

>> All rise.

Hear ye, hear ye, hear ye the
Supreme Court of Florida is now
in session.

All who have cause to plea, draw
near and ye shall be heard.

God save these United States,
the great state of Florida, and
this honorable court.

>> Ladies and gentlemen, the
Supreme Court of Florida.

Please be seated.

>> Good morning and welcome to
the Florida Supreme Court.

The first case on our docket is
the Florida rules of judicial
administration, etc.

Counsel, please proceed.

>> May it please the court.

I represent the Judicial
Administration.

I would also like to introduce
Kevin Johnson from civil rules,
the Honorable Donald Gagliardi

from criminal rules, Michael
Opperman from appellate rules,
Twyla Sketchley from probate
rules, Ashley Myers from family
rules and to my right is Joel
Silvershein from juvenile rules
and next to him the Honorable
Judge Eaton from the criminal
courts steering committee.

The court requested this
argument pursuant to a draft
proposed of a rule change
pursuant to the courts June 16,
2010 charged to various rules,
chairman, that we were asked to
propose a uniform rule of
procedure for computation of
time periods and in that word
time period with reference to
emergency situations which
really were generated from a
hurricane disaster and ways of
extending this time the court
issued an administrative order
and in that order 2.205A to

extend time limits in the emergency situations and proposed in order for the Chief Justice.

The community viewed the draft contained in the June 16 letter and it was suggested from this court and therefore went about its business to draft a rule to make the time limits uniform and in fact I know the rule drafting is broader than what was contained in the June 16, 2010 letter.

>> May I ask you a question?

[INAUDIBLE]

>> We didn't think there was anything wrong with the rule but we thought the court's concern was that you said when you were reviewing the rule you were concerned there was not a uniform way of computing time and you found different ways of computing time in different

rules.

We viewed the rules of the
judicial administration and the
reason is to make
standardization -- things that
can be used by all rules.

For instance in Boling you had
three days of criminal and you
had five days of governable
rules.

>> That is true but for example,
we realized there was a problem
in our order and that is why we
had language to suspend rather
than hold.

It says that the court is closed
either is the result of an order
of the Chief Justice.

The Chief Justice does not close
the court.

The Chief Judges close the
courts.

They probably maybe were not
even realizing it but that is
why we sent it over with the

language to explain how it works.

It works where the Chief Judge closes the court and then the Chief Justice authorizes that by the administrative order.

Boling was getting confusing so we use the word closing.

Having an accessibility of the clerk's office as something that affects this that is not the courts issue because we don't control the courts.

>> We like the uniformity but it is a language the language that we are now concerned about as far as the changing of the wording, not the uniformity issue but the changing.

Was there something that maybe somebody didn't appreciate that doling became a problem for the Chief Justice didn't close the court ordered but five other things that are problematic.

They are not substances
philosophical differences.

They are just problems for the
court in these situations.

>> Justice, I guess I am not --
maybe I am not understanding
the courts question and -- but
one of the issues that again as
lawyers we are looking at this
isn't necessarily the closing of
the court as much as you can't
file a paper.

The clerk's office is
inaccessible for some reason.

>> But that issue, the clerk's
office being inaccessible, there
are situations where a clerk
will just arbitrarily close the
courts before a holiday.

We don't authorize that.

We can't do that.

Now we don't want to -- so there
is -- what we were dealing with
his wanting uniformity but then
also trying to make sure the

issue about what is the effect
of the courts order court's
order suspending deadlines and
emergency situations.

Now you have expanded it to
something that really becomes
problematic, something you may
or may not have known which is a
judge clerk will close the
courts and close their office.

We don't authorize that.

That may create a problem that
day for a litigant but we are
not sure we want to authorize
that process through a rule.

