

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> AND THE NEXT CASE IS THE,
WELL, IN REFERENCE TO A WHOLE
BUNCH OF RULES.
WE'LL LET YOU GET STARTED.
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
WILLIAM PALMER FROM DAYTONA
BEACH.
I'M CHAIR OF THE ADR RULES AND
POLICY COMMITTEE, THE PETITIONER
IN THIS ACTION.
THE MAIN PURPOSE THAT WE'RE
TRYING TO ACCOMPLISH BY THIS SET
OF RULES IS TO DEAL WITH THOSE
SITUATIONS WHICH HAVE STARTED TO
APPEAR IN TRIAL COURTS WHERE THE
TRIAL COURT HAS THE DISCRETION
TO SEND THE PARTIES TO A VARIETY
OF ADR PROCESSES BEYOND THE ONES
THAT WE HAVE A SET OF RULES AND
PROCEDURES FOR.
WE HAVE A WELL-ESTABLISHED SET
OF RULES AND PROCEDURES FOR
MEDIATION.
WE HAVE THE SAME THING FOR
ARBITRATION.
MORE RECENTLY THIS COURT HAS
ADOPTED SIMILAR RULES FOR
PARENTING COORDINATION.
>> I KNOW, BUT WE DID THAT AFTER
THERE WAS A SPECIFIC SET OF
DEFINITIONS.
WHAT I'M, AND AGAIN, WE SAID IN
ANOTHER CASE WE DON'T KILL THE
MESSENGER BUT WHAT-- EXPLAIN TO
US BECAUSE SEVERAL OF THE
CIRCUITS DIDN'T SEEM TO
UNDERSTAND.
WHAT PRECISELY, GIVE US FIVE
EXAMPLES OF SITUATIONS WHERE
JUDGES ARE REFERRING PARTIES TO
SOMETHING THAT IS NOT COVERED BY
EXISTING PROCESSES BUT WHERE IT
CAN'T BE DEFINED BECAUSE IT'S
TOO GENERAL?
CAN YOU GIVE EXAMPLES OF IT?

>> THERE ARE CERTAIN STATUTORY SYSTEMS LIKE VOLUNTARY TRIAL RESOLUTION WHICH IS PROVIDED FOR IN CHAPTER 44 WHICH THE COURTS CAN SEND FOLKS TO THAT THERE ARE NOT A SET OF RULES AND STANDARDS FOR.

THERE ARE OTHER METHODS OF ADR--

>> IF IT WAS SUMMARY JURY TRIAL THEN WE NEED TO DEAL WITH THAT SEPARATELY BECAUSE THAT'S A VERY, THAT'S TO ME NOT A, I DIDN'T KNOW JUDGES WERE DOING THAT.

BUT IF THEY'RE DOING IT, THEN WE NEED TO HAVE A SET OF RULES TO DEAL WITH SUMMARY JURY TRIALS IF THE PARTIES ARE BEING COMPELLED, BECAUSE TO GO TO SOMETHING THAT WOULD RESOLVE THEIR DISPUTE WITHOUT A JUDGE BUT SO-- WHAT ELSE BESIDES SUMMARY JURY TRIALS?

>> THERE IS EARLY NEUTRAL EVALUATION.

SOME, THERE ARE SOME COMBINATIONS--

>> WHAT IS THAT, EARLY NEUTRAL EVALUATION?

I MEAN, AGAIN, HERE'S THE PROBLEM, NONE OF IT IS DISCUSSED.

LIKE THERE'S SOMETHING VAGUELY OUT THERE THAT AGAIN TWO OF THE CIRCUITS GO, WE DON'T KNOW WHAT YOU'RE TALKING ABOUT, AND I DON'T KNOW, I DON'T KNOW WHAT YOU'RE TALKING ABOUT.

AND HOW DO WE ADOPT A RULE TO WITH SOMETHING THAT IS THAT VAGUE?

SHOULDN'T WE DEAL WITH SPECIFIC TYPES OF SITUATIONS WHERE JUDGES ARE REFERRING AND DEAL WITH THOSE SEPARATELY?

AND MY PREFERENCE WOULD BE TO DO THIS NOT IN AD VERY CHERYL SYSTEM BUT ALL OF US TO GET AROUND A TABLE AND

COLLABORATIVELY TALK ABOUT IT SO THAT WE CAN, YOU KNOW, BECAUSE WE WANT TO DO WHAT'S RIGHT FOR THE COURTS, FOR ADR.

I JUST HAVE TOO MANY QUESTIONS NOW WHAT THIS RULE, THE UNINTENDED CONSEQUENCES.

>> I WOULD SAY A COUPLE THINGS. FIRST, IDEALLY YOU GET TO A POINT WHERE A CERTAIN PROCESS IS BEING USED SUFFICIENTLY ENOUGH THAT IT MAKES SENSE TO CREATE A WHOLE SET OF RULES AND STANDARDS FOR IT, LIKE WAS DONE WITH PARENTING COORDINATION.

AND THAT MAY BE THE ULTIMATE GOAL BUT IF THERE ARE OTHER METHODS THAT ARE BEING USED SPORADICALLY THE OPTIONS ARE EITHER, AS IT STANDS NOW, THERE IS NO STANDARDS OR NO RULES, AS OPPOSED TO SOME GENERAL RULES THAT DEAL WITH SOME BASIC THINGS ABOUT IMPARTIALITY AND CONFLICT OF INTEREST, SOME OF THOSE THINGS THAT ARE IN THE STANDARDS OF CONDUCT AND--

>> SEE, LET ME, MY QUESTION IS ALONG THOSE SAME LINES BUT IT IS EVEN MORE-- YOU HAVE UNDER YOUR DEFINITION OF OTHER ADR PROCESSES, AND YOU HAVE MINI-TRIAL, NEUTRAL EVALUATION, SUMMARY JURY TRIAL, BINDING OR NON-BINDING, VOLUNTARY TRIAL RESOLUTION.

BUT THEN YOU HAVE THESE OTHER THINGS, THAT IS ANY OTHER ADR PROCESS ORDERED BY THE COURT AND ANY OTHER ADR PROCESS AGREED TO BY THE PARTIES AND APPROVED BY THE COURT.

