

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.

ALL WHO HAVE CAUSE, DRAW NEAR--  
[INAUDIBLE]

>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME  
COURT.

THE FIRST CASE ON THE DOCKET IS  
THE AMENDMENTS TO THE FLORIDA  
RULES FOR CERTIFIED AND  
COURT-APPOINTED MEDIATORS.

>> GOOD MORNING AGAIN AND MAY IT  
PLEASE THE COURT.

CHIEF JUSTICE LABARGA AND OTHER  
JUSTICES OF THE SUPREME COURT  
AND MR. HOYLE, I AM ROD SMITH ON  
BEHALF OF THE COMMITTEE.

AND I WOULD LIKE TO, IF I MAY,  
GIVE YOU A SHORT OVERVIEW BEFORE  
ADDRESSING ANY SPECIFICS AS TO  
ADR RULES.

THE POLICY COMMITTEE FEELS THESE  
HIGH LEVEL CONSIDERATIONS ARE  
VERY IMPORTANT.

FIRST, IT IS IMPORTANT TO  
UNDERSTAND THAT THE REASON FOR  
THESE RULES WAS TO INSURE  
GREATER DUE PROCESS AND  
CONFIDENTIALITY, TO FILL IN GAPS  
WHERE THE RULES DID NOT EXIST,  
TO MEMORIALIZE PROCEDURES BEING  
UTILIZED WHICH ARE NOT OUTLINED  
IN THE RULES.

AND, FOR EXAMPLE, UNDER THE OLD  
RULE THAT REQUIRED FORMAL  
CHARGES AT THE TIME OF PANEL  
ASSIGNMENT-- WHICH CAN TAKE  
MONTHS-- NOW THE DRC SENDS OUT  
FORMAL CHARGES IMMEDIATELY.

ALSO UNDER THE OLD RULES IT ONLY  
REQUIRED THAT MAIL BE SENT OUT  
IN THE REGULAR MAIL AND MANY  
CIRCUMSTANCES NOW--

>> LET ME, YOU DON'T HAVE A LOT  
OF TIME TO DO THIS, AND IT SEEMS  
TO ME THAT THE OPPONENTS, THE

COMMENTATORS HAD SOME SPECIFIC THINGS THAT SEEM TO BE APPLICABLE TO A NUMBER OF THE PROPOSED RULE CHANGES. AND SO I'D LIKE YOU TO, YOU KNOW, REALLY GET TO ADDRESSING SOME OF THOSE SPECIFICALLY, LIKE THE TIME AND THE NUMBER OF THE RULES THEY COMPLAINED THAT THERE WAS NO SPECIFIC TIME PERIODS FOR DOING THINGS, AND A NUMBER OF THEM THEY ALSO COMPLAINED ABOUT THAT THE MEDIATOR WHO HAD TO DO CERTAIN THINGS BUT THAT IT WASN'T RECIPROCAL ON THE PART OF THE DRC STAFF OR COMMITTEE. AND SO IF YOU COULD ADDRESS THOSE THINGS WHICH REALLY SEEM TO HAVE, PRESENT SOME PROBLEMS. >> ALL RIGHT. YES, JUSTICE QUINCE, I WILL. AS A MATTER OF FACT, JUSTICE QUINCE, WHEN WE RECEIVED THE RESPONSE, OUR COMMITTEE-- I MEAN, THEIR COMMENTS HAVE BEEN TAKEN VERY SERIOUSLY, THEIR COMMENTS. AND WE DID AGREE TO NOT ONLY TO REVISE, BUT ADOPT THEIR VERY LANGUAGE. SO IT DOES COMPORT TO WHAT THEY'RE ASKING AS WELL. AND THERE WERE ABOUT OVER A DOZEN RULES WHICH THIS, OUR COMMITTEE DID AGREE THAT IT SHOULD BE CHANGED BECAUSE WE BELIEVE THE ADR BAR SECTIONS AND 11 JUDICIAL CIRCUIT, THEY WERE CORRECT AS TO THOSE PROPOSED CHANGES. HOWEVER, ANYTHING BEYOND THOSE 13 CHANGES THAT WAS MADE, IT'S OPPOSITION THAT THE RULES DOES COMPORT WITH DUE PROCESS, THEY ARE-- PROVIDES CLARIFICATION. AND THE WHOLE GOAL IS NOT TO PUNISH A MEDIATOR, BUT TO EDUCATE, TO REHABILITATE AND TO PROTECT THE PUBLIC. SO WHEN YOU LOOK AT OUR 44-PAGE

RESPONSE TO THEIR COMMENTS, WE DID SUBJECT THEM TO RIGOROUS AND SUSTAINED SCRUTINY.

AND THERE WERE MEMBERS ON THIS COMMITTEE-- TRIAL COURT JUDGES SUCH AS MYSELF, FORMER PROSECUTING ATTORNEYS-- SO WE HAD A COMPLETE REVIEW.

>> OKAY, LET'S TALK ABOUT SOMETHING SPECIFIC.

>> OKAY.

>> FOR EXAMPLE, UNDER RULE 10.820 THERE WAS SOME DISCUSSION ABOUT WHETHER OR NOT THERE SHOULD BE A SPECIFIC TIME PERIOD IN WHICH THE HEARINGS PANEL'S DECISION MUST BE MADE.

SO DID THE COMMITTEE ADDRESS THAT AND AGREE THAT THAT WAS A PROPOSAL THAT SHOULD, IN FACT--

>> WELL, WHEN THE COMPLAINT GOES OUT, THERE'S A 30 DAYS-- THE HEARING CANNOT BE HELD WITHIN 30 DAYS, BUT IT MUST BE HELD WITHIN A 60-DAY PERIOD.

SO IMMEDIATELY ONCE THE PANEL IS SET IN THAT 60-DAY WINDOW, THE PANEL DOES ISSUE A RULING.

>> WITHIN HOW MANY DAYS?

>> WITHIN 60 DAYS.

FIRST, THEY GET THE COMPLAINT, THE FORMAL CHARGES.

AND SO WITHIN 60 DAYS WE HAVE A PANEL TO HAVE A HEARING WHICH THE MEDIATOR IS NOTIFIED.

>> 60 DAYS TO HAVE THE HEARING.

>> YES.

>> AND THEN HOW MUCH TIME AFTER THE HEARING TO MAKE A DECISION? I THINK THAT WAS THE QUESTION RAISED IN THE COMMENT.

>> THAT IS GENERALLY SET WITHIN LESS THAN 30 DAYS.

IMMEDIATELY.

>> IT'S NOT IN THE RULES, RIGHT?

>> RIGHT.

BUT TO MY UNDERSTANDING AS WELL, JUSTICE QUINCE, THERE'S NOT BEEN ANY UNNECESSARY DELAY, BECAUSE ALL THESE DECISIONS HAVE BEEN

SENT TO THE MEDIATOR DEFINITELY  
WITHIN 30 DAYS OR LESS.  
BUT IF THAT'S SOMETHING THAT YOU  
BELIEVE SHOULD BE INCORPORATED  
INTO THE RULES, 30-DAY WINDOW, I  
BELIEVE IT'S REASONABLE UNDER  
THE CIRCUMSTANCES.

>> WHAT IS-- IN THE REAL WORLD  
HOW MANY COMPLAINTS ARE ACTUALLY  
RECEIVED EACH YEAR AGAINST  
CERTIFIED MEDIATORS, AND HOW  
MANY HAVE HAD THEIR MEDIATION  
CERTIFICATION REVOKED?

>> I DON'T HAVE THAT NUMBER, BUT  
I--

>> I MEAN, I DON'T-- I GUESS,  
IS THIS SOMETHING-- YOU KNOW,  
WE'VE GOT THE FLORIDA BAR, WE  
HAVE A VERY SPECIFIC PROCEDURE  
FOR FLORIDA BAR GRIEVANCES.  
WE KNOW, WE KEEP TRACK OF THAT.  
DO WE-- IS THERE ANY  
INFORMATION?

JUST WONDERING HOW BIG A PROBLEM  
IT IS--

>> ALL RIGHT.

WELL--

>> OR ARE WE REALLY TALKING  
ABOUT A PRETTY NARROW GROUP OF  
COMPLAINTS?

>> WE HAVE OUR FORMER DIRECTOR  
OF THE DRC WHO CAN BE PRETTY  
MUCH MORE IN A POSITION TO  
ANSWER YOUR QUESTIONS  
SPECIFICALLY.

>> WELL, MAYBE ON-- ARE YOU  
SAVING ANYTHING FOR REBUTTAL?

>> YES.

I WOULD LIKE TO RESERVE TIME  
THERE, ABOUT FOUR MINUTES, AND I  
UNDERSTAND IT'S A STRICT TIME  
CLOCK.

>> THANK YOU.

>> THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT AND  
JUDGE SMITH, I'M BOB HOYLE.  
I'M FROM BRADENTON HERE AS THE  
ALTERNATIVE SOLUTION COUNSEL OF  
THE FLORIDA BAR.

I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY, AND I WILL SAY THAT WE ARE COMMITTED TO THE DISCIPLINE OF MEDIATORS WHO ARE NOT-- DON'T HAVE THE CHARACTER TO BE SERVING THE PUBLIC. THE PUBLIC NEEDS TO BE PROTECTED.

THE JUDICIARY NEEDS TO BE CONFIDENT THAT THE MEDIATORS THAT ARE SERVING ON THEIR CASES HAVE THE CHARACTER AND ARE NOT VIOLATIVE OF THE RULES.

I WILL TELL THE COURT, IF I MAY, I HAD AN ISSUE COME UP IN A CASE IN TAMPA LAST WEEK THAT DID NOT MAKE IT TO MY COMMENT BECAUSE I WASN'T AWARE OF AN INTERPRETIVE ISSUE.

HAD TO DO WITH 10.820F WHICH DEALS WITH--

>> HAD TO DO WITH WHAT?

>> 10.820F.

THAT'S THE RULE THAT SAYS THAT THE DISPUTE RESOLUTION CENTER SHALL SCHEDULE A FINAL HEARING. AND THE PROPOSED RULE IS NO SOONER THAN 30 DAYS, NO LATER THAN 120 DAYS.

THE DRC HAS APPARENTLY INTERPRETED THAT RULE TO NOT REQUIRE IT TO CLEAR HEARING TIME WITH THE MEDIATOR.

AND I READ THROUGH THE CASE, AND THIS MEDIATOR RECEIVED A NOTICE OF HEARING, AND THE HEARING WAS SCHEDULED WITHIN THE 60-DAY WINDOW, BUT IT WAS SCHEDULED ON A DATE THAT HE HAD A CONFLICT. HE FILED A MOTION FOR CONTINUANCE, NOTED THAT THE HEARING WAS NOT CLEARED ON HIS CALENDAR, AND THE DRC FILED A RESPONSE AND SAID, WELL, SINCE 10.820F DOES NOT SPECIFICALLY REQUIRE US TO CLEAR HEARING TIME WITH THE MEDIATOR, WE DON'T HAVE TO DO THAT.

SO WE OBVIOUSLY HAVE THREE ISSUES WITH THAT.

NUMBER ONE IS THE FACT THAT THE  
LATIMER CENTER FOR  
PROFESSIONALISM CLEARLY HAS A  
PROVISION THAT--

>> WHAT ARE YOU PROPOSING THAT  
WOULD CHANGE THAT?

WHAT LANGUAGE IN, WHAT WAS IT,  
10--

>> 10.820F, MA'AM.

>> 820F.

>> YES, MA'AM.

>> SO WHAT LANGUAGE IN 10.820F  
WOULD YOU SUGGEST NEEDS TO BE  
CHANGED?

>> I WOULD SAY THAT IF THE DRC  
IS GOING TO TAKE THE POSITION AS  
THEY DID, THAT IT'S INCUMBENT  
UPON THE MEDIATOR TO ADVISE THE  
DRC THAT HE OR SHE HAS A  
CONFLICT ON THEIR SCHEDULE  
WITHIN THAT 60-DAY TIME PERIOD  
ON THE DATE, I MEAN, BEFORE THEY  
GET THE DATE.

IF THERE'S A CONFLICT THE  
MEDIATOR HAS WITHIN THAT  
CONFLICT, THEY SAY IT WAS  
INCUMBENT UPON THE MEDIATOR TO  
ADVISE THEM SO THEY WOULDN'T  
SCHEDULE IT ON THAT PARTICULAR  
DATE.

IF THAT'S GOING TO BE THE RULE,  
THEN I THINK THE MEDIATOR NEEDS  
TO BE ON NOTICE THAT THIS  
REQUIREMENT EXISTS.

IT'S NOT IN THERE.

THE RULE SIMPLY SAYS THAT THE  
DRC SHALL SCHEDULE.

IMPLICIT IN THAT TO ME AT LEAST  
IS THAT THE HEARING TIME IS  
GOING TO BE CLEARED ON THE  
CALENDAR--

>> I MEAN, ISN'T THAT JUST-- I  
MEAN, HERE WE ARE, WE'RE TALKING  
ABOUT MEDIATION.

AND ARE WE REALLY SAYING THAT  
YOU CAN'T SIT DOWN WITH THE,  
THOSE THAT ARE HEAD OF THE DRC  
AND DISCUSS THAT?

OF COURSE THEY SHOULD CLEAR IT.  
AND IT'S-- THAT'S

PROFESSIONALISM.

WE'RE NOT-- BUT FOR US TO ACTUALLY MICROMANAGE, WHICH IS WHAT IT FEELS LIKE IS HAPPENING, I MEAN, DO YOU SEE?

DO YOU AGREE WITH JUDGE SMITH THAT OVERALL THIS IS PROVIDING MORE PROCESS, MORE DISCIPLINE THAN EXISTED BEFORE, OR DO YOU THINK THE WHOLE SCHEME IS JUST NOT, NOT APPROPRIATE?

SO ANSWER THE FIRST THING.

DO YOU REALLY THINK WE NEED TO MICROMANAGE THE ISSUE THAT SOMEONE HAS A CONFLICT, THEY OUGHT TO CLEAR IT FIRST, THAT WE SHOULD HAVE A RULE THAT SAYS THAT?

>> I BELIEVE THE MEDIATOR SHOULD BE ON NOTICE--

>> THAT--

>> PARDON ME.

>> YEAH.

SO YOU WOULD PROPOSE THAT WE HAVE TO SAY IN THE RULE THAT BEFORE ANY-- AND THIS WOULD BE THE SAME IF YOU HAVE DEPOSITIONS-- BEFORE DEPOSITIONS ARE SET, THEY HAVE TO CLEAR IT.

BUT WE DON'T GET TO THAT LEVEL OF DETAIL IN RULES GENERALLY.

>> I UNDERSTAND.

BUT IN THIS PARTICULAR CASE, THE FACT THAT THIS MEDIATOR--

>> WELL, THEN WE'VE GOT TO-- WHAT I'M ASKING, WHY CAN'T WE, WHY CAN'T YOU JUST PICK UP THE PHONE, TALK TO THE HEAD OF THE CENTER AND SAY WHY ARE YOU DOING THIS?

I GUESS I JUST DON'T SEE IT GOING INTO A RULE TO SAY YOU'VE GOT TO FIRST CLEAR IT WITH THE MEDIATOR.

I MEAN, WHAT IF THE MEDIATOR KEEPS ON SAYING, YOU KNOW, I'M NOT AVAILABLE?

