CAN
USE OTHER THAN ABROGATING 40
YEAR OF LAW ON THIS PARTICULAR

SUBJECT WHICH WE DO NOT BELIEVE
WOULD BE APPROPRIATE, ESPECIALLY
GIVEN THE FACT THAT THIS WAS THE
SUBSTANTIVE LAW THAT
MS. MACHIELA WALKED INTO AND WAS
THE SUBSTANTIVE LAW OF THE
FOURTH DCA AT THE TIME SHE HAD
THE HEARING, AND WE WOULD
REQUEST THE COURT AFFIRM THE
FOURTH DCA.

>> THANK YOU.

OPPOSING COUNSEL TOOK TWO EXTRA
MINUTES, SO I'LL GIVE YOU TWO.

>> THANK YOU VERY MUCH.

I JUST WANT TO MAKE IT CLEAR WE
ARE NOT, OBVIOUSLY, SAYING THE
CLIENT SHOULD NOT BE PROTECTED.

WE ARE SAYING THAT THIS
MECHANISM IS NOT DOING WHAT IT
PURPORTS TO DO, AND AS FAR AS
HOLDING THE IMAGE OF LAWYERS,
YOU KNOW, IN BETTER REGARD FOR
THE PUBLIC, WE ARE ARGUING THAT
IT'S DOING THE OPPOSITE BY
CONTRIBUTING TO INCREASING

LITIGATION FEES, INCREASING THE COSTS WHICH ARE TAXED TO THE LOSING PARTY, IN THIS CASE THE CLIENT.

AND, IN FACT, THAT IS REALLY THE HARM.

THEY'RE BEING HARMED MORE BY SOMETHING THAT IS NOT HELPING THEM, BUT THAT IS HARMING THEM.

AGAIN, I THINK THE FACT THAT A CLIENT THINKS THAT SOMETHING'S UNREASONABLE WHETHER -- IF THE JUDGE THINKS IT'S UNREASONABLE, OBVIOUSLY, THE JUDGE CAN MAKE THAT CALL.

THAT'S HOW IT IS RIGHT NOW.

THE JUDGE COULD REQUIRE AN EXPERT TO COME IN.

THE CLIENT, IF THEY THINK IT'S UNREASONABLE AFTER THEY HAVE AGREED TO IT, SHOULD BE ABLE TO HAVE -- SHOULD HAVE THE BURDEN AND THE ONUS SAYING THIS IS UNREASONABLE.

I'M GOING TO BRING MY EXPERT AND

TELL YOU WHY.

>> YOU'VE PRACTICED IN BOCA
RATON.

ARE THESE CONTRACTS, IS THIS
STANDARD CONTRACT IN PALM BEACH
COUNTY?

>> I DO, SPECIFICALLY, APPELLATE
WORK SO WITH REGARDS TO THE
CONTRACT FOR FAMILY LAW
ATTORNEYS, I DON'T KNOW.

I THINK THAT THIS IS A LITTLE
BIT MORE, YOU KNOW, A LITTLE BIT
DIFFERENT THAN WHAT I THINK
TAKES PLACE.

BUT, AGAIN, AN EXPERT WITNESS WE
DON'T THINK WOULD HAVE HELPED
THE PROBLEM THAT COMES INTO --

>> WAIT A MINUTE.

YOU DO APPELLATE WORK?

>> I DO.

>> IN THE CIVIL ARENA?
IN DOMESTIC CASES?

>> YES.

>> YOU REPRESENT TO THE COURT
THAT YOU DON'T KNOW WHAT

CONTRACT CHARGES ARE IN --

>> NO, I REPRESENT THAT I DO
KNOW THE AMOUNT.

>> OKAY.

THE QUESTION --

>> [INAUDIBLE]

>> THAT'S NOT WHAT WAS ASKED.

IS THIS A STANDARD CONTRACT IN
PALM BEACH COUNTY THAT YOU HAVE
SEEN AS AN APPELLATE LAWYER?

>> NO, IT IS NOT A STANDARD
CONTRACT THAT I HAVE SEEN SUCH
AS THIS.

BUT MY POINT IS I DON'T SEE THE
CONTRACT PHASE THAT OFTEN, IS
WHAT I WAS SAYING.

BASICALLY, WE ARE SIMPLY SAYING
THAT WE FEEL THAT THE CASE
SHOULD BE, THE TRIAL COURT
DECISION SHOULD BE REVERSED BY
THE FOURTH DCA BASED ON THEIR
OWN COMMENTS.

IN FACT, IN THIS NARROW
CIRCUMSTANCE SOMEBODY HAS
CONTRACTED WITH AN ATTORNEY THAT

THIS IS AT LEAST THE
CIRCUMSTANCE TO SAY AN EXPERT
WITNESS TESTIMONY IS NOT
NECESSARY.

WE RESPECTFULLY ASK THIS BE
REVERSED.

THANK YOU.

>> THANK YOU.

WE THANK BOTH SIDES FOR YOUR
ARGUMENT.

THAT'S THE LAST CASE OF THE DAY,
THE COURT WILL NOW STAND
ADJOURNED.

>> PLEASE RISE.