THAT IS SO OPEN-ENDED THAT I, THAT WE REALLY JUST DON'T HAVE ANY IDEA WHAT YOU'RE TALKING ABOUT.

NOW IF THE ONES THAT YOU SPECIFICALLY SAY, NAME ARE THOSE THE ONES THAT ARE ACTUALLY BEING USED YOU SAY SPORADICALLY AROUND

THE STATE?

>> I THINK THE ANSWER IS YES BUT WE'RE NOT SURE.

THERE MAY BE OTHER VARIATIONS ON THAT OR NEW INNOVATIONS THAT COME ALONG THAT THE TRIAL JUDGES HAVE THE RIGHT TO USE CURRENTLY IF THEY CHOOSE TO DO SO.

AND THE IDEA IS, IF A NEW METHOD COMES ALONG AND THE TRIAL COURT HAS THE RIGHT TO SEND FOLKS TO THEM, SHOULD THERE BE SOME BASIC FRAMEWORK OF STANDARDS IN PLACE SO THAT IF THEY DO THAT THERE'S AT LEAST SOME BASICS, OR, DO WE WANT TO LEAVE IT AS IT IS NOW WHICH IS, THERE ARE NO STANDARDS, THERE ARE NO RULES, THERE ARE NO PROCEDURES.

UNTIL IT GETS TO THE POINT WHERE IT IS COMMON ENOUGH TO JUSTIFY AN ENTIRE SET SPECIFIC TO THAT KIND OF PROCEDURE?

>> YOU KNOW, YOU LOOK BACK, YOU LOOK AT CHAPTER 44 AND THERE ARE LIKE MEDIATION AND ARBITRATION AND VOLUNTARY BINDING ARBITRATION IS IN IT AND VOLUNTARY TRIAL RESOLUTION AND EVEN CITIZEN DISPUTE.

UNDER 61 YOU END UP WITH PARENTING COORDINATION.

AND SO, I GUESS TO SOME EXTENT I THOUGHT TRIAL JUDGES WERE, SORT OF BOUND BY THESE KINDS OF THINGS, AND THAT'S WHAT THEY WERE EITHER SENDING PEOPLE TO OR ALLOWING PEOPLE TO CHOOSE FROM. BUT NOW YOU'RE TELLING ME THAT THERE IS A WHOLE OTHER BODY OF DISPUTE RESOLUTION PROCESSES THAT TRIAL JUDGES OR ALLOWING AND OR, ORDERING PLAINTIFF, I MEAN PARTIES TO GO TO?

>> I THINK THAT IF IT-- CERTAINLY NOT A BINDING PROCESS. WE'RE ONLY TALKING ABOUT NON-BINDING PROCESSES.

I THINK THE TRIAL COURTS HAVE INHERENT JURISDICTION TO UTILIZE

NON-BINDING TYPES OF ADR IN AN ATTEMPT TO RESOLVE CASES ON THEIR DOCKET.

I DON'T THINK THERE HAS TO BE A SPECIFIC STATUTE OR RULE IN PLACE BEFORE THEY COULD DO THAT. I THINK CIRCUIT JUDGES COULD SEND FOLKS TO MEDIATION INHERENTLY BEFORE THE WHOLE STRUCTURE WAS--

>> WHAT DO THESE PROCESSES MEAN, SOME OF THEM, AT LEAST I DON'T. SO YOU DON'T THINK THERE IS ANY NEED, EVEN IN THESE GENERAL RULES TO SORT OF DEFINE WHAT THESE TERMS ARE, INCLUDING A TERM LIKE NEUTRAL?

I KNOW YOU SAY YOU DEFINE IT BUT, ANY THIRD PERSON WHO IS IMPARTIAL?

WHAT DOES THAT MEAN?

I COULD JUST PICK SOMEONE OFF THE STREET AND THEY CAN DO ONE OF THESE OTHER ADR PROCESSES?

>> WELL, ONE OF THE PROBLEMS INHERENT IN TRYING TO SET UP SORT OF A GENERAL BASE SYSTEM TO DEAL WITH LOTS OF CONTINGENCIES IS INHERENTLY IT HAS GOT TO BE SOMEWHAT BROAD OR VAGUE BECAUSE IT COULD BE APPLIED IN DIFFERENT SCENARIOS WHERE DIFFERENT THINGS APPLY.

IF YOU USE AN ADR SYSTEM WHERE YOU'RE ASKING SOMEBODY TO MAKE AN EARLY EVALUATION, FOR EXAMPLE, AS OPPOSED TO A MEDIATOR WHO IS NOT ALLUDED TO EVALUATE, WELL THE DEFINITIONS MAY BE A LITTLE DIFFERENT AND THE WHOLE PURPOSE OF THIS WAS TO TRY AND COME UP WITH A STRUCTURE TO SAY, WHEN IT GETS TO THE POINT WHERE IT DESERVES ITS OWN SET OF RULES THAT'S GREAT BUT UNTIL THAT TIME SHOULD THERE AT LEAST NOT BE SOMETHING IN PLACE TO PROVIDE SOME REAL BASIC FRAMEWORK FOR IT?

>> SO WE DON'T NEED TO EVEN KNOW

IN THESE RULES WHAT AN EARLY EVALUATION, WHAT IT MEANS? OR EVEN, YOU KNOW, THE ONES, THE ONES THAT YOU'VE ACTUALLY SPECIFICALLY DELINEATED, I MEAN WE DON'T NEED IN THE RULES TO DEFINE WHAT A MINI-TRIAL IS OR THE NEUTRAL EVALUATION? BECAUSE I'M NOT SURE WHAT A NEUTRAL EVALUATION MEANS BUT, MAYBE THE PARTIES OUT THERE WHO DO THESE ALTERNATIVE DISPUTES KNOW WHAT IT IS.

>> I DON'T KNOW THAT IN THIS FRAMEWORK OF, LET'S HAVE SOME BASICS THAT WILL APPLY ACROSS THE BOARD THAT IT IS NECESSARY TO THEN DESIGNATE EVERY SINGLE POSSIBILITY AND DEFINE THAT AND SHOW HOW THAT APPLIES.

