

>> WE WILL NOW MOVE TO THE
FOURTH AND FINAL CASE ON
TODAY'S DOCKET.

RE, AMENDMENTS TO THE FLORIDA
RULES OF APPELLATE PROCEDURE.

>> GOOD MORNING, I'M JOHN
CRABTREE.

I REPRESENT THE APPELLATE COURT
RULES COMMITTEE.

I'M IN KATHY'S SAME BOX.

FIRST TIME IN MY CAREER I DON'T
HAVE A OPPONENT.

I'M A LITTLE BIT OF A LOSS.

>> AS YOU SEE YOU'VE GOT ENOUGH
TO DEAL WITH UP HERE.

>> APPARENTLY SOME DO. YOU KNOW
WE HAVE COMMENTS WERE RECEIVED.
WE ADDRESSED ALL OF THEM FOR
EXCEPT THREE.

ALL OF THEM TO THE SATISFACTION
OF COMMENTERS.

TWO OF THOSE WERE FROM HARVEY
RUBIN.

HE WANTED US TO GIVE THE
CLERK'S OFFICE 50 DAYS TO

SUBMIT THE RECORD AFTER THE
TRANSCRIPTS WERE COMPLETE AND
WE WANTED TO KEEP IT AT 20
BECAUSE THERE WOULD HAVE
ALREADY BEEN 50 AND OUR
THINKING WAS THAT, THE CLERK'S
OFFICE ALREADY HAD SUFFICIENT
TIME TO GET ITS DUCKS IN A ROW
TO FINISH IT UP ONCE THEY
RECEIVE THE TRANSCRIPTS AND
THIS IS A CRIMINAL APPELLATE
RULE AND WE PARTICULARLY DID
NOT WANT THERE TO BE
UNNECESSARY DELAY.
HE ALSO BELIEVED THAT NOTICE
THAT THE TRANSCRIPT HAD NOT
BEEN PROVIDED AND THE RECORD
WAS -- SHOULD NOT BE PROVIDED
TO PARTIES BUT ONLY TO
APPELLATE COURT AND WE DID NOT
AGREE WITH THAT.
AS A MATTER OF DUE PROCESS AT
LEAST EVERYONE SHOULD BE
NOTIFIED.
THE OTHER RULE WHERE WE

RECEIVED THE COMMENT AND WE
DIDN'T AGREE WAS FROM
GENTLEMAN, I BELIEVE HIS NAME
WAS MIKE ROLO.
WHO WANTED US TO EXPAND NEW
RULE 9.170 TO INCLUDE ORDERS REFUSING
TO ENFORCE SETTLEMENT
AGREEMENTS AND WE DID NOT FEEL
THAT WAS KEEPING WITHIN THE
SPIRIT OF EITHER THE OLD RULE
OR THE NEW RULE.
AND SO WE REJECTED THAT
SUGGESTION AS WELL.
BUT BEYOND THAT WE HAVE WORKED
OUT THINGS IN THE COMMENTS AND
WE HAVE NO OPPOSITION.
SO I GUESS I WOULD WELCOME ANY
QUESTIONS FROM THE COURT.
OR WISH YOU ALL A GREAT
MORNING.
>> LET ME ASK YOU A QUESTION
ABOUT RULE 9.140, APPEAL
PROCEEDINGS IN CRIMINAL CASES
IN THE PORTION THAT HAS,
SUBSECTION D, WITHDRAWAL OF

DEFENSE COUNSEL AFTER JUDGEMENT
AND SENTENCE OR AFTER APPEAL BY
STATE AND THAT IS APPENDIX C-9,
10, ACTUALLY C-10 IS WHERE
THE LANGUAGE IS THERE.

BASICALLY IF I UNDERSTAND THIS,
THIS RULE SAYS IN THE COMMENT
THERE, IS INTENDED TO CLARIFY THE
RULE AS IT GOVERNS PROCEDURES
FOR A DEFENDANT'S TRIAL
AATTORNEY MAY WITHDRAW WHILE
THE CASE BEFORE CONVICTION AND
SENTENCE.

PURPOSE OF AMENDMENT TO
RECOGNIZE NEWLY CREATED OFFICE
OF CRIMINAL CONFLICT AND
REGIONAL COUNSEL AND CLARIFY
REPRESENTATION IN THOSE CASES.

THIS IS RULE NOW ADDRESSES
REPRESENTATION IN, JUST REFERS
TO PUBLICLY-FUNDED DEFENSE
APPEALS.

AND IT REFERS TO THE PUBLIC
DEFENDER.

>> IT DOES.

>> AND THE AMENDMENT EXPAND IT
TO REFER TO THE DISTRICT OFFICE
OF CRIMINAL CONFLICT AND CIVIL
REGIONAL COUNSEL.

>> IT DOES.

>> LET ME ASK YOU, I MAY BE
MISSING SOMETHING VERY
ELEMENTARY HERE.

WHAT ABOUT CIRCUMSTANCES WHERE
THE DEFENSE IS PUBLICLY FUNDED
BUT COUNSEL IS REGISTRY
COUNSEL?

THAT'S WHERE, THE PUBLIC
DEFENDER'S CONFLICTED OUT AND
THE REGIONAL COUNSEL HAS
CONFLICTED OUT AND THEY HAVE
HAD TO GO TO REGISTRY COUNSEL.

>> WELL I DON'T, I'M NOT SURE
EXACTLY HOW THAT WOULD PLAY OUT
TO BE CANDID.

I KNOW IN THIS RULE WHAT WE'RE
LARGELY TRYING TO ADDRESS A
CONCERN ABOUT FROM THE TRIAL
COURT CRIMINAL DEFENSE LAWYER
TO THE APPELLATE COURT CRIMINAL

DEFENSE LAWYER AND THAT WAS OUR
PRIMARY IMPETUS FOR THIS
AMENDMENT.

>> IS THERE SOME REASON THE
HANDOFF WOULD BE DIFFERENTLY?
PUBLICLY-FUNDED CASES WHERE
THERE IS REGISTRY COUNSEL AS
OPPOSED TO PUBLICLY-FUNDED CASE
WHERE REGISTRY TYPE COUNSEL -

>> CANDIDLY, JUSTICE CANADY,
NO.

I DO SEE THE PROBLEM.

JONATHAN MORRIS FROM THE PUBLIC
DEFENDER'S OFFICE CAME HERE TO
BABYSIT ME IN CASE I GOT IN
TROUBLE, IF HE HAS ANYTHING TO
SHARE ON THAT.

>> JONATHAN MORRIS.

PUBLIC DEFENDER'S OFFICE IN
MIAMI.

WE DON'T HAVE A PARTICULAR
POSITION ON THAT RULE.

SORRY.

THAT DOES MAKE SOME SENSE.

THE REASON THIS --

>> WHAT MAKES SOME SENSE?

>> TO ALSO HAVE A RULE THAT

ADDRESSES WHAT WE CALL WHEELED

COUNSEL, THE PRIVATELY --

>> APPOINTED PRIVATE COUNSEL.

>> APPOINTED PRIVATE COUNSEL.

>> DON'T YOU CALL THE

REGISTRY REAL COUNSEL.

>> WHEELED COUNSEL.

>> OH.

HE IS TALKING ABOUT, THERE IS,

WE GOT REGISTRY WHICH IS IN

CAPITAL CASES.

>> RIGHT.

>> YOU'RE TALKING ABOUT --

>> I'M NOT TALKING ABOUT

CAPITAL CASES.

>> OH, YOU'RE NOT?

>> MY OPINION THEY REFER TO

APPOINTED COUNSEL AS REGISTRY

COUNSEL BECAUSE THERE IS

REGISTRY, THERE IS ALSO A

REGISTRY FOR APPOINTED COUNSEL.

>> ULTIMATELY IT WAS A

ROTATIONAL SYSTEM. THERE

WAS THE WHEEL, FOR LACK

OF A --.

>> WHAT HAPPENS WHEN YOU CAN'T

HEAR TOO WELL.

>> PERHAPS COUNSEL DOESN'T

ENUNCIATE VERY CLEARLY. IT

DOES MAKE SENSE TO DEAL WITH

THAT.

I THINK THE RULE IS WRITTEN THE

WAY IT IS THERE IS STATUTE THAT

VERY SPECIFICALLY DEALS WITH

PUBLIC DEFENDERS FOR THE FIVE

DCAs THAT HAVE APPELLATE

COUNSEL WILL TAKE ALL OF THE

APPEALS NOT ONLY FROM ALL OF

THE PUBLIC DEFENDERS WITHIN THE

DISTRICT BUT ALSO ALL THE

REGIONAL COUNSEL IN THE

DISTRICT.

THERE'S NO STATUTE THAT I KNOW

OF THAT DEALS WITH WHAT HAPPENS

WITH, WITH THE REGISTRY

ATTORNEYS WE'LL CALL THEM, WITH

THE PRIVATELY --

>> BUT THEY DON'T HAVE TO STAY

ON THE CASE UNTIL THE RECORD IS
TRANSMITTED ALSO?

I THOUGHT ANY ATTORNEY DID?

>> I THINK THEY DO AND I THINK
THAT'S PROBABLY WHY THERE IS NO
STATUTE BECAUSE THE STATUTE,
JUST DEALS WITH REGIONAL
COUNSEL AND PUBLIC DEFENDERS.

ALL OTHER PRIVATE ATTORNEYS
WOULD BE COVERED, WOULD BE A
PRIVATE ATTORNEY JUST LIKE ANY
OTHER PRIVATE ATTORNEY AND THE
SAME RULE HAS TO APPLY.

THEY HAVE TO STAY ON THE CASE
UNTIL, EVEN UNDER THIS, EVEN
UNTIL THE RECORD IS ASSEMBLED.

THE SIMPLE REASON FOR THAT IS
JUST BECAUSE WE'RE SITTING IN
MIAMI-DADE COUNTY.

WE GET APPEALS OUT OF KEY WEST.

IT IS VERY DIFFICULT FOR US TO
GET A RECORD ASSEMBLED OUT OF
THE KEY WEST COURTS.

THEREFORE IF THE LOCAL ATTORNEY
WILL TAKE CARE OF THAT AND THEN

PASS THE CASE TO US.

THAT IS THE POINT OF ALL THIS.

>> SO YOU'RE, AND THE ISSUE

WHETHER THEY'RE PRIVATE

ATTORNEY PAID OR PRIVATE

ATTORNEY APPOINTED THAT'S,

THERE'S NOT AN ISSUE IS THOSE

CASES?

IS THAT THE WHY THE RULE IS --

>> AS EXCEPT AS TO JUSTICE

CANADY POINTED OUT,

PUBLICLY-FUNDED DEFENSE AND --

>> WOULDN'T THERE BE CASES --

>> THIS MIGHT QUALIFY FOR THAT.

>> WHERE YOU HAVE PRIVATELY OF

A POINTED, PUBLICLY-FUNDED

APPOINTED COUNSEL,

PRIVATE COUNSEL AT THE TRIAL

LEVEL WHERE THERE MIGHT NOT BE

NECESSARY AT THE APPELLATE

LEVEL?

>> OH, THAT'S OFTEN WHY,

THAT'S WHY THE WHOLE STATUTE IS

WRITTEN AS IT IS SO IT FUNNELS

EVERYTHING BACK TO THE PUBLIC

DEFENDER.

>> WHY WOULDN'T THAT BE PART OF
THE SAME SCHEME?

>> IT PROBABLY SHOULD BE.

>> PART OF THIS THEY HAVE GOT
TO LET THE TRIAL COURT KNOW
ABOUT THE APPOINTMENT AND FOCUS
ON THE FACT THAT I'M PRIVATE,
THAT I'M PUBLICLY-FUNDED
COUNSEL.

>> THE TRIAL COURT SHOULD KNOW
THAT.

THE TRIAL COURT SHOULD HAVE
BEEN ONE THAT DID THAT.

THE TRIAL COURT SHOULD HAVE
BEEN ONE APPOINTED THEM IN THE
FIRST PLACE.

>> I'M SORRY, I SHOULD HAVE
SAID THE APPELLATE COURT.

>> OH, POINT TAKEN.

>> ALTHOUGH I REALLY DON'T SEE
THAT THERE WOULD BE ANY
IMPEDIMENT TO US ADDING THEM,
DO YOU?

CAN YOU THINK OF ANY REASON WHY

YOU WOULD NOT ADD THE PRIVATELY
APPOINTED BUT COURT-FUNDED.

>> NO, YOUR HONOR ,I CAN NOT IS
THE SIMPLE ANSWER.

>> HOW WOULD WE BEST REFER TO
THEM? CAN YOU --

>> I WOULD USE THE STATUTORY
LANGUAGE.

I THINK IT IS REGISTRY.

IT IS DEFINITELY NOT WHAT WE
COLLOQUIALLY REFER TO THEM AS
BUT I WOULD JUST USE THE
STATUTORY LANGUAGE.

>> WE HAVE THE EXPERT.

SO NOW I THINK THE ANSWER TO
YOUR QUESTION WE SHOULD
PROBABLY PUT THAT IN AS WELL.

THERE IS NO REASON NOT TO.

ARE THERE ANY OTHER QUESTIONS
FROM THE COURT ON ANY OF THE
OTHER RULE PROPOSALS?

IF THERE ARE NOT ANY, THANK YOU
VERY MUCH FOR YOUR TIME.

>> ALL RIGHT.

WE THANK YOU AND WE THANK YOU

AS WELL.

THAT BEING THE LAST CASE ON OUR

DOCKET, THE COURT WILL NOW BE

ADJOURNED.

>> ALL RISE.