>> WELL, THAT WOULD BE, I SUPPOSE THAT WOULD BE THE

BALANCE THAT WOULD HAVE TO BE STRUCK IN TERMS OF THE DRC NEEDING TO HAVE SOME CERTAINTY.

>> I GUESS WHAT I'M-- AGAIN, MAYBE YOUR-- MY POINT BEING WE DON'T EVER HAVE THAT LEVEL OF DETAIL IN OUR RULES.

WHY WOULD WE WANT TO PUT IT INTO THE MEDIATOR RULES WHEN THE WHOLE IDEA IS YOU SHOULD TRY TO MEDIATE THESE THINGS?

>> WELL, IN THE CONTEXT OF THIS PARTICULAR CASE, THE MEDIATOR DID FILE A MOTION FOR CONTINUANCE, AND IT WAS DENIED. AND AS FAR AS THERE BEING ANY MEDIATION OF THAT PARTICULAR ISSUE, IT APPEARS THAT BY DENYING IT THERE WAS JUST SOME FINALITY TO IT.

I DON'T DISPUTE WHAT YOU'RE SAYING, JUSTICE PARIENTE, IN TERMS OF THERE BEING A NEED FOR SOME COMMUNICATION THERE, BUT--

>> SO THE OVERARCHING QUESTION, DO YOU AGREE OVERALL THESE RULES ARE WELL-INTENTIONED AND PROVIDE MORE PROCESS FOR THE DISCIPLINE PROCEDURES?

>> IN SOME CASES I DO.

I THINK OUR COMMENT POINTED OUT VARIOUS AREAS THAT WE FEEL ARE STILL LACKING, EXCUSE ME, IN THAT REGARD.

BUT OVERALL I THINK IT'S A FINE JOB, IT'S A GREAT EFFORT THAT THEY MADE.

I THINK THERE'S SOME CLARIFICATION, BUT I THINK THERE'S ALSO SOME AREAS WHERE THERE IS A LACK OF CLARITY, A LACK OF TRANSPARENCY AND A LACK OF CONSISTENCY.

>> I GUESS WHAT WE WANT TO KNOW, IF THERE'S SOME SPECIFIC PROBLEM WITH THE RULE, YOU KNOW, OTHER THAN, YOU KNOW, MINOR THINGS LIKE SCHEDULING A HEARING. BUT ARE THERE SOME SPECIFIC THINGS THAT YOU WANT TO BRING TO

OUR ATTENTION THAT WE SHOULD  
LOOK AT BEFORE WE APPROVE OR  
DISAPPROVE OF THESE RULES?

>> YES, MA'AM.

THERE'S A NEW RULE 10.760 ON THE  
DUTY TO INFORM.

10.760.

THE CURRENT RULE IS 10.800B1 AND  
B2 IN WHICH A MEDIATOR IS  
REQUIRED WITHIN 30 DAYS TO  
INFORM THE DRC OF ANY CHANGE IN  
A PROFESSIONAL LICENSE.

THE NEW RULE, 10.760, STATES  
THAT THE MEDIATOR MUST REPORT  
WHETHER THE MEDIATOR HAS BEEN  
ADMONISHED, REPRIMANDED,  
SANCTIONED OR OTHERWISE  
DISCIPLINED BY ANY COURT  
ADMINISTRATIVE AGENCY, BAR  
ASSOCIATION OR ANY OTHER  
PROFESSIONAL GROUP.

OUR THOUGHT IS THAT THE WORD  
"ADMONISHED" CARRIES WITH IT  
SEVERAL DIFFERENT, YOU KNOW,  
CONNOTATIONS AND DEFINITIONS.  
IT COULD BE INTERPRETED TO MEAN  
SIMPLY A COURT VERBALLY  
CHASTISING THE MEDIATOR, IT  
COULD MEAN THAT THERE IS SOME  
KIND OF A WRITTEN REPRIMAND OF  
SOME TYPE.

YOU KNOW, THE BOTTOM LINE IS  
THAT THE WORD "ADMONISHED" IS  
SUBJECT TO VARIOUS  
INTERPRETATIONS.

AND FOR A MEDIATOR TO BE ABLE TO  
CLEARLY UNDERSTAND EXACTLY WHAT  
ACTION BY THE MEDIATOR WOULD  
REQUIRE HIM OR HER TO REPORT IT  
TO THE, TO THE DRC IS OPEN TO  
QUESTION.

AND SO THE VAGUENESS THERE IS  
SOMETHING THAT WE HAVE A VERY  
GRAVE CONCERN ABOUT.

ANOTHER ISSUE IS 10.840,  
SANCTIONS.

IF THE MEDIATOR GOES TO A PANEL  
HEARING AND LOSES, THE DRC CAN  
REQUEST SANCTIONS IN THE FORM OF  
TRAVEL COST DEPOSITION, COURT

COSTS AND SO ON FROM THE  
MEDIATOR.

THERE'S NO RECIPROCAL RIGHT OF  
THE MEDIATOR TO REQUEST COSTS IN  
THE EVENT THAT THE MEDIATOR  
PREVAILS IN THE--

>> IN THE EVENT WHAT HAPPENS?

>> IN THE EVENT THE MEDIATOR  
WOULD PREVAIL IN THE PANEL  
HEARING.

>> WELL, AS I UNDERSTOOD THE  
ARGUMENT BY THE DRC, IT'S THAT  
BEFORE YOU EVEN GET TO THAT  
POINT YOU'VE HAD A COMMITTEE  
THAT HAS LOOKED AT IT TO SEE IF  
THERE WAS PROBABLE CAUSE TO  
DETERMINE THAT THIS WASN'T TRULY  
A FRIVOLOUS COMPLAINT.

SO UNDER THOSE CIRCUMSTANCES,  
THEY'VE ALREADY DECIDED THAT THE  
COMPLAINT THE PERSON MADE WAS  
NOT FRIVOLOUS.

SO WHY SHOULD THE MEDIATOR THEN  
GET--

[INAUDIBLE]

>> WELL, THERE'S TWO PARTS TO  
THAT.

NUMBER ONE, THE TAXATION OF COST  
IN THE FLORIDA BAR RULE IS TO A  
PREVAILING PARTY STANDARD.

I'M NOT DEALING WITH A FRIVOLOUS  
LAWSUIT AT THIS PARTICULAR TIME.  
IF YOU HAVE A PANEL HEARING AND  
THE MEDIATOR PREVAILS, WE FEEL  
LIKE SINCE THE DRC HAS A RIGHT  
TO REQUEST COSTS FROM THE  
MEDIATOR, THE MEDIATOR OUGHT TO  
HAVE A RIGHT TO--

>> BUT DOES THAT HAPPEN IN THE  
FLORIDA BAR EVEN IF YOU ARE, GO  
TO A HEARING AND IT IS  
DETERMINED THAT YOU DID NOT  
VIOLATE THE RULES, YOU DON'T GET  
COSTS DO YOU?

>> I BELIEVE ACCORDING TO THE  
COMMENT FILED BY THE 11TH  
CIRCUIT, I BELIEVE IT IS  
RECIPROCAL IN A BAR GRIEVANCE  
SITUATION.

SO I'M DEALING WITH THAT

PARTICULAR SITUATION.  
WITH REGARD TO YOUR OTHER  
COMMENT ABOUT IT BEING A  
FRIVOLOUS COMPLAINT, THE PROBLEM  
THAT WE HAVE WITH THAT IS THAT  
THE PROBABLE CAUSE DETERMINATION  
DOESN'T NECESSARILY INCLUDE THE  
MEDIATOR'S INPUT.

AND THE MEDIATOR WOULD BE  
RELYING UPON THE QUALITY OF THE  
INVESTIGATIVE REPORT THAT WAS  
DONE.

AND WE DON'T KNOW THAT A  
PRESUMPTION OF FAIRNESS, IF YOU  
WILL, ATTACHES TO THE FINDING OF  
PROBABLE CAUSE.

BECAUSE THAT'S ALL BEING DONE BY  
THE RVCC OR THE QIC.

ANOTHER ISSUE THAT WE HAVE IS  
WITH REGARD TO SOMETHING YOU  
MENTIONED EARLIER, THE TIMING.  
THE RULE REQUIRES THAT THE-- OF  
COURSE, WE KNOW THAT THE  
MEDIATOR HAS TO APPLY FOR  
RECERTIFICATION.

AND IF THERE IS AN INQUIRY BEING  
DONE, THEN THE RECERTIFICATION  
PROCESS STOPS PENDING A  
RESOLUTION OF THAT.

NOW, THE PROBLEM WITH THAT IS  
THAT IF IT'S CLOSE ENOUGH TO THE  
END OF THE RECERTIFICATION TIME  
PERIOD, THEN THE RIGHT TO  
MEDIATE IS TERMINATED PENDING A  
REVIEW OF THE COMPLAINT OR THE  
RECERTIFICATION PROCESS.

SO THERE WE THINK THAT THERE  
SHOULD BE SOME EFFORT TO PERMIT  
THE MEDIATOR TO EXTEND THEIR  
CERTIFICATION DURING THE  
PENDENCY OF AN INQUIRY.

BECAUSE OTHERWISE THEY CAN'T  
WORK, YOU SEE?

THERE'S A PROVISION, AND I DON'T  
HAVE THE NUMBER HERE, GIVING THE  
DRC THE RIGHT TO DETERMINE  
WHETHER A MEDIATOR HAS COMPLIED  
WITH ANY SANCTIONS THAT HAVE  
BEEN IMPOSED UPON THE MEDIATOR.  
THERE'S A PROVISION THERE THAT

SAYS THE MOTION FOR CONTEMPT IS SERVED UPON THE MEDIATOR BY THE DRC, BUT IT ALSO SAYS THAT THE DRC, IF THEY FIND ANY FURTHER ISSUES ASSOCIATED WITH NONCOMPLIANCE, CAN BRING THOSE UP AFTER THE NOTICE OF HEARING IS FILED.

THE WAY IT'S WRITTEN, IT MAKES IT APPEAR THAT THE MEDIATOR IS NOT PROVIDED WITH ANY NOTICE OF THE ADDITIONAL CHARGES THAT MIGHT BE RAISED AT THE HEARING. SO WE THINK THAT NEEDS SOME TYPE OF CLARIFICATION AS WELL.

THERE'S A SECTION ON BURDEN OF PROOF.

CURRENTLY, THE BURDEN OF PROOF IS CLEAR AND CONVINCING EVIDENCE FOR A RULES VIOLATION, BUT IT'S A PREPONDERANCE OF THE EVIDENCE FOR A GOOD MORAL CHARACTER INQUIRY.

WE FEEL LIKE THERE'S NO COMPELLING REASON FOR THOSE STANDARDS TO BE DIFFERENT. A GOOD MORAL CHARACTER INQUIRY SHOULD ALSO BE CLEAR AND CONVINCING BECAUSE OF THE POTENTIAL FOR DAMAGE TO THE REPUTATION OF THE MEDIATOR. THAT'S MY PRESENTATION HERE THIS MORNING.

AGAIN, I APPRECIATE AND I'LL ENTERTAIN ANY OTHER QUESTIONS IF THE COURT HAS ANY.

THANK YOU VERY MUCH FOR THE OPPORTUNITY.

AGAIN, BASED UPON THE COMMENTS THAT WE FILED, WE FEEL THAT THE PROPOSED RULES MIGHT BE RECONSIDERED.

WE WOULD BE MORE THAN HAPPY TO WORK WITH THE COMMITTEE IN CONSIDERING ANY PROPOSED CHANGES OR REVISIONS.

THANK YOU VERY MUCH.

>> ALL RIGHT, GOOD MORNING AGAIN.

TO ADDRESS, JUSTICE PARIENTE,

THE QUESTION AS TO THE NUMBER,  
PERCENTAGE OF THOSE GRIEVANCES  
BEING BROUGHT IN THE STATE,  
THERE ARE BETWEEN 25-35 AND ALSO  
BETWEEN 40-60 PERTAINING TO GOOD  
MORAL CHARACTER.

AND ALSO TO ADDRESS--

>> THAT'S EACH YEAR?

>> YEAH.

YES, MA'AM.

YES, JUSTICE.

AND ALSO TO ADDRESS COUNSEL'S  
ARGUMENT IN 10.760 REGARDING THE  
UNDERSTANDING ABOUT WHAT IS  
REQUIRED TO REPORT IN TERMS OF  
ADMONISHMENT OR REPRIMANDS, WE  
DID FILE A RESPONSE.

IT CLEARLY STATES THAT IT  
PERTAINS TO REPORTS ADMONISHMENT  
OR REPRIMANDS THAT ARE  
CONSIDERED BY THE ENTITY SUCH AS  
A COURT, ADMINISTRATIVE AGENCY,  
BAR ASSOCIATION OR OTHER  
PROFESSIONAL GROUP AS WELL.

AND LET ME JUST ALSO BE CLEAR,  
YOUR HONORS.

MEDIATION AFFECTS EVERYONE.

THIS IS NOT A LAWYER ENTITY  
ONLY.

IT'S NOT EXCLUSIVE TO LAWYERS.  
YOU HAVE THOSE WHO ARE PUBLIC  
ACCOUNTANTS, TEACHERS, CLERGY,  
EVERYONE ELSE.

SO IT'S ABOUT HALF OF THE  
LAWYERS IN THE STATE OF FLORIDA  
OR FLORIDA-CERTIFIED MEDIATORS.

>> IN FAIRNESS, THE TERM  
"ADMONISHMENT" SEEMS, PERHAPS, A  
LITTLE MORE AMBIGUOUS.

REPRIMAND, SANCTION, OTHERWISE  
DISCIPLINE--

[INAUDIBLE]

SO WHAT WOULD YOU USE AS A  
DEFINITION?

>> I DON'T HAVE A PARTICULAR  
DEFINITION TO GIVE TO YOU, BUT I  
BELIEVE THIS WOULD BE, FOR  
EXAMPLE, IF THE COURT ADVISES OR  
INSTRUCTS A MEDIATOR IN A  
CAPACITY ON SOMETHING THEY MAY

HAVE DONE WITHOUT BEING--  
WITHOUT PENALIZING THEM.  
FOR EXAMPLE, IF YOU DIDN'T  
COMPLY WITH A COURT'S ORDER AND  
YOU CONSISTENTLY CONTINUE TO BE  
DISRUPTIVE, TO BE DISRESPECTFUL  
AND YET THE COURT SAYS, WELL,  
NOW I'M GOING TO HAVE TO REPORT  
YOU, REFER YOU TO THE FLORIDA  
BAR, SOMETHING TO THAT EFFECT.  
>> WITH REGARD TO THE ISSUE OF  
COSTS--

>> YES.

>>-- THAT WAS ASSERTED, WITHOUT  
REGARD TO WHETHER THE FLORIDA  
BAR DOES OR DOES NOT ALLOW THEM,  
IS THERE ANY REASON AS YOU  
UNDERSTAND IT THAT WE SHOULD  
TREAT THAT DIFFERENTLY THAN AS  
THE BAR MAY DO SO UNDER THE  
GRIEVANCE PROCEDURES, GRIEVANCE  
PANELS, ETC.?

>> YES, ABSOLUTELY.

THERE HAS NO PLACE IN THIS, FOR  
THIS PARTICULAR FORUM.  
BECAUSE, NUMBER ONE, WHERE ARE  
YOU GOING TO GET THE COSTS FROM?  
WHO'S GOING TO PAY FOR IT?  
WITH RESPECT TO THE BUDGET, THE  
LEGISLATURE, HOW ARE YOU  
ENTITLED TO COST?  
AND ALSO IT CREATES A CHILLING  
EFFECT ON THE PUBLIC.  
CAN YOU IMAGINE THE DETERRENCE  
IN DOMESTIC CASES WHERE IF  
SOMEONE WAS TO FILE ONE AND THAT  
PERSON'S NOT SUCCESSFUL IN  
OBTAINING AN INJUNCTION, SO NOW  
THE LITIGANT'S GOING TO SEEK  
COSTS AND FEES FOR BRINGING AN  
INJUNCTION?

>> SO YOUR VIEW IS, IS THAT  
THERE'S EVEN LESS REASON--  
>> ABSOLUTELY.

>>-- IN THIS CONTEXT TO ALLOW  
COSTS FOR SUCCESSFUL MEDIATORS  
THAT ARE SUBJECT TO THIS  
PROCESS.

>> ABSOLUTELY, YOUR HONOR.

>> OKAY.

>> WHAT KIND OF COSTS ARE WE TALKING ABOUT?  
AGAIN, THIS IS SORT OF TRYING TO UNDERSTAND, AND MAYBE YOU DON'T KNOW--

>> YES.

THE TRAVEL EXPENSES.

REMEMBER, WHEN YOU HAVE A PANEL, WE HAVE TO PAY FOR A HOTEL.

YOU'RE LOOKING AT A PANEL ADVISER, JUDGE, THE OTHER MEMBERS TO TRAVEL.

AND IT'S VERY EXPENSIVE AT TIMES TO GET EVERYONE ELSE INVOLVED.

FOR EXAMPLE, WE HAVE, WHEN YOU LOOK AT HOW THESE DIVISIONS ARE BROKEN APART, THE SOUTHERN DIVISION CONSISTS OF 11, 15, 16, 17, 19, 20--

>> SO THE DISCIPLINARY PROCESS COSTS?

>> YES.

>> LET ME ASK YOU ONE OF THE QUESTIONS THAT CAME UP HAD TO DO WITH WHO, WHEN YOU'RE DOING THESE GOOD CHARACTER INQUIRIES--

>> YES.

>>-- WHY IT DOES NOT INCLUDE PEOPLE WHO ARE LOOKING FOR ADDITIONAL CERTIFICATION. THE RULE ACTUALLY TALKS ABOUT NEW APPLICANTS, RENEWALS AND REINSTATEMENT.

SO SHOULD IT INCLUDE THOSE WHO ARE LOOKING FOR NEW CERTIFICATION?

WOULD THE DRC HAVE A PROBLEM WITH INCLUDING THOSE IN THERE? IT SEEMS TO ME THERE'S NO REASON NOT TO.

>> NO, IT DOES.

IT DOES INCLUDE.

>> SO YOU THINK THE RULE INCLUDES THEM.

>> YES, I BELIEVE SO.

>> IF IT DOESN'T, YOU HAVE NO PROBLEM WITH IT.

>> ABSOLUTELY, YOUR HONOR.

>> OKAY.

>> ABSOLUTELY.  
>> THE OTHER ISSUE COUNSEL  
RAISED WAS ABOUT NOTIFICATION OF  
CHARGES.  
COULD YOU ADDRESS THAT  
PARTICULAR--  
>> YES.  
THE NOTIFICATION OF CHARGES.  
THEY ARE SENT IMMEDIATELY TO THE  
MEDIATOR AS WELL.  
AND ALSO AS I MENTIONED EARLIER,  
WITHIN A 60-DAY WINDOW A HEARING  
IS SET, AND THE MEDIATOR IS  
GIVEN NOTICE.  
AND ANYTHING THEY HAVE WITH  
RESPECT TO CONTINUANCE OR  
CONFLICT, THEY ARE GOING TO BE  
BEFORE A SITTING JUDGE.  
AND THE MERE FACT THAT A JUDGE  
MAY DENY OR GRANT A CONTINUANCE,  
THERE'S NO PLACE FOR THIS COURT  
HERE WE BELIEVE--  
RESPECTFULLY-- TO SAY, WELL, IT  
SHOULD BE GRANTED OR DENIED.  
THERE HAVE BEEN TIMES WHERE I'VE  
CHAired A NUMBER OF PANELS WHERE  
THE DRC WAS ADAMANT THAT I  
SHOULD NOT CONTINUE A MATTER,  
AND I HAVE.  
IT ALL DEPENDS ON WHO'S SITTING  
THERE BASED ON THE  
CIRCUMSTANCES.  
WE DON'T KNOW THE REASONS WHY A  
JUDGE CHOSE TO DENY, BUT I THINK  
THAT SHOULD BE ENTRUSTED WITH  
THE JUDGE AND THE DECISION.  
AND ALSO THEY HAVE THE APPELLATE  
REMEDY.  
THINK ABOUT IT.  
THE CHIEF JUSTICE OF THIS  
COMMITTEE, WE HEAR ALL APPEALS.  
AND ASK YOURSELF HOW MANY OF YOU  
HAVE SERVED AS CHIEF JUSTICE OF  
THIS COURT AND HAVE ANY OF THESE  
ISSUES BROUGHT BEFORE YOUR  
ATTENTION.  
NOT ANY CASE I CAN IMAGINE, NOT  
ONE.  
>> THANK GOODNESS.  
DO NOT ENCOURAGE THAT.

>> I DON'T.

[LAUGHTER]

>> ANOTHER QUESTION HAD TO DEAL WITH--

[INAUDIBLE]

INSUFFICIENT RULE ALLOWS FOR COMPLAINANT TO FILE AT LEAST A COUPLE MORE TIMES.

SO SOME OBJECTION TO REFILE MORE THAN ONCE.

HOW DID THE COMMITTEE ADDRESS THAT?

>> YES.

WE DID RESPOND TO THAT, AND I BELIEVE WE ALLOWED TO GIVE THEM A FEW OPPORTUNITIES BECAUSE OFTEN TIMES THESE ARE PRO SE LITIGANTS, PRO SE COMPLAINANTS, AND THEY MAY NOT BE WELL VERSED WITH RESPECT TO THE RULES.

SO WE DO GIVE THEM AN OPPORTUNITY.

WE'RE NOT DEPRIVING THEIR RIGHT. WE WANT TO MAKE SURE THEY HAVE EVERY MEANINGFUL OPPORTUNITY TO PROCEED.

AND I THINK GIVING THEM TWO OPPORTUNITIES IS NOT UNREASONABLE UNDER THE CIRCUMSTANCES.

>> DID ANYONE THINK ABOUT THAT APPEAL, THAT HAVING AN APPEAL FROM A MEDIATOR DETERMINATION TO THE CHIEF JUSTICE SINGLY IS REALLY NOT THE BEST SYSTEM?

I MEAN, WE DON'T HAVE THAT IN ANYTHING ELSE.

I MEAN, THANKFULLY, WE HAVEN'T HAD THOSE.

BUT IT JUST SEEMS IF THERE WERE TO BE AN UPTICK, THAT'S SOME--

I MEAN, WHY WOULD THE CHIEF JUSTICE BE, HAVE TO BE RESPONSIBLE TO VIEW THESE?

>> WELL--

>> MAYBE NOBODY COMPLAINED BECAUSE THEY WEREN'T THE CHIEF JUSTICE, YOU KNOW?

[LAUGHTER]

>> MAYBE IT SHOULD BE THE DEAN

OF THE COURT.

[LAUGHTER]

>> WELL, YOU KNOW WHAT, YOUR HONORS?

ANOTHER SUGGESTION COULD BE IF SOMEONE HAS AN ISSUE THAT ONE PERSON'S GOING TO DECIDE, YOU COULD HAVE A THREE-JUDGE PANEL OR FIVE OR SEVEN IF YOU WANT TO HAVE AN ODD NUMBER.

>> I JUST DON'T WANT TO MAKE-- I GUESS THIS IS THE ISSUE. I THINK THE FACT IS THAT THE COURT WANTS THIS TO RUN SMOOTHLY--

>> EXACTLY.

>> AND, BUT IF WE STARTED TO HAVE PEOPLE COMPLAINING ABOUT THE OUTCOME, WE WOULD HAVE TO CONSIDER SOME OTHER PROCEDURE, BECAUSE IT REALLY ISN'T IN THE NATURE OF WHAT THE CHIEF JUSTICE, I THINK, SHOULD BE DOING.

>> YEAH.

BUT YOU CAN TELL WHEN YOU LOOK AT THE HISTORY OF SINCE, WHAT, 1992, HOW MANY CASES--

>> WELL, THAT'S WHY I ASKED ABOUT HOW MUCH OF THIS IS, I MEAN, I HOPE IT'S NOT MUCH ADO ABOUT NOTHING.

BUT IF NOW THERE ARE MORE PROCEDURES OR CASES GOING TO BE BROUGHT AND ALL OF A SUDDEN THERE ARE MORE INDIVIDUALS THAT ARE UNHAPPY WITH THE RESULT, WE WOULD REALLY END UP SAYING LIKE WE DO IN, YOU KNOW, BOARD CERTIFICATION.

SORT OF SAY, HEY, DON'T COME TO US.

THEY'VE STOPPED COMING.

BUT ANYWAY, WE'LL WORRY ABOUT THAT, I GUESS, NEXT YEAR.

>> WHEN IT HAPPENS, THE CHIEF JUSTICE WILL MAKE A WISE--

[LAUGHTER]

>> AND WE TRUST THAT YOU WILL, YOUR HONOR.

[LAUGHTER]

WELL, THANK YOU.

>> BECAUSE WE HAVE NOTHING ELSE  
ON OUR PLATE, RIGHT?

>> I'M NOT GOING TO SAY THAT.

>> THANK YOU.

>> THANK YOU FOR YOUR TIME AND  
CONSIDERATION.

AND IN CLOSING, I ASK THAT YOU  
ADOPT THE RULES IN OUR ORIGINAL  
PETITION AND OUR RESPONSE  
THERE TO THAT WAS FILED.

THANK YOU AND HAVE A BLESSED  
DAY.

>> THANK YOU FOR YOUR ARGUMENT.