THE WHOLE PURPOSE OF IT WAS TO HAVE THIS GENERAL FRAMEWORK.

>> WE'RE DOING THIS, SEE, I'M TRYING TO FIGURE OUT WHO WE'RE TRYING TO PROTECT BECAUSE I'M LOOKING AT THE COMMENTS FROM THE SIXTH CIRCUIT AND THE CHIEF JUDGE AND THEY'RE UNCLEAR THAT ABOUT THE AUTHORITY TO APPROVE THE PARAMETERS OF THE ADA PROCESS.

MY OTHER CONCERN, BY US PASSING A RULE AND NOT REALLY KNOWING WHAT PROCESSES IT COVERS, WE'RE SOMEHOW PUTTING OUR STAMP OF APPROVAL ON SOMETHING AS OPPOSED TO A JUDGE REFERS PARTIES AND AGAIN, IF IT IS, BOTH PARTIES AGREE TO SOMETHING, THEY CAN JUST ABOUT AGREE TO ANYTHING. THEY DON'T NEED A JUDGE'S APPROVAL BUT SOMETHING THE JUDGE IS SAYING YOU DO THIS, THEN THEY GO NO.

WE GET A CASE AND GOES ON APPEAL AND WE LOOK AT IT, OR WE NOW HAVE THAT SPECIFIC THING.

BUT, BY US PUTTING THIS TO A RULE, IT SEEMS TO ME THAT WE'RE SAYING, YES, THE JUDGE DOES, IS

ANSWERING THE QUESTION, YOU'RE SAYING THEY DO HAVE INHERENT AUTHORITY TO DO ANYTHING IS REFERRING JUDGE-- PARTIES TO SOME TYPE OF VOLUNTARY PROCESS. THEY CAN DO IT.

AND I DON'T THINK THAT WE DO THAT IN A RULES CASE DECIDE THAT THEY HAVE GOT THIS BROAD, INHERENT AUTHORITY AND JUDGE McGRADY IN THE SIXTH CIRCUIT AND THE EIGHTH CIRCUIT DON'T SEEM TO THINK, THEY'RE NOT COMFORTABLE WITH THIS RULE. SO WHO ARE WE PROTECTING IS THE QUESTION?

>> I GUESS THE PURPOSE IS TO PROTECT THE PARTY WHO IS ARE GOING TO BE GOING INTO THESE DIFFERENT ADR PROCESSES. IF YOU HAVE A TRIAL JUDGE OUT THERE WHO CHOOSES TO USE AND REFER THEM TO A PROCESS WHICH THERE ARE NO STANDARDS OR RULES CURRENTLY IN EXISTENCE, ARE THE PARTIES BETTER OFF IF THERE ARE SOME AT LEAST BASE FRAMEWORK THINGS ABOUT IMPARTIALITY, ETCETERA.

>> WHAT ABOUT THE QUALIFICATIONS OF THE PERSON WHO IS GOING TO BE LEADING, FOR WONT OF A BETTER WORD THIS ADR PROCESS? I MEAN THERE'S NOTHING IN HERE ABOUT WHAT QUALIFIES YOU TO BE A NEUTRAL.

I MEAN WE HAVE ALL THESE RULES ABOUT BEING A MEDIATOR AND BEING AN ARBITRATOR.

NOW EVEN A PARENTING COORDINATOR BUT A NEUTRAL DOESN'T HAVE TO HAVE ANY QUALIFICATIONS?

>> WELL, IT'S PURPOSEFUL THERE IS NOT A SET OF QUALIFICATIONS IN HERE BECAUSE THE QUALIFICATIONS COULD BE DIFFERENT FOR DIFFERENT PROCESSES THAT MIGHT FIT UNDER THESE GENERAL RULES AND WE ARE LOOKING AT IT IN COMPARISON TO

THE CURRENT SYSTEM WHICH IS--

>> WHO WOULD KNOW THAT?
WHO WOULD KNOW WHAT THOSE
QUALIFICATIONS WOULD BE?
WHAT QUALIFICATIONS YOU WOULD
NEED?

>> WELL I THINK THE PARTIES
COULD AGREE OR THE TRIAL JUDGE
WHO DECIDES TO SEND FOLKS TO A
FORM OF ADR THAT IS NOT COVERED
BY THE RULES THAT HAVE A SET OF
QUALIFICATIONS.

COULD PROVIDE THOSE
QUALIFICATIONS AND WE LOOK AT IT
IN THE CONTEXT, WE'RE NOT
COMPARING THIS TO WHAT THE
MEDIATORS HAVE.

WE'RE SAYING, THIS, THESE SETS
OF RULES VERSUS HAVING NOTHING
BECAUSE RIGHT NOW WE HAVE
NOTHING.

SO IF A JUDGE NOW SENDS FOLKS TO
AN ALTERNATIVE SYSTEM OF ADR,
THERE IS NOT SOME MINIMUM SET OF
QUALIFICATIONS FOR THAT.

>> ARE WE TALKING ABOUT, CAN WE
ELIMINATE FAMILY CASES?
THAT IS WHERE I WOULD BE MOST
CONCERNED.

THAT IS WHAT THE SIXTH CIRCUIT
ALSO TALKS ABOUT.

I KNOW THE CIVIL RULES PEOPLE
ARE HERE.

BUT I'M LESS CONCERNED ABOUT
THEM.

I THINK THERE ARE A LOT OF
ISSUES THAT ARISE IN FAMILY
CASES AND I'M SORT OF SURPRISED
OUR FAMILY COURT STEERING
COMMITTEE DOESN'T LOOK AT IT.

>> WE DO HAVE SOMEBODY FROM THE
FAMILY RULES.

>> BUT THAT IS A BROADER KIND OF
LOOKING AT THE WHOLE SPECTRUM.
SO, WE HAVE USED UP YOUR TIME.
AGAIN, I REALIZE THAT YOU'RE
HERE TO DO WHAT'S BEST FOR
MEDIATION AND ARBITRATION AND
ADR.

SO AS, PLEASE DON'T INTERPRET

THE QUESTIONS AS BEING HOSTILE TO YOU.

>> I UNDERSTAND.

>> BY THE WAY YOU GOT A WINDFALL ON TIME.

CLOCK DIDN'T START TO RUN UNTIL TWO MINUTES AFTER YOU WERE UP THERE.

>> JUST WHAT I NEEDED.

>> SNEAK THAT IN.

>> MAY IT PLEASE THE COURT.

I'M ROBERT MERLIN.

I'M A COLLABORATIVE FAMILY LAW ATTORNEY FROM CORAL GABLES.

I'M APPEARING INDIVIDUALLY AND ON BEHALF OF THE FAMILY LAW RULES COMMITTEE.

I'M PREPARED TO BASICALLY SUPPORT THE COMMENTS THAT I MADE BUT I THINK IT'S APPROPRIATE FOR ME TO SOMEWHAT EXPOSE MYSELF TO THE QUESTIONS THAT WERE ASKED BY JUSTICE PARIENTE AND QUINCE.

SO AN EXAMPLE WOULD BE THE COLLABORATIVE LAW PROCESS.

I APPEARED BEFORE THIS COURT FOUR YEARS AGO AND ARGUED IN FAVOR OF THE ADOPTION OF COLLABORATIVE LAW RULES.

THIS COURT RULED THAT IT WAS PREMATURE TO DO THAT.

YOU WANTED THE LEGISLATURE TO ACT FIRST.

SO NOW COLLABORATIVE IS OUT THERE.

I KNOW OF AT LEAST ONE CASE WHERE A JUDGE STRONGLY SUGGESTED TO THE ATTORNEYS INSTEAD OF HANDLING THEIR FAMILY CASE BY LITIGATING THAT THEY USE THE COLLABORATIVE LAW PROCESS.

THERE ARE NO STANDING RULES NOW, EVEN THOUGH WE WORKED ON THEM, AND WE'RE PREPARED TO COME BACK HERE ONCE THE LEGISLATURE ACTS, THERE IS NO STANDARD FOR A JUDGE TO USE TO REFER PARTIES TO THE COLLABORATIVE LAW PROCESS.

THE PARTIES--

>> SO IS THAT-- SO NOW, AGAIN

YOU AND I HAVE HAD DISCUSSIONS
ABOUT THIS OUTSIDE OF THE
COURTROOM.

>> RIGHT.

>> ABOUT COLLABORATIVE LAW.
YOU KNOW MY CONCERNS IN MANY
CASES ALTHOUGH I CERTAINLY AGREE
WE SHOULD AVOID AT ALL COSTS A
HIGH CONFLICT DISSOLUTION OF
MARRIAGE, THAT I'M CONCERNED
WITH THE COSTS OF A
COLLABORATIVE DIVORCE.

THEN IF IT FAILS, WHAT HAPPENS?
BUT IF WE REJECTED SPECIFIC
RULES DEALING WITH COLLABORATIVE
DIVORCE AND REFERRAL TO THOSE BY
A JUDGE, HOW IS IT THAT NOW, AND
I APPRECIATE YOUR CANDOR BIT,
NOW WE'RE GOING TO APPROVE
SOMETHING VAGUE THAT WILL ALLOW
COLLABORATIVE LAW PROCESSES TO
COME INTO PLAY?

AREN'T WE BETTER OFF FOR YOU TO
COME BACK WITH THE RULES THAT
YOU HAD PROPOSED AND SAID THE
LEGISLATURE HAS NOT ACTED BUT,
HERE ARE THE STATISTICS, HOW
OFTEN IT IS BEING USED AND HERE
IS YOUR CONCERNS AND DEAL WITH
COLLABORATIVE DIVORCE AS A
SEPARATE THING AS OPPOSED TO IN
THIS UMBRELLA, THIS OF A TENT
THAT IS UNDEFINED?

>> I WAS NOT PART OF ADR RULES
AND POLICY COMMITTEE.

SO I WASN'T INVOLVED IN THESE
NEGOTIATIONS.

I THINK IT'S RECOGNITION THAT
ADR PROCESSES ARE BEING CREATED
FAIRLY RAPIDLY.

SO NOW IT HAS BEEN FOUR YEARS
SINCE I WAS HERE.

WE'RE STILL NOT BEFORE THE COURT
WITH SPECIFIC RULES BUT MORE AND
MORE PEOPLE ARE USING THIS
PROCESS.

AND THE COURT HAS AN OPPORTUNITY
TO SAY, WE RECOGNIZE ADR IS
HAPPENING.

WE RECOGNIZE IT IS EVER

DEVELOPING.

>> YOU SAY THIS PROCESS.
SO NOW YOU'RE TALKING ABOUT
COLLABORATIVE DIVORCES.
WHAT OTHER, TWO CIRCUITS, SOME,
IT TAKES A LOT TO FILE A
COMMENT.

SO I DON'T KNOW HOW THE OTHER 18
CIRCUITS, MAYBE WE NEED INPUT
FROM THE CONFERENCE OF CIRCUIT
COURT JUDGES TO TELL US HOW MUCH
THIS IS BEING USED OR MAYBE WE
NEED THE ADR COMMITTEE TO DO A
SURVEY SO WE KNOW WHAT WE'RE
TALKING ABOUT.

IS IT BEING USED IN 20 CIRCUITS?
IN ONE CIRCUIT?

I IN GOOD FAITH CAN NOT APPROVE,
AT LEAST JOIN IN VOTING FOR
SOMETHING WHERE I'VE GOT SO MANY
QUESTIONS VERSUS, YOU KNOW YOU
COME BACK ON COLLABORATIVE LAW
WITH MORE INFORMATION.

MAYBE WE'VE GOT TO TAKE ANOTHER
LOOK AT IT.

SO DO YOU SEE THE PROBLEM WITH
WHAT, WE REJECTED THE SPECIFIC
BECAUSE THERE WAS NO LEGISLATIVE
AUTHORITY BUT NOW WE'RE GOING TO
APPROVE A GENERAL THAT MIGHT
INCLUDE OTHER PROCESSES THAT
WE'RE UNAWARE OF?

>> WELL, I THINK THE COURT HAS
AN OPPORTUNITY TO FURTHER
PROMOTE ADR WHICH THIS COURT HAS
A LONG HISTORY OF DOING, AND
JUST GIVE GENERAL GUIDELINES TO
THE JUDGES AND PARTIES TO
PROMOTE IT AND SET CERTAIN
STANDARDS LIKE THERE HAS TO BE A
NEUTRAL AND WHO IS GOING TO TAKE
CARE OF THEIR FEES FOR INSTANCE,
WHICH IS PART OF THE RULES.
I THINK I HAVE OVERSTAYED MY
TIME.

>> MAY IT PLEASE THE COURT.
MY NAME IS GREG BROWN.
I'M WITH HILL, WARD, HENDERSON
IN TAMPA, SPEAKING ON BEHALF OF
THE CIVIL PROCEDURE RULES

COMMITTEE.

I CHAIRED THE SUBCOMMITTEE THAT ANALYZED THE PROPOSED RULES.

OUR BIG C COMMITTEE VOTED 43-0 TO FILE A COMMENT WHICH OBJECTS TO THE RULES AS FORM.

>> I DON'T THINK YOU EVER HAD A UNANIMOUS ANYTHING.

>> IT DOESN'T HAPPEN VERY OFTEN, THAT'S CORRECT, YOUR HONOR.

>> NOT PLAINTIFF OR DEFENDANT.

>> BUT WE, AND I HOPE THAT OUR COMMENT IS FAIRLY CLEAR AND I THINK IT IS CONSISTENT WITH SOME OF THE OTHER COMMENTS THAT WERE SUBMITTED.

WE THINK THAT THERE ARE SOME FAIRLY SIGNIFICANT MECHANICAL FLAWS TO THE RULES AS PROPOSED ON TOP OF SOME OF THE SUBSTANTIVE ISSUES THAT JUSTICES QUINCE AND PARIENTE MENTIONED-- PARIENTE.

WE DON'T BELIEVE THE ISSUES ARE RESOLVED TO DRAFTING OF THOSE RULES WITH ALL DUE RESPECT OF THE ADR COMMITTEE ON A VERY NOBLE PURSUIT.

AND IT APPEARS THAT THE RULE, SORT OF MANIFESTS SOME INDECISION IN THE PURPOSE OF THE RULE.

IS THE PURPOSE OF THE RULE TO OFFER THE PARTIES MORE SELF-DETERMINATION WHEN IT COMES TO SELECTING ADR PROCESSES?

AND IF SO, YOU MAY CONTEMPLATE A FAIRLY SIMPLE RULE THAT WOULD SORT OF AUTHORIZE OR EMPOWER PARTIES TO STEP OUTSIDE OF THE COURT WHEN IT COMES TO RESOLVING THEIR DIFFERENCES.

ON THE OTHER HAND--

>> AND ON THAT, YOU'VE GOT A JUDGE, YOU HAVE GENERAL, YOU HAVE GOT MASTERS FOR DISCOVERY. YOU'VE GOT-- WHAT IS IT, SO WHAT ELSE IN THE CIVIL ARENA IS LACKING.

>> WELL, YOUR HONOR, WE'RE NOT

CERTAIN.

AGAIN, WITH THIS, IT APPEARS THAT THE EFFORT TO DEFINE THE PROCESS HERE IS BY A NEGATIVE DEFINITION.

IT IS IN EFFECT EVERYTHING THAT IS NOT EITHER MEDIATION OR ARBITRATION.

SO IT IS UNCLEAR TO US WHAT EXACTLY THOSE PROCESSES ARE BUT, FOR EXAMPLE THE AAA WEBSITE IDENTIFIES PROCESSES OTHER THAN WHAT WE WOULD RECOGNIZE AS A TRADITIONAL ARBITRATION WHERE THERE IS PEER REVIEW AND THOSE SORTS OF THINGS.

I CANDIDLY NOT CERTAIN WHAT EXACTLY THEY ARE BUT AGAIN IT MAY BE THERE COULD BE A RULE OF CIVIL PROCEDURE THAT ALLOWS PARTIES, AGAIN, TO, TO, WITH THE APPROVAL OF THE COURT, COME UP WITH A BINDING OR NONBINDING ADR PROCESS THAT WOULD SUIT A PARTICULAR CASE.

HOWEVER, WHAT THIS RULE APPEARS TO DO IS GIVE COURTS THE AUTHORITY TO ACTUALLY MANDATE A PROCESS THAT IS NOT MEDIATION OR ARBITRATION.

AND THAT'S WHERE A REAL FUNDAMENTAL FLAW COMES IN THIS RULE, ESPECIALLY WHEN YOU LOOK AT THE LAUNDRY LIST OF IDENTIFIED ADR PROCESSES AND SOME OF THEM CARRY THE TERM, BINDING WITH THEM, WHICH WOULD, ON ITS PLAIN READING SUGGEST THAT A COURT COULD MANDATE A BINDING EXTRA JUDICIAL PROCESS IN A CASE WHERE THE PARTIES MAY HAVE REQUESTED A JURY TRIAL AND THE LIKE.

FOR THOSE REASONS WE WOULD ASK THE COURT REJECT THE PROPOSED RULES.

THANK YOU.

>> GOOD MORNING.

I'M BOB HOYLE FROM BRADENTON ON HERE ON BEHALF OF THE

ALTERNATIVE DISPUTE RESOLUTION
SECTION OF THE FLORIDA BAR.

>> IF YOU COULD SPEAK UP AND
CLOSER TO THE MIC PLEASE.

>> I COULD SAY SOMETHING ABOUT
BEING VERTICALLY CHALLENGED,
JUSTICE I WILL SAVE THAT
COMMENT.

THANK YOU.

I WOULD LIKE TO FOLLOW UP ON A
COUPLE COMMENTS MADE ALREADY
WITH REGARD TO THE NOT ONLY LACK
OF DEFINITION FOR THESE OTHER
ADR PROCESSES BUT WITH REGARD TO
THE QUALIFYING OF THE NEUTRALS.
IT IS GOING TO CREATE A PROCESS
OR MODEL LIKE THIS I THINK YOU
HAVE TWO QUESTIONS THAT NEED TO
BE ANSWERED.

ONE IS--

>> LET ME ASK YOU.

>> YES.

>> THERE ARE THREE DIFFERENT
THINGS HERE.

WE HAVE THE REGULAR, WE HAVE THE
GENERAL RULES FOR ANY ADR
PROCESS, HOW WOULD YOU CONDUCT
IT, YOURSELF.

THEN WE HAVE THE CIVIL SECTION
AND THEN WE HAVE THE FAMILY
SECTION.

SO, IF JUDGES ARE IN FACT DOING
OTHER ADR PROCESSES.

SHOULDN'T AT LEAST THE GENERAL
RULES ABOUT CONDUCT AND ALL OF
THAT, SHOULDN'T, AREN'T THOSE,
WOULDN'T THAT BE A GOOD THING?

>> ARE YOU ASKING THEN IF THERE
SHOULD BE GENERAL RULES?

>> RULES UNDER 16?

WOULDN'T THOSE BE A GOOD THING
IF JUDGES ARE IN FACT SENDING
PEOPLE TO OTHER FORMS OF
ALTERNATIVE DISPUTE OTHER THAN
MEDIATION AND ARBITRATION AND
THOSE THAT ARE FOUND UNDER THE
STATUTES?

>> WELL I WOULD SUBMIT THAT IF
YOU TAKE IT IN THAT FASHION, THE
ANSWER WOULD BE YES.

BUT I DON'T THINK YOU CAN LOOK AT IT IN A VACUUM WITHOUT ALSO TAKING INTO CONSIDERATION THE FACT THAT THE WORD NEUTRAL IS NOT SPECIFICALLY DEFINED BY WAY OF TRAINING OR QUALIFICATIONS OR CERTIFICATION.

NOR, ARE THE PROCESSES SPECIFICALLY DEFINED AS WELL. SO I THINK ONCE YOU GET OVER THAT HURDLE, PERHAPS THOSE RULES COULD BE APPLIED IN, ALMOST OXYMORONIC TO SAY IN A GENERAL FASHION BECAUSE IF YOU'RE GOING TO SPECIFICALLY DEFINE THE RULES THEN THE PARTIES ARE GOING TO KNOW WHAT IT IS THEY'RE GOING TO BE INVOLVED IN.

I'M NOT SURE THAT IS RESPONSIVE BUT I AGREE WITH YOU THAT, IF JUDGES ARE DOING THAT, THEN, THEY ARE IN FACT ASSIGNING PARTIES OR MANDATING THEM TO THESE UNDEFINED PROCESSES. THEIR, FOR LACK OF A BETTER TERM, THEY'RE BEING REQUIRED TO CHOOSE A GAME WITHOUT KNOWING WHAT THE RULES, WHAT THE RULES ARE.

SO THAT IS, I HOPE THAT WAS RESPONSIVE TO YOUR QUESTION, JUSTICE?

>> YEAH.

>> BASICALLY YOU'RE SAYING IF WE'VE GOT A PARTICULAR PROCESS BEING USED BY MORE THAN ONE ERRANT JUDGE, AND I THINK THE POINT BEING WHO IS THIS TO PROTECT?

IS IT TO GIVE THE JUDGES PROTECTION?

IS IT TO GIVE, IS IT TO HELP THE PARTIES OR IS IT TO HELP THE PEOPLE THAT ARE GAINING LUCRATIVELY FROM THE REFERRALS. SO THAT IS THREE POSSIBLE, NOT TO SAY, THAT, MAKING MONEY IS INHERENTLY BAD BUT IT IS, ONE OTHER POSSIBLE INTERESTED PARTY. SO, IT ALL, SEEMS TO ME, WE NEED

TO COME UP WITH, HERE ARE THE ONE, TWO OR THREE PROCESSES THAT ARE BEING USED ON MORE THAN DISCUSS A OCCASIONAL BASIS. AND, THEN TRY TO FIT THE, THOSE IN LIKE WE DID FOR PARENTING COORDINATION.

WOULD THAT BE HOW YOU SEE THIS GOING?

>> YES.

I BELIEVE THAT IF IN FACT THESE OTHER PROCESSES ARE BEING USED OUT THERE, BE IT EARLY NEUTRAL EVALUATION, MINI-TRIAL, VOLUNTARY TRIAL RESOLUTION OR SUMMARY JURY TRIALS, THEY NEED TO BE SPECIFICALLY DEFINED. THEY NEED TO BE SET OUT IN LOCAL COURT RULES OR SOME GENERAL FASHION GENERAL RULES BY STATUTE.

THE PERSON CONDUCTING IT THE PUBLIC NEEDS TO KNOW THIS PERSON IS CERTIFIED, QUALIFIED, AND COMPETENT TO BE CARRYING ON THIS PARTICULAR PROCESS.

>> IN THIS ISSUE OF, ARE THERE SITUATIONS WHERE JUDGES ARE SAYING THAT YOU IN A CIVIL CASE HAVE TO GO TO A SUMMARY JURY TRIAL?

NOT SUMMARY, A SUMMARY TRIAL?

>> I CAN ONLY SPEAK FOR MANATEE AND SARASOTA COUNTIES.

I HAVE NOT SEEN THAT.

THERE IS A, THERE IS AN AUTOMATIC ORDER THAT COMES OUT THAT'S OUTLINED IN 1.700 THAT STATE HAS BEFORE A TRIAL IS SET, PARTIES HAVE TO CONDUCT A MEDIATION.

THAT IS JUST PAR FOR THE COURSE. I WILL TELL YOU I HAVE NOT SENOR HAVE I HEARD OF ANY JUDGE IN OUR CIRCUIT REQUIRING EARLY NEUTRAL EVALUATION, A SUMMARY JURY TRIAL IS A DIFFERENT CREATURE THAT NOBODY KNOWS ABOUT.

AND A MINI-TRIAL.

I HAD TO LOOK THOSE UP ONLINE

QUITE HONESTLY, JUSTICE.
SO, WHERE I AM, IT'S NOT BEING
USED TO THE BEST OF MY
KNOWLEDGE.

THE OTHER LARGER CIRCUITS,
PERHAPS IT IS.

THAT IS NOT TO SAY THAT THE
PARTIES CAN NOT VOLUNTARY USE
THEIR RIGHT OF
SELF-DETERMINATION TO ASK THE
COURT TO DO ONE OF THOSE
PROCESSES.

ANOTHER PROBLEM WE HAVE WITH THE
RULES AS DRAFTED IS THAT IN
1.840 IT APPEARS TO SAY THAT THE
TRIAL JUDGE CAN ISSUE AN ORDER
REQUIRING THE PARTIES TO
PARTICIPATE IN ONE OF THE THREE
OTHER ADR PROCESSES THAT ARE
IDENTIFIED, OR SOMETHING THAT
THE PARTIES AGREE TO AMONG
THEMSELVES.

AT THE LAST PART OF THAT RULE,
IT SAYS THAT IN THE ALTERNATIVE,
A TRIAL JUDGE CAN MANDATE WHAT
THEY'RE GOING TO DO.

WE HAVE A PROBLEM WITH THAT
BECAUSE IT DENIES THE PARTIES
THE RIGHT OF SELF-DETERMINATION.
THE PARTIES CAN NOT CHOOSE
EITHER MEDIATION OR ARBITRATION
AS AN ALTERNATIVE TO RESOLVE
THEIR DISPUTE.

AND--

>> ONE OF THE COMMENTS MADE SAID
SOMETHING TO THE EFFECT THAT THE
FALL BACK WOULD BE TO SEND THEM
TO MEDIATION?

DO YOU AGREE WITH THAT?

>> WELL, AS THE RULES ARE
DRAFTED, IT'S MORE--

>> RULES DON'T SAY THAT, AS
THEY'RE DRAFTED.

BUT I BELIEVE THERE WAS A
COMMENTATOR THAT SAID THERE
SHOULD BE ALTERED TO REQUIRE
MEDIATION AS THE FALL BACK.

>> WELL, I WOULD HAVE NO PROBLEM
WITH THAT.

I WOULD SEE NO ISSUE WITH THAT,

IF THAT WAS INCORPORATED IN.
BUT AGAIN, IT IS MORE OF A
MANDATED PROCESS AS IT IS, TO
THESE UNDEFINED OTHER ADR
PROCESSES.

ANOTHER ISSUE THAT WE SEE WITH
REGARD TO THE RULES AS DRAFTED,
A FUNDAMENTAL PART OF ADR, IS
THE IMMUNITY ISSUE, THAT BOTH
MEDIATORS AND ARBITRATORS ENJOY
BY THE STATUTE.

THERE IS NO PROVISION FOR THE
IMMUNITY IN THIGHS PARTICULAR
RULES.

WE WOULD SUBMIT THAT BEING A
BASIC CONCEPT OF ADR IS NOT
CONSISTENT WITH THE--

>> SEEMS TO ME IF YOU DON'T HAVE
ANY STANDARDS OR QUALIFICATIONS
WHY WOULD WE GIVE IMMUNITY TO
PEOPLE THAT WE HAVE NO IDEA WHAT
KIND OF QUALIFICATIONS THEY
HAVE?

>> THAT WOULD BE A VERY GOOD
POINT TO BACK UP WHAT I'M SAYING
HERE.

IF YOU DON'T HAVE ANY
QUALIFICATIONS, HOW CAN YOU
DICTATE OR DETERMINE IF THEY
HAVE DONE ANYTHING, YOU KNOW,
INCORRECT OR, OR OTHERWISE?
FINAL POINT TO BE MADE--

>> GO AHEAD AND WRAP UP.

>> FINAL POINT TO BE MADE IS THE
CONFLICT OF INTEREST RULES.
BASICALLY TRACKS 10.340 WHICH
STATE HAS THERE IS DISCLOSURE.
THERE IS A POSSIBILITY OF WAIVER
AND THERE CAN BE A CLEAR
CONFLICT OF INTEREST FOR WHICH
THERE CAN BE NO WAIVER.

THE PROBLEM WITH THAT IS, IS
THAT, THERE IS NO DEFINITION OF
A CLEAR CONFLICT OF INTEREST.
IF THERE IS A CLEAR CONFLICT,
THE PROCESS SHOULD NOT OCCUR,
AND WE FEEL LIKE THERE NEEDS TO
BE ADDRESSED IN THE RULES, SO
THAT THE PARTIES KNOW,
BEFOREHAND, THAT BY THE

DISCLOSURE, EXACTLY WHAT SET OF CIRCUMSTANCES WOULD CONSTITUTE A CLEAR CONFLICT AND THEREBY PROHIBIT THE PROCESS FROM OCCURRING.

ON BEHALF OF THE SECTION, AGAIN WE WOULD REQUEST THAT THE RULES AS DRAFTED NOT BE ADOPTED BY THE COURT.

I APPRECIATE YOUR TIME.
THANK YOU.

>> THANK YOU, SIR.

>> JUDGE PALMER.

>> LET ME ADDRESS A COUPLE OF SPECIFIC QUESTIONS, JUSTICE PARIENTE.

YOUR QUESTION OF WHO THESE ARE MEANT TO PROTECT, I THINK IS CLEARLY GUIDED TOWARDS THE PROTECTION OF CONSUMERS, THE FOLKS ORDERED TO THESE PROCESSES.

IF YOU LOOK, WE HAVE TWO SECTIONS.

WE HAVE STANDARDS OF PROFESSIONAL CONDUCT AND WE HAVE SOME PROPOSED CIVIL RULES TO IMPLEMENT THEM AND SOME PROPOSED FAMILY RULES TO IMPLEMENT THEM. THE STANDARDS OF PROFESSIONAL CONDUCT DEAL WITH THINGS LIKE IMPARTIALITY, MISREPRESENTATIONS, CONFLICTS, PRIVACY, MARKETING PRACTICE, ETCETERA.

I THINK ALL OF THESE THE FOCUS IS ON THE CONSUMERS.

SO IF--

>> IF THERE ARE LAWYERS BEING REFERRED TO, YOU'VE GOT THE CODE OF PROFESSIONAL CONDUCT.

IF WE'RE, I WOULD IMAGINE, IF IT IS A LICENSED SOCIAL WORKER, THERE ARE, RIGHT, THERE ARE STANDARDS WITHIN THE, THE PROFESSION.

>> THERE MAY VERY WELL BE PROFESSIONAL STANDARDS FOR SOME OF THE FOLKS.

THESE WOULD BE REFERRED TO.

WE DON'T KNOW WHO ALL THEY MIGHT BE REFERRED TO.

>> THAT'S THE PROBLEM.

THIS GOES BACK TO IT.

WE HAVE-- ARE WE SAYING THAT THERE ARE JUDGES OUT THERE WHO ARE, AGAIN, UNDEFINED, REFERRING PARTIES IN UNDEFINED KINDS OF CASES TO SOMETHING THAT IS BENEFICIAL TO THOSE PARTIES BUT, REALLY THE PARTIES ARE NOT PROTECTED?

AND IT IS LIKE, WHERE, WOULD JUST BE REALLY HELPFUL, AND AGAIN, YOU SEE WHERE THIS ARGUMENT IS GOING ANYWAY, TO HAVE A SURVEY OF THE CIRCUITS TO FIND OUT WHAT IT IS THAT IS GOING ON AND THEN TRY TO DRILL DOWN?

YOU KNOW MR. MERLIN MAY BE RIGHT, WE HAVE TO GO BACK TO LOOK AT PARENTING, COLLABORATIVE DIVORCE BECAUSE THAT'S A WHOLE--

>> I HAVE A WHOLE ISSUE WHETHER COLLABORATIVE DIVORCE WOULD BE ADR PROCESS AT ALL.

>> THERE YOU HAVE IT.

NOTHING IS, NOTHING IS, YOU WOULDN'T EVEN THINK IT GOES UNDER THIS RULE?

TOO RIGHT.

>> BUT YOU SEE THAT PROBLEM? I MEAN MR. MERLIN THINKS IT DOES.

YOU GO, IT IS NOT MEANT FOR THAT.

>> AS A CONCRETE EXAMPLE, FOR EXAMPLE, CHAPTER 44 ALLOWS PARTIES, THE COURTS TO USE VOLUNTARY TRIAL RESOLUTION, ALL RIGHT?

IF A JUDGE DECIDES TO USE THAT STATUTORILY AUTHORIZED PROCESS CURRENTLY, THERE ARE NO STANDARDS THAT GO TO THAT, TO THAT PROCESS.

ONE OF YOUR QUESTIONS--

>> THAT WOULD BE A CIVIL RULES

THING, SHOULDN'T WE GET TOGETHER WITH THE CIVIL RULES COMMITTEE TO SEE IF THAT IS BEING USED? LET THEM COME UP WITH A RULE WITH YOU THAT WOULD ADDRESS THAT?

, SO IT ISN'T ABUSED.

ISN'T REALLY THE ISSUE OF PROTECTING PARTIES THERE. IT IS THAT, YOU KNOW, PARTIES, IF THEY DON'T WANT TO HAVE TO GO THROUGH ANOTHER TRIAL, I MEAN THAT IS AN EXPENSE TO THE PARTIES.

I DON'T SEE HOW IT PROTECTS THEM TO HAVE A RULE THAT WOULD ACTUALLY SANCTION SOMETHING THAT THEY MIGHT NOT WANT, LIKE A VOLUNTARY TRIAL.

>> THE PROCESS IS ALREADY SANCTIONED.

THE TRIAL JUDGE CAN ALREADY USE IT.

THE QUESTION IS, IF THE PARTIES ARE GOING TO BE SENT TO THAT, DO THEY HAVE MORE PROTECTION IF WE HAVE SOME BASIC THINGS LIKE THIS STANDARD OF PROFESSIONAL CONDUCT THAT WOULD APPLY, OR DO THEY HAVE NO PROTECTIONS BECAUSE THERE IS NOTHING IN PLACE IS?

>> I WOULD SAY THE EASIER WAY TO DEAL WITH THAT WOULD BE TO COME UP WITH THAT TYPE OF A SITUATION, A VOLUNTARY TRIAL. YOU WOULD SAY THEY HAVE TO BE REFERRED TO EITHER APPROVED SUPREME COURT MEDIATOR OR SENIOR, FORMER JUDGE OR SOMETHING.

I MEAN NOT ANYBODY IN THE WORLD TO CONDUCT A TRIAL THAT MIGHT BE, COSTLY TO THE PARTIES. AND SO, ANYWAY, I THINK YOU ARE HEARING MY POINT.

>> I, THE BOTTOM LINE FROM MY STANDPOINT IS, ULTIMATELY YOU HAVE PROCESSES THAT MAY GET TO THE POINT WHERE IT MAYBE SENSE ANSWER IS WOULDN'T A SPECIFIC

RULE BE BETTER.
BUT IN A VACUUM UNTIL IT GETS TO
THAT POINT, ARE YOU BETTER OFF
WITH SOMETHING LIKE THIS WITH
STANDARDS OF PROFESSIONAL
CONDUCT OR A TOTAL VACUUM WHERE
THERE IS NOTHING OUT THERE AND
MY SUGGESTION IS THIS IS BETTER
UNTIL YOU GET TO THE POINT WHERE
YOU CAN DO SOMETHING MORE
SPECIFIC FOR A SPECIFIC AREA.
>> SO YOU COULD REALLY, I MEAN
WE COULD SAY ADOPT THE RULES
UNDER 16 WITHOUT ACTUALLY HAVING
TO DO THE CIVIL AND THE FAMILY?
>> I THINK COULD YOU, YES
BECAUSE IT SETS UP THE STANDARD
FOR ANY OF THESE REFERRALS AT
LEAST.
>> BECAUSE 16 WOULD GENERALLY,
EXCUSE ME, HANDLE ANY OF THE
PROCESSES ACTUALLY BEING USED
OUT THERE NOW THAT WE DON'T
REALLY HAVE?
>> DON'T HAVE PROFESSIONAL
CONDUCT, THAT'S CORRECT.
>> OKAY.