>> I understand what the concern
is, and I guess what -- and
hopefully understanding, we feel
that this is probably overly
broad and that we have included
a nonjudicial, non-judge
judicial person into the mix
that could make a decision that
the rules shouldn't really be
concerned about that we should

be concerned about judicial action and that therefore only a judge or a chief judge or Chief Justice's order should have an impact with regards to filing or not filing an extension at the time.

>> Why do we start with one of these, which is why you have the language about the Chief Justice is closing the court.

That is a very simple one.

The Chief Justice does not close the court.

He or she simply -- there is an order that will extend the time once the court has actually been closed so I think that should be an easy fix.

>> That could be an easy fix, yes.

>> In the best of all worlds you and I could sit down with our staff lawyer and we could probably fix this.

So what I am hearing you saying is that if the committee strayed from many of the language suggested by the court, it was not because he thought the court -- it may have just been because you are focusing on a picture that was maybe different from everything.

>> There would be no problem.

I don't think the committee would have any problem making the changes you are concerned about.

>> So if we just say we send it back and say convict this through an order you can see if there's any problem.

For example Boling.

>> We do not have a problem.

I think that the committee just went broader and started looking at a lawyer's perspective in an emergency situation and that therefore we went broader than

we should have gone and we would have no problem making that correction.

>> Actually I do have a presentation but I was hoping -- if anybody else have any questions we were at a loss as to really what the concerns were of the court.

>> You mean having an oral argument?

>> I wasn't going to make any more argument if there are no more questions.

>> The other part was the frustration that we had the judicial administration we hoped each of the committees will follow suit and I think we have got some committees that didn't submit their conforming amendment.

>> Right.

One was the small claims I think said they wanted to wait until

they heard what the Supreme Court was going to do.

Mr. Silvershein is here with reference to juvenile rules.

Juvenile rules in their method.

What we provided for was that a rules committee could and there are rules that provide exceptions if there were different circumstances which I certainly understand.

They put a sentence in their same juvenile rules will not follow this rule as opposed to making some exceptions.

>> There isn't a provision for court closings or hearings under seven days.

Is that an intentional omission?

>> I think the language was general enough to cover any time of court closings.

I don't see that limitation in there.

>> I have a question and forgive

me if I overlook something in the commentary that explains this but I am specifically focusing on subsection four of 2.514, subsection A4.

>> For is closure of the courthouse.

>> I'm having a conceptual problem with understanding how these extensions have the computations of time applied to courthouses.

[LAUGHTER]

>> No, no, no.

When we first drafted or started drafting this rule, I am from Pinellas County, Sixth Circuit.

We have two counties in our circuit and we have in Pinellas County we have three courthouses and in Pasco County we have to courthouses.

>> I can assume anything should be filed in Pinellas County can be filed in the clerk's office

and any of the courthouses?

>> Actually we have five courthouses.

No, because some courthouses strictly have traffic and they won't accept golf fell felony civil filings or if you have a circuit filing the traffic is county and the clerks or by county, sometimes they won't accept a circuit filing and a county like the traffic division which is strictly a County division.

Therefore you could have a situation and it has happened in Broward I am told.

Someone was from Broward -- and we had a joint ad hoc committee of all the rules committee so in Broward you actually had one courthouse close, one courthouse opened but the lawyers who were around the closed courthouse didn't know the open courthouse

even existed on the other side
of the County.

It was actually open and
functioning and again it was an
emergency situation.

So, we felt that it was
important that we put a
provision and therefor when only
certain courthouses within a
circuit or a county are
closed but the other ones are
open and we have had a couple of
members that were very strong on
that issue because they felt
they could be a severe problem.

>> Well what if it is a statute
of limitations issue?

And it has got the lawsuit that
has to be filed by a certain
day.

There is a courthouse on on one
side of the county that is open
that will accept a civil filing
and there is a courthouse, the
main courthouse may be -- is

closed.

What happens?

>> He would go to the open
courthouse.

>> If he doesn't go to the open
courthouse he is --

>> Right.

>> Until we have E-portal and
E-filing.

>> Correct and then midnight on
Saturday night he could file it.
Hopefully it will happen sooner
rather than later.

He would have to go to the open
courthouse to do that filing.

>> The issue of dealing with
closures in seven days was
either to be addressed and that
would address some of the
juvenile rules committee
concerns.

[INAUDIBLE]

>> If that happened it was not
our intent.

In reading this initially I

can't find that limitation.

>> Okay, so that is not there

you are fine to make sure we

have that are ghosts be

absolutely.

Because I know that was not our

intent to do so.

>> I will just make a closing

comment then and move on, but as

always the Florida bar has

appreciated the court trusting

it with the responsibilities of

court rules.

Florida bar takes its

responsibilities seriously and

feels it is the best forums for

such a discussion.

Friday of lawyers involved in

the dedication of the lawyers

and judges to the process serves

for the cause of justice and the

needs of this court.

I'm a past chairman of the

criminal rules committee and

criminal law section.

I know this court has at times
been frustrated for what it
perceives to be a less than timely
response to requests.

I assure you that no one wants
these request to be timely more
than the members of the Florida
bar.

However we feel it is our duty
to provide this court for the
best possible product to provide
members of the Florida bar who
must live with these rules with
an opportunity to invest in the
Palm edition of the rules and
therefore what we may sometimes
you as slow as in an enhancement
for the long run and the
practice of law and the
sufficient cost-effective search
for justice and truth.

I appreciate the time and I
appreciate the interest and I
appreciate the input.

And, I know that we have tried

-- are trying to be a more informal way in which Justice can input into the rules committees.

These kinds of suggestions are just the logical a logical way for you to, if you tell us what your concerns are.

>> What can happen is when the letter goes over, before a petition is filed and there is any issue where someone doesn't understand the extended charger the language used, there can be communication.

[INAUDIBLE]

Our clerk town hall is always available to answer questions and --

>> I called Tom about this and asked him, what is the question?

[LAUGHTER]

>> If there is ever an issue on a referral we would hate for the rules committee to go down the

path and I guess here the
frustration we have is we
thought we had a simple solution
to the rule that was sent over.

>> Those corrections, there is
no one that I believe would have
been a concern with the concerns
of the court in making those
corrections and those changes.

Thank you.

>> Good morning.

I am Joel Silvershein.

I'm here in my capacity of the
juvenile rules committee.

We are here mostly because of
the expansion of what was
originally sent out about the
court.

We have really no problem with
the concept of uniform
computation of time when it
comes to those emergency
situations.

An occupant of the Broward
County courthouse where a --

will break and we had a situation several years ago where it broke in the clerk's office and it became a real problem and we had to apply with the court and that was done.

We have incorporated those changes in the individual rules with dependency.

[INAUDIBLE]

When we have an issue is with the expansion or the elimination of situations where the rules call for a response less than seven days that you eliminate the way the rules read now that if you have it period of less than seven days you don't count it as immediate.

>> I think what they are saying is this was in the communication that should be in there.

Does that solve your major problem?

>> Yes, does.

>> So this is why we are all
appear having this conversation.

It seems that your concern which
is a legitimate concern, you are
talking about shelter especially
with juveniles who are a shelter
as well as detention hearings.

Time is critical.

>> The way our discovery rules
are written things in juvenile
move a lot faster.

>> They have to because there is
that 21 maximum days holding.

>> The discovery rules are five
days, and there is an issue with
the subpoenas on law enforcement
officers.

That is also five days and there
could be a conflict between the
statute in the rule in those are
issues that we are concerned
about.

When we were asked to respond as
an individual committee, all the
committees were, we read this

very carefully and we saw this
as a problem dealing with us.
Number one although uniformity
is a good idea the problems of a
juvenile are not necessarily
problems of --

>> Timeframes that are less than
seven days can be in a
family.

All the cases, when I was
working on this changing the
administrative order and had one
way of dealing with something.

They warrant because of the
nature of the preceding.

It was just something that
drafted it at a different time
like what happens in the
legislature.

Not because they had a different
problem so we were trying to get
uniformity where we could.

Obviously a speedy trial we
recognize that is different,
different consideration for the

criminal case and that is why we
adopted the official rule to
deal with that.

You were telling us, what we
had, what we sent to the
judicial administration, your
concern would be --

>> If there are no other
questions I have nothing
further.

I thank you for the courts time.

>> Good morning.

I am here for the criminal court
steering committee.

I have a couple minor comments
about this rule proposal first
and I wish to say I had no part
in drafting this.

You can tell that a lot of
lawyers did.

[LAUGHTER]

If you will look on page three,
the very beginning paragraph A
where it says computing time.

>> Are you talking about the

Appendix?

>> Yeah.

>> Page C3?

It is 2.514A.

Computing time.

I would like to suggest that you strike the last clause of that that says that does not specify a method of computing time because I think all of the statutory times are procedural so it out to include all of those.

Alternatively you might want to just get rid of that, that is after statute because I don't know whether that is a dangling participle or what it is but it appears to apply to other things and I think it just meant to apply to that statute.

Secondly, on page four, where you have definitions, I question the need for definitions of last day, next day and legal holiday.

I am sorry, I understand what those mean.

That is pretty plain language and I just don't know that it is necessary.

My other comment, and this is the last one, that I like the courts proposal better than I like this ruling.

But, I understand particularly in juvenile there are problems that are different than anybody else's so somehow it is going to have to be addressed.

I will volunteer if you decide you want to send it back and have another committee or something look at it.

>> Heavens no.

If we send it back --

>> If you want to have a conference with your staff attorney or something like that, I will volunteer to do that.

There are no questions.

That's it for me.

>> That, after the statute was delivered, that was actually the lawyers drafted it.

We discussed it, because we really did mean any of the rules or statutes.

For instance the juvenile needed it in their rules as an exception to this and they passed a specific rule for computing time for a specific act, that would be an exception of this and we did deliberately put that in here.

>> I guess grammatically it would be, when you have a -- I will ask my staff attorney.

>> My daughter is an English teacher.

I didn't ask her that.

I should have.

They voted to put it in there.

>> How long did that vote take?

>> That was a very long one but our intent was although should be included in the exception.

>> It is a very relative term.

>> It gave a very compelling statement at the end of your first argument about the process, but that court is seeing more and more the need to have like when it came to the issue of records and now when we get to these filings, uniformity and we do call on the judicial of may be a lot to be in charge but it does seem like we end up and it is not small claims or traffic or whatever.

Some committees are somewhat recalcitrant and they don't understand.

This is a case.

We have to go now and have another petition and consider it again, it is more work for us in more work for the public and so

if we are going to have the current process with a bar as the quarterback, there are has got to be some consideration of sufficiency in doing this, and in all fairness, our staff may be put that rule together in a day and send it over because we know what happens when we don't send it over.

Again it has problems and so again my wish has been if you thought -- you wanted to expand and would like to put in something about the clerks office, write us a letter back quickly or call somebody and just say is there any reason to have this word versus that so we don't have a year go by and it is time consuming.

>> I understand.

When I was chairman of rules, I really tried and never complained that year about our

responses and the timeliness of
our responses.

Unfortunately, everybody all the
time doesn't always act the same
way.

>> Maybe the rules committees
that don't respond we will just
get the standard rule and that
is the end of the story and say
you know, too bad.

>> We would really like more
informal content with accord
with reference to these rules.

>> It can happen before it is
filed.

>> I promise you we will take
advantage of that and I will
communicate that to all the
rules committees, the
availability final to the rule
that we have some input from.

Thank you all very much.

>> We thank you.

Thank all of you for your
contribution.

>> I'm sorry, are we going to
get an order?

[INAUDIBLE]