>> 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.
GIVE ATTENTION, YOU 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.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON TODAY'S DOCKET
IS IN RE FLORIDA FAMILY LAW RULE
OF PROCEDURE 12.510.
SO WE HAVE A CERTAIN LACK OF
ADVERSITY OF INTEREST HERE THIS
MORNING.
[LAUGHTER]
COUNSEL, PLEASE PROCEED.
>> THANK YOU, CHIEF JUSTICE
CANADY.
MAY IT PLEASE THE COURT.
MY NAME IS CORY BRANDFON.
I HAVE THE PRIVILEGE OF
APPEARING THIS MORNING ON BEHALF
OF THE FAMILY LAW RULES
COMMITTEE ALONGSIDE MY
COLLEAGUE, ASHLEY TAYLOR, THE
CURRENT CHAIR OF THE COMMITTEE.
I AM THE COMMITTEE'S IMMEDIATE
PAST CHAIR, ITS LIAISON TO THE
JUDICIAL ADMINISTRATION
COMMITTEE AMONG OTHERS.
MS. TAYLOR AND I WILL BE
DIVIDING OUR PRESENTATION HERE
THIS MORNING.
I WILL BE PRESENTING THE
COMMITTEE'S MAJORITY POSITION,
AND SHE WILL BE PRESENTING THE
COMMITTEE'S MINORITY POSITION
WITH REGARDS TO 12501 GOVERNING
SUMMARY JUDGMENT.
THE COMMITTEE RESPECTFULLY DOES
NOT RECOMMEND THE CONTINUED
ADOPTION OF RULE 12.510 THAT
PREVIOUSLY EXISTED.
ALTHOUGH IMPERFECT, WAS NOT

BROKEN AND FAMILY COURT AND,
THEREFORE, DOES NOT REQUIRE
FIXING.
IT FACILITATED THE APPROPRIATE
LIMITED USE OF SUMMARY JUDGMENT
IN FAMILY COURT.
EVEN IF INTENDED AS A
CLARIFICATION OF THE EXISTING
STANDARD, THE COMMITTEE BELIEVES
THAT THIS COURT'S TWO OPINIONS,
ITS APRIL 29TH, 2021, OPINION
AND ITS JULY 8TH, 2021, OPINION
SEND A SIGNAL TO THE BENCH AND
THE BAR THAT SUMMARY JUDGMENT
SHOULD BE APPLIED FOR AND
GRANTED MORE EXPANSIVELY IN
FAMILY COURT.
>> CAN WE ASK YOU THIS QUESTION,
BECAUSE I PRESIDED IN THE FAMILY
DIVISION WHEN I WAS A TRIAL
JUDGE, AND I PRESIDED OVER OTHER
DIVISIONS, ALL OTHER DIVISIONS
IN CIRCUIT COURT.
IT SEEMED LIKE FAMILY WAS
UNIQUELY DIFFERENT, I GUESS, SO
TO SPEAK.
THE PARTICULAR AREA THAT
CONCERNS ME ABOUT THIS WHOLE
BUSINESS OF SUMMARY JUDGMENT IS
THE AREA OF CHILD CUSTODY WHERE
JUDGES ARE REQUIRED TO EVALUATE
AND WEIGH THE FACTORS, STATUTORY
FACTORS IN DETERMINING WHO GETS
CUSTODY OF THE CHILDREN.
AND IT CONCERNS ME THAT THAT IS
A VERY FACTUALLY INTENSIVE AREA
OF MATRIMONIAL LAW, VERY
EMOTIONALLY CHARGED.
YOU DON'T SEE THAT IN OTHER
DIVISIONS WHERE BOTH MOM AND DAD
ARE FIGHTING OVER WHO GETS TO
HAVE PRIMARY CUSTODY OF
CHILDREN.
BUT, AND TYPICALLY IT'S RESOLVED
IN A TRIAL BECAUSE THIS IS
SOMETHING THAT PARTIES USUALLY
FIGHT ABOUT.
HERE, UNDER THE NEW RULE THAT
THE COURT HAS ADOPTED, BASICALLY
20 DAYS AFTER THE FILING OF
DOCUMENTS A PERSON CAN WALK IN
AND JUST FILE A MOTION FOR
SUMMARY JUDGMENT.
HOW, IN THAT PARTICULAR AREA

SPECIFICALLY, PUT ASIDE THE
DIVISION OF MATRIMONIAL ASSETS
AND LIABILITIES, PUT ASIDE ALL
THESE OTHER THINGS, ALIMONY, WHO
GETS THE HOUSE, WHO GETS THE
POT, WHO GETS THE PAN, BUT
LOOKING STRICTLY WHAT CONCERNS
ME MOST IS THE AREA OF CHILD
CUSTODY, VISITATION, THOSE TYPE
OF THINGS WHERE CHILDREN, THEIR
FUTURE, THEIR LIVES ARE AT STAKE
AT THIS MOMENT.
>> THANK YOU, YOUR HONOR.
I THINK THAT'S AN IMPORTANT
QUESTION, AND THE COMMITTEE
CERTAINLY SHARES YOUR CONCERN.
WHEN MS. TAYLOR GIVES HER
PRESENTATION, SHE WILL PRESENT
THE COMMITTEE'S PROPOSAL THAT
TIMESHARING ISSUES AND PARENTAL
RESPONSIBILITY ISSUES BE
SPECIFICALLY CARVED OUT FROM THE
RULE.
PRECEDENTIAL CASE LAW HOLDS THAT
PARENTING DECISIONS SHOULD NOT
BE DECIDED BY DEFAULT, AND
CERTAINLY THE COMMITTEE WOULD
SUGGEST THAT BE EXTENDED TO WHAT
MAY BE CONSIDERED TECHNICAL
DEFAULT FOR A FAILURE TO COMPLY
WITH THE INTRICACIES OF THE
REVISED RULE.
FAMILY COURT JUDGES HAVE AN
INDEPENDENT OBLIGATION TO
CONFIRM THAT PARENTING PLANS,
PARENTING DECISIONS, TIMESHARING
SCHEDULES ARE IN THE BEST
INTEREST OF THE CHILD--
>> HOW DOES, DOESN'T THAT
EXISTENCE OF AN OBLIGATION SOLVE
THE PROBLEM?
I MEAN, ISN'T THE FACT THAT THE
JUDGE CAN DENY THE MOTION FOR
SUMMARY MOTION SOMEWHAT MISSING
FROM YOUR ANALYSIS?
LET'S SAY DISCOVERY HASN'T
CLOSED, AS WE MIGHT EXPECT, 20
DAYS AFTER THE COMPLAINT HAS
BEEN FILED.
DISCOVERY'S STILL OPEN.
A PARTY MOVES FOR SUMMARY
JUDGMENT.
OBVIOUSLY, THE CORRECT LEGAL
ANSWER SUBJECT TO REVERSAL IF

THE JUDGE DOESN'T DO IT IS TO
SAY THERE ARE ISSUES OF MATERIAL
FACT, I'M NOT GRANTING SUMMARY
JUDGMENT, DISCOVERY HASN'T
CLOSED SUBJECT TO YOUR REMOVAL
OF OBJECTION AT THE CONCLUSION
OF THE SUMMARY, YOUR MOTION IS
DENIED.
WHY SHOULD WE HAVE THE FEAR THAT
YOU ARE DISCUSSING?
>> THANK YOU, YOUR HONOR.
I THINK IT'S MISSING FROM THAT
SPECIFIC PORTION OF MY ANALYSIS
BUT NOT OUR BROADER ANALYSIS.
WE HAVE CONCERNS WITH INCREASED
APPLICATIONS GENERALLY INCLUDING
IN THE CONTEXT OF PARTICIPATING
ISSUES.
AS JUSTICE LABARGA POINTED OUT,
THESE ARE HIGHLY INTENSIVE
INQUIRIES AS IT RELATED TO
EQUITABLE DISTRIBUTION AND
ALIMONY AS WELL--
>> YOUR CONCERN IS WITH
ADDITIONAL FILINGS?
>> WELL, WHETHER-- YES.
IN MY PERSONAL EXPERIENCE, AND I
THINK THIS IS ANECDOTALLY THE
EXPERIENCE OF MANY MEMBERS,
SINCE FAMILY COURT CASES ARE
RESOLVED BY BENCH TRIAL AND THE
JUDGES ARE TRIERS OF FACT, THEY
OBVIOUSLY MAINTAIN VERY BUSY
CALENDARS AS DO THEIR BRETHREN
IN CIVIL COURTS, BUT THEY'RE
ALSO EXPECTED TO FIND TIME TO
WRITE LENGTHY JUDGMENTS AND
ORDERS.
>> I GUESS I DON'T KNOW WHY THE
ORDER HAS TO BE ANY LONGER THAN
WHAT I JUST SAID.
THERE ARE GENUINE ISSUES OF
MATERIAL FACT THAT MAY EXIST,
MOTION DENIED.
>> IN THAT SPECIFIC INSTANCE,
YOUR HONOR, IF IT IS THAT
SIMPLE, I AGREE IT WOULD NOT
REQUIRE THE SAME DEGREE OF TIME.
HOWEVER, IF YOU ARE ASKING A
TRIAL JUDGE TO REVIEW VOLUMINOUS
SUMMARY JUDGMENT EVIDENCE AND
TRY TO MAKE THOSE DETERMINATIONS
IN THE CONTEXT OF PARENTING
DECISIONS, I THINK UNTIL BE A

SIGNIFICANTLY FOR TIME-INTENSIVE
INQUIRY.
AND IF THEY'RE BEING DENIED, I
DON'T BELIEVE IT'S A PRODUCTIVE
USE OF THE TRIAL COURT'S TIME
WHERE THEY COULD BE HEARING
OTHER MOTIONS REGARDING
PARENTING AND TEMPORARY RELIEF
MOTIONS, FOR INSTANCE.
>> COUNSEL, IT SOUNDS LIKE WHAT
YOU'RE TALKING ABOUT, ALL OF
THIS MATERIAL AND EVIDENCE AND
THINGS LOOKING AT, THOSE ARE
MATERIAL FACTS IN DISPUTE.
I MEAN, A GLANCE AT THAT WOULD
SAY THIS IS NOT, CANNOT BE
DECIDED AS A MATTER OF LAW,
DENIED.
I MEAN, SUMMARY JUDGMENT HAS
BEEN AROUND IN FAMILY LAW, I
MEANING BEFORE NOW.
IT'S VERY RARELY USED BECAUSE IT
IS SO FACT-INTENSIVE.
SO HOW IS THIS CHANGE GOING TO
CAUSE THAT LEVEL OF CATASTROPHE
FOR THE FAMILY LAW COURT?
>> I THINK THE SIGNAL HAS BEEN
SENT TO THE BENCH AND THE BAR
THAT THE COURT IS INTERESTED IN
THIS BEING USED MORE NOT JUST IN
CIVIL, BUT IN FAMILY COURTS.
ANECDOTALLY IT'S SOMETHING
THAT'S BEING DISCUSSED AMONG THE
BAR.
SO, AGAIN, I THINK YOU'RE GOING
TO SEE INCREASED APPLICATIONS,
AND SELF-REPRESENTED LITIGANTS
ARE ESPECIALLY VULNERABLE TO NOT
RESPONDING PROPERLY, AND THIS
DOES GIVE THE COURT DISCRETION
TO GRANT SUMMARY JUDGMENT FOR,
ESSENTIALLY, TECHNICAL FAILURE
TO COMPLY WITH THE--
>> WOULDN'T THAT BE TRUE UNDER
THE CURRENT RULE?
>> YES, IT WOULD, YOUR HONOR.
>> IT SEEMS LIKE THE ARGUMENTS
YOU'RE MAKING ARE AGAINST ANY
FAMILY JUDGMENT IN THE FAMILY
LAW CONTEXT.
>> CERTAINLY, I EXPECTED THAT
QUESTION.
IT IS HARDLY USED NOW--
>> IT'S FEAR THAT IT WOULD BE

USED IN THE FUTURE IN CASES THAT
ARE NOT PROPER FOR SUMMARY
JUDGMENT, RIGHT?
>> WELL, I THINK WHETHER IT'S
PROPER FOR SUMMARY JUDGMENT ON
AN INDIVIDUAL BASIS IS GOING TO
BE AN--
>> I MEAN, YOU CAN LOOK AT THE
UNIVERSE OF CASES, AND I CAN
AGREE MOST OF THE CASES WE'RE
TALKING ABOUT BEST INTEREST OF
THE CHILD, CHILD CUSTODY ISSUES,
ALL OF THOSE THINGS ARE NOT
GOING TO BE PROPER FOR SUMMARY
JUDGMENT, SO I DON'T KNOW WHY
YOU WOULD ANTICIPATE THAT FOLKS
WOULD BE FILING MOTIONS JUST
BECAUSE WHAT I VIEW AS A MORE
SENSIBLE STANDARD.
>> AND I CERTAINLY UNDERSTAND
THIS COURT'S POSITION.
MY RESPONSE TO THAT WOULD BE,
AGAIN, ANECDOTALLY, THERE IS
DISCUSSION AMONG PARTIES
ATTEMPTING TO USE THESE MORE,
OBVIOUSLY, THE EVIDENTIARY
BURDEN FOR DEFEATING THEM HAS
BEEN RAISED I THINK IN THIS
COURT'S APRIL 29TH OPINION, AND
I'M PARAPHRASING.
IT SAYS IT'LL NO LONGER BE
SUFFICIENT TO CITE ANY COMPETENT
EVIDENCE TO SOLVE A DISPUTE, AND
THE COMMISSION ON ACCESS TO
CIVIL JUSTICE STUDY FOR MARCH
2020 SHOWS US THAT 60% OF OUR
CASES INVOLVE THE SUBURBS AND
LITIGANT.
YOU DO HAVE A SUBSTANTIAL RISK
WHEN THEY'RE BEING FILED MORE OF
MORE TECHNICAL FAILURES.
>> LET ME GO BACK TO THE POINT
THAT WAS RAISED EARLIER, BECAUSE
WHAT'S GOING TO HAPPEN IS AS
SOON AS THE 20-DAY PERIOD
EXPIRES, SOMEBODY'S GOING TO
FILE A MOTION FOR SUMMARY
JUDGMENT IN CUSTODY.
THAT'S JUST THE WAY IT IS.
THE SUGGESTION IS, WELL, WHY
DON'T THEY JUST DENY IT BECAUSE
THERE'S MORE DISCOVERY TO BE
DONE.
THE PROBLEM IS IT DEFEATS THE

WHOLE PURPOSE OF WHY WE, THIS
COURT, AMENDED THE RULES OF
PROCEDURE TO BRING IN ONE LINE
WITH THE FEDERAL-- AND THERE
SAID THE FLORIDA AND FEDERAL
RULES OF PROCEDURE SHARE THE
SAME OVERARCHING PURPOSE, QUOTE:
TO SECURE THE JUST, SPEEDY AND
INEXPENSIVE DETERMINATION OF A
REACTION.
SO IF WE'RE GOING TO SAY TOO
EARLY FOR THIS MOTION, I'LL COME
BACK LATER, WELL, IT'S NOT GOING
TO BE RIGHT REALLY UNTIL THE DAY
BEFORE TRIAL, SO WHY HAVE THIS
ORDER TO BEGIN WITH?
>> I AGREE WITH YOUR HONOR.
I DO THINK IN THOSE MANY
INSTANCES IT COULD BE
COUNTERPRODUCTIVE.
AND MORE TO YOUR POINT, I
BELIEVE THAT AND THE COMMITTEE
BELIEVES THAT THE RATIONALE
UNDERLYING THIS COURT'S APRIL
29TH OPINION IN THE CIVIL RULES
DO NOT APPLY IN EQUAL FORCE TO
FAMILY LAW.
FOR INSTANCE, THE BENEFIT OF
AVOIDING IMPANELING A JURY IN
THE CONTEXT OF FAMILY COURT
CASES WHICH ARE OBVIOUSLY
RESOLVED BY BENCH TRIAL.
IT'S NOT THE QUESTION OF WHETHER
YOU GET BEFORE A JURY OR NOT,
IT'S A QUESTION OF WHEN YOU GET
IN FRONT OF A JUDGE AND IN WHAT
MANNER.
THIS COURT HAS CITED TALK ABOUT
ESSENTIAL ELEMENTS.
WE DON'T HAVE THEM IN FAMILY
COURT.
AND FAMILY COURT CASES ARE
GOVERNED BY STATE LAW AND
STATUTE, SO YOU'RE NOT GOING TO
HAVE CORRESPONDING CAUSES OF
ACTION IN FEDERAL COURTS AND BE
ABLE TO ANALOGIZE THE MATERIAL
ELEMENTS.
THOSE ARE TWO THINGS THAT WERE
CITED BY THIS COURT AS MAIN
REASONS FOR ITS ADOPTION OF THE
STANDARD IN CIVIL COURT.
AND, OF COURSE, WE INFER THE
OTHER MAIN POINT IS TO JUST

GENERALLY MAKE IT MORE
AVAILABLE, MAKE IT USED MORE
COMMONLY, AND I HAVE A FEW OTHER
IMPORTANT REASONS WHY I THINK IT
DOESN'T WORK IN FAMILY THE SAME
WAY.
AND WHETHER IT'S GRANTED FOR
SELF-REPRESENTED LITIGANTS TO
RESPOND OR WHETHER DENIED
BECAUSE DISCOVERY ISN'T CLOSED
OR DECISION MAKING PROCESSES,
IT'S NOT PRODUCTIVE.
>> COUNSEL, ARE YOU-- IS THE
COMMITTEE MORE CONCERNED-- IT
DOESN'T SOUND LIKE THE COMMITTEE
IS CONCERNED ABOUT TWO
SELF-REPRESENTED LITIGANTS GOING
AGAINST EACH OTHER BECAUSE,
ARGUABLY, THEY'RE NOT GOING TO
USE THIS.
AND IT DOESN'T SOUND LIKE YOU'RE
CONCERNED ABOUT TWO ATTORNEYS.
IT SOUNDS LIKE WHAT YOU'RE
MOSTLY CONCERNED ABOUT IS WHEN
ONE SIDE IS REPRESENTED, AND
WHEN ONE SIDE IS UNREPRESENTED.
>> THAT'S CORRECT, YOUR HONOR.
AND SO WE UNDERSTAND-- THIS IS
MY FIFTH YEAR ON THE COMMITTEE,
I UNDERSTAND AS A PRACTICE WE
DON'T MAKE TEXTUAL DISTINCTIONS
IN THE RULES BETWEEN
SELF-REPRESENTED LITIGANTS AND
REPRESENTED PARTIES.
THERE IS PRECEDENT AT SUPREME
COURT OF THE UNITED STATES IN
HAINES V. KERNER, THAT'S 404
U.S. 519, A 1972 CASE,
DISTINGUISHING BETWEEN
SELF-REPRESENTED LITIGANTS AND
REPRESENTED PARTIES IN HOW YOU
CONSTRUE PLEADINGS.
AND SO THE FILINGS OF
SELF-REPRESENTED LITIGANTS ARE
HELD TO A LESS STRINGENT
STANDARD.
AND SO IF THAT'S NOT FAITHFULLY
EXECUTED IN THIS STATE BY OUR
JUDGES, THERE'S A CHANCE THAT--
>> WELL, PRACTICALLY SPEAKING,
COUNSEL, I'VE NOT-- THAT SEEMS
TO BE HOW TRIAL JUDGES IN MY
PRACTICE, I PRACTICED FAMILY
LAW.

I MEAN, TRIAL JUDGES ARE VERY
CAREFUL IN THE STATE TO INSURE
ESPECIALLY WHEN YOU HAVE
REPRESENTED AND UNREPRESENTED TO
INSURE THAT ALL PARTIES ARE
TREATED EQUALLY, THAT A FAIR AND
JUST PROCESS.
SO IT SOUNDS LIKE YOU'RE
CONCERNED ABOUT THE TRIAL
JUDGE'S APPLICATION OF THIS IN
AN UNFAIR MANNER.
AND IS THAT SOMETHING THAT THE
COMMITTEE THINKS IS HAPPENING?
IS IT GOING TO HAPPEN?
I MEAN, I'M JUST TRYING TO
UNDERSTAND WHAT THE CONCERN IS.
>> YOU USE THE TERM UNFAIR, AND
I THINK YOU TOUCH ON SOMETHING
IMPORTANT.
OUR COURTS ARE COURTS OF EQUITY.
AND I OBVIOUSLY CAN'T-- I AGREE
THAT JUDGES, BY AND LARGE, TRY
TO DUTIFULLY AND FAITHFULLY
EXECUTE THEIR DUTIES AND INSURE
THAT EQUITY IS DONE.
ALTHOUGH SUMMARY JUDGMENT MAY BE
AN INTEGRAL PART OF THE
PROCEDURE IN FEDERAL COURT AND
NOW IN THIS STATE, AGAIN, AS
THIS COURT CITES IN ITS APRIL
OPINION, I WOULDN'T SUGGEST THAT
IT IS SYNONYMOUS WITH THE
CONCEPT OF EQUITY.
YOU ARE NOT NECESSARILY GETTING
YOUR FULL DAY IN COURT.
SELF-REPRESENTING LITIGANTS
ESPECIALLY ARE BEING HELD TO
RESPOND TO AN INTRICATE RULE
UNDER A BURDEN FAR MORE THAN
THAT IMPOSED IN CONNECTION WITH
A DEFAULT.
TO AVOID A DEFAULT, YOU GET A
SUMMONS, YOU HAVE TO ADMIT OR
DENY ALLEGATIONS IN A NUMBERED
FORM.
IT'S NOT THAT HARD.
TO AVOID THIS, YOU HAVE TO
UNDERSTAND WHAT'S BEING SERVED
ON YOU.
YOU HAVE TO KNOW THERE'S A RULE.
YOU HAVE TO UNDERSTAND THE RULE.
YOU HAVE TO BE ABLE TO IDENTIFY
WHAT A MATERIAL FACT IS, YOU
HAVE TO BE ABLE TO IDENTIFY THE

CORPS SPONGED EVIDENCE, AND NOW
MOST IMPORTANTLY UNDER THIS
STANDARD, YOU HAVE TO BE ABLE TO
CONTEXTUALIZE IT SUFFICIENTLY
FOR THE COURT.
AND, YES, I HOPE EVERY COURT
WILL TRY TO INSURE EVEN UNDER
THOSE CIRCUMSTANCES THAT EQUITY
IS DONE.
BUT DO I HAVE CONCERNS
ESPECIALLY WHEN THEY'RE FACING
IN MANY INSTANCES MONTHS-LONG
BACKLOGS?
THIS RULE GIVES THEM SIGNIFICANT
DISCRETION, AND I THINK THEY'LL
DO THEIR BEST.
BUT I THINK IF SUMMARY
DISPOSITION IS USED WIDELY IN
FAMILY COURT, THERE IS THE RISK
THAT INADVERTENTLY THE
CONFIDENCE IN THE JUDICIARY WILL
BE ERODED AMONG SELF-REPRESENTED
LITIGANTS AND THE COMMUNITY AT
LARGE WHO RELY ON THEIR DAY IN
COURT AND SOMETIMES FUMBLING
THROUGH THE EVIDENCE TO TRY TO
GET THEIR POINT ACROSS.
SO WITH THAT, I SEE THAT MY TIME
IS UP.
I THANK THE COURT FOR ITS TIME,
AND I YIELD TO MS. TAYLOR.
THANK YOU.
>> THANK YOU, JUSTICE CANADY AND
MAY IT PLEASE THE COURT, MY NAME
IS ASHLEY TAYLOR, AND I AM THE
CURRENT CHAIR OF THE COMMITTEE.
I AM HERE TO EXPRESS THE
MINORITY POSITION--
[INAUDIBLE]
AS MR. BRANDFON EXPRESSED, WHILE
THE COMMITTEE DOES NOT BELIEVE
THAT THE RULE SHOULD STAND, WE
DO BELIEVE THAT IF THE RULE
STANDS, THERE SHOULD BE CERTAIN
AMENDMENTS TO THE RULE--
>> THAT'S NOT REALLY A MINORITY
POSITION.
BECAUSE YOU'RE STILL POSING THE
RULE, CORRECT?
YOU'RE JUST SAYING, WELL, IF THE
RULE STAYS, YOU'RE GOING TO--
WE'D PREFER THAT YOU ADOPT THESE
CHANGES TO IT.
>> YES, YOUR HONOR.

>> I MEAN, THE OTHER PART OF THE
COMMITTEE DOESN'T DISAGREE WITH
THAT, DO THEY?
>> NO, YOUR HONOR.
>> IT'S AN ODD WAY TO DESCRIBE
IT, AS A MINORITY POSITION.
>> YES, YOUR HONOR, UNDERSTOOD.
THE COMMITTEE FEELS THERE ARE
CERTAIN UNIQUE ASPECTS OF FAMILY
LAW THAT SHOULD HAVE THE RULE BE
TAILORED TO THESE ASPECTS.
THIS IS, THESE ARE CASES THAT
INVOLVE, FOR EXAMPLE, PEOPLE
GOING THROUGH DIVORCES OR ISSUES
WITH THEIR CHILDREN.
THE COMMITTEE RECOMMENDS CERTAIN
SPECIFIC, NECESSARY CHANGES
THROUGHOUT THE RULE.
THESE MODIFICATIONS CAN BE
EXPLAINED AS RESTING ON FOUR
UNIQUE ASPECT OF FAMILY LAW ARE.
ONE, AS WE PREVIOUSLY DISCUSSED,
IS CHILDREN'S ISSUES.
TWO IS THE FACT THAT THERE'S
MANDATORY DISCLOSURE IN FAMILY
LAW CASES.
THREE IS THAT THERE IS A LARGE
NUMBER OF PRO SE LITIGANTS AND
FAMILY LAW CASES WHICH IS AROUND
60%.
AND FOUR IS THE FACT THAT FAMILY
LAW IS A COURT OF EQUITY.
SO THE COMMITTEE'S FIRST
PROPOSED CHANGE RELATES TO
CHILDREN'S ISSUES.
WE BELIEVE THAT IN CASES
INVOLVING CHILDREN THERE SHOULD
BE A CARVEOUT TO THE RULE, AND
SPECIFICALLY WE ARE STATING THAT
WE WANT A SENTENCE, WE'RE ASKING
FOR A SENTENCE THAT SUMMARY
JUDGMENT MAY BE SOUGHT TO
ADDRESS THE ISSUE OF PATERNITY
BUT MAY NOT BE SOUGHT TO RESOLVE
THE OTHER ISSUES RELATING TO
CHILDREN INCLUDING TIMESHARING
AND PARENTAL RESPONSIBILITY.
THE REASON FOR THIS IS THAT IN
MAKING DETERMINATIONS RELATING
TO CHILDREN'S ISSUES, THE COURT
MUST MAKE A BEST INTEREST
DETERMINATION.
THIS DETERMINATION REQUIRES
CONSIDERING CERTAIN FACTORS THAT

REQUIRE TESTIMONY AND EVIDENCE,
AND THE COMMITTEE FEELS SUMMARY
JUDGMENT IS JUST NOT THE PROPER
TOOL TO ACCOMPLISH THAT--
>> [INAUDIBLE]
IT COULD NEVER BE THE PROPER
TOOL?
IS THAT'S THE COMMITTEE'S
POSITION?
>> THAT IS OUR POSITION, YOUR
HONOR.
>> SO LET'S IMAGINE A PARENT WHO
DISAPPEARS, ABSCONDS.
>> YES, YOUR HONOR.
>> LET'S SAY, YOU KNOW, WE'RE
ABLE TO ESTABLISH THAT THAT
OTHER PARENT HAS LEFT THE UNITED
STATES, AND ALL WE KNOW IS THAT
THE PARENT IS IN SOME OTHER
JURISDICTION, DOESN'T WANT TO
COME BACK.
THERE'S NO WAY THAT SUMMARY
JUDGMENT COULD BE ABLE TO
RESOLVE THAT CONFLICT?
HELP ME UNDERSTAND WHY IT COULD
NEVER BE APPROPRIATE.
>> YOUR HONOR, IN THAT CASE I
BELIEVE THE COURT WOULD STILL
NEED TO MAKE A BEST INTEREST
FINDING, AND THAT WOULD REQUIRE
A HEARING TO DO THAT.
>> SO IF THE COURT MUST,
NONETHELESS, MAKE THOSE FACTUAL
FINDINGS, ISN'T IT TRUE THAT
THIS SORT OF FEAR THAT'S BEING
EXPRESSED THAT THERE WILL BE A
RULING ON SUMMARY JUDGMENT
REALLY VAPORIZES, BECAUSE A
MOTION EVEN UNDER, YOU KNOW, THE
FACTS I JUST GAVE YOU WOULD
NEVER LIE, RIGHT?
SO THE COURT WILL DENY SUMMARY
JUDGMENT.
WHAT'S-- HELP ME UNDERSTAND
WHAT THE PROBLEM IS.
IT SEEMS TO ME THERE'S NO SKIN
OFF THE COURT'S NOSE TO JUST
SAY, OKAY, I READ THE RULE,
SUMMARY JUDGMENT'S NOT
APPROPRIATE.
I DON'T NEED TO BE TOLD SUMMARY
JUDGMENT'S NOT APPROPRIATE--
[AUDIO DIFFICULTY]
MOTION DENIED.

>> THAT'S A GOOD POINT, YOUR
HONOR, AND THE REASON THE
COMMITTEE IS ASKING FOR THIS
CARVEOUT IS JUST TO PROHIBIT
HAVING THESE MOTIONS FILED.
IF IT'S NEVER GOING TO BE USED,
WE THINK THAT PUTTING IN THE
DETECTIVE OF THE RULE THAT IT
CAN'T BE USED--
>> I GUESS THAT SEEMS TO ME A
VERY THIN READ.
I DON'T KNOW-- CAN YOU DIRECT
ME TO ANOTHER TIME WE'VE SAID
THAT A RULE SHOULD BE CHANGED TO
PREVENT THE COURT FROM HEARING
ARGUMENT FROM PARTIES?
AS A GENERAL RULE, WE ASCRIBE TO
PARTIES A RATIONALITY IN THEIR
SELF-INTEREST, SO WE DON'T
EXPECT PARTIES TO BE MAKING
MOTIONS THAT ARE AGAINST THEIR
INTEREST AND DEEMED FRIVOLOUS,
NOR TO JUDGES AN IRRATIONALITY
OR LAZINESS IS THAT THEY'RE
GOING TO JUST DO THE WRONG THING
UNDER THE LAW.
I GUESS THAT'S THE PART THAT
REALLY SORT OF GRATES ON ME, IS
THIS IDEA THAT, YOU KNOW, WE'RE
EXPECTING OUR JUDGES IN THE
STATE OF FLORIDA TO DO
SOMETHING--
[AUDIO DIFFICULTY]
UNDER YOUR VIEW OF THE WORLD
WHICH YOU WOULD HAVE A CHANCE TO
REVERSE, RIGHT?
>> YOUR HONOR, I THINK IT'S THE
FACT THAT JUDGES WOULD HAVE TO
DEAL WITH THESE MOTIONS AT ALL.
THE FACT THAT IT WOULD NEVER
APPLY IF WE CARVE IT OUT FROM
THE RULE, THEY DON'T EVEN HAVE
TO HAVE IT IN FRONT OF THEM,
THEY DON'T HAVE TO SPEND THE
TIME DEALING WITH IT BECAUSE
PRACTITIONERS CANNOT FILE THE
MOTION TO BEGIN WITH IF IT'S
CARVED OUT FROM THE RULE.
THE OTHER AREA THAT COURT--
THAT THE COMMITTEE WOULD LIKE TO
HAVE A CARVEOUT IS THE FACT THAT
WE HAVE MANDATORY DISCLOSURE
WHICH IS VERY UNIQUE TO FAMILY
LAW.

IN FAMILY LAW COURTS, 45 DAYS
FROM SERVICE OF THE INITIAL
ACTION YOU MUST EXCHANGE CERTAIN
FINANCIAL INFORMATION.
AND THE WAY THAT THE RULE IS
WRITTEN CURRENTLY, THIS MOTION
MAY BE BROUGHT 20 DAYS FROM
COMMENCEMENT OF THE ACTION.
SO, FOR EXAMPLE, IF A PARTY
FILES A MOTION FOR SUMMARY
JUDGMENT, THE RESPONDING PARTY
MAY SEE A MATERIAL FACT--
>> THE 20-DAY, THE 20-DAY PERIOD
IS IN THE EXISTING RULE.
I MEAN, PRIOR TO THE ADOPTION OF
THE NEW RULE, I MEAN, THE
PREVIOUSLY EXISTING RULE.
>> IT IS, YOUR HONOR.
AND TO BE CANDID--
>> SO THAT WASN'T A PROBLEM, WAS
IT?
>> THE RULE HAS BEEN USED VERY
SPARINGLY AS IT CURRENTLY
STANDS, SO WE'VE IDENTIFIED THIS
RULE DURING OUR ANALYSIS.
AND TO BE CANDID, IF THE OLD
RULE, IF YOU WILL, STANDS, THE
COMMITTEE DOES INTEND ON GOING
TO ADDRESS THAT ISSUE BECAUSE
WE'VE IDENTIFIED THIS, AND WE DO
THINK THIS IS AN ISSUE THAT DOES
NOT MATCH WITH OUR MANDATORY
DISCLOSURE REQUIREMENT.
THE COMMITTEE IS ASKING THAT WE
REVISE THE RULE TO MATCH WITH
THIS REQUIREMENT SO THAT A
MOTION FOR SUMMARY JUDGMENT NOT
BE FILED UNTIL A 45 DAYS
FOLLOWING THE INITIAL
PROCEEDING.
THE THIRD AREA THAT WE FEEL HAS
REQUESTED CHANGES RELATES TO THE
LARGE NUMBER OF SELF-REPRESENTED
LITIGANTS IN FAMILY LAW CASES.
NOW, WE HAVE CERTAIN VERBIAGE
THAT WE'VE PUT THROUGHOUT THE
RULE THAT WE THINK MAKES THE
RULE CLEARER FOR LITIGANTS, BUT
ONE OF THE MAIN PROPOSALS WE
HAVE IS UNDER SUBSECTION A.
NOW, THE COMMITTEE UNDER
SUBSECTION A BELIEVES IT WOULD
BE IMPORTANT TO PUT A PARTY ON
NOTICE NOT JUST OF THEIR DUTY TO

RESPOND TO THE MOTION, BUT THE
FACT THEY NEED TO PROVIDE A
FACTUAL POSITION IN THAT
RESPONSE.
FOR EXAMPLE, WE ALREADY HAVE IN
A PETITION FOR RELOCATION THIS
KIND OF LANGUAGE WHERE THERE IS
A SIMILARLY SERIOUS OR RESULT IF
A PARTY DOESN'T RESPOND.
SO THE COMMITTEE BELIEVES THAT
BECAUSE OF THE FINALITY OF
SUMMARY JUDGMENT IN THE FAMILY
LAW CONTEXT, THIS LANGUAGE
CREATES AN EXTRA LAYER OF
PROTECTION TO PUT PARTIES ON
NOTICE OF WHAT THEIR DUTY IS
WHEN THIS KIND OF MOTION IS
FILED.
AND THIS TIES INTO THE
RECOMMENDED CHANGES IN
SUBSECTIONS D, E, F AND G OF THE
RULE THAT THE COMMITTEE FEELS
THAT THERE SHOULD BE A HEARING
WHEN THERE IS A MOTION FOR
SUMMARY JUDGMENT THAT IS TO BE
DECIDED.
NOW, HAVING A MOTION FOR SUMMARY
JUDGMENT DECIDED RUNS THE RISK
THAT'S AKIN TO A DEFAULT
JUDGMENT BEING ENTERED.
THE DIFFERENCE WITH A DEFAULT
JUDGMENT IS YOU HAVE PERSONAL
SERVICE.
WE DON'T HAVE PERSONAL SERVICE
WITH A SUMMARY JUDGMENT.
SO THE COMMITTEE FEELS THAT
HAVING A HEARING GIVES THE COURT
THE OPPORTUNITY TO HAVE PARTIES
BE HEARD ON THIS ISSUE SO THAT
THEIR CASE IS NOT ADJUDICATED BY
A PROCEDURAL FAILURE TO RESPOND.
AND FOR THE PARTIES WHO DO
RECEIVE AND REVIEW THE MOTION,
THEY POTENTIALLY LOSE THE
OPPORTUNITY TO EXPLAIN TO THE
COURT THROUGH TESTIMONY THEIR
POSITION.
AND AS WE'VE MENTIONED, THESE
MAY BE PARTIES GOING THROUGH A
DIVORCE, THESE MAY BE PARTIES
HAVING DETERMINING ISSUES WITH
THEIR CHILDREN.
WE BELIEVE THE PROPER METHOD TO
DETERMINE THIS IS THROUGH

TESTIMONY FOR THE COURT IN ORDER
FOR THEM TO HAVE ACCESS TO THE
COURT SYSTEM.
THE FINAL DIFFERENCE THAT IS
UNIQUE TO FAMILY LAW IS THAT
IT'S A COURT OF EQUITY.
UNDER CERTAIN STATUTES, FOR
EXAMPLE, STATUTE 6108 WHICH IS
ALIMONY, 61075 WHICH IS
EQUITABLE DISTRIBUTION, THE
COURT MUST CONSIDER ANY FACTOR
NECESSARY TO DO JUSTICE IN
EQUITY BETWEEN THE PARTIES.
IN ORDER TO PRESENT ANY AND ALL
TESTIMONY TO DO JUSTICE AND
EQUITY BEFORE THE PARTIES, WE
BELIEVE THAT THE COURT SHOULD BE
HEARING THESE PARTIES SO THAT
THEY CAN HEAR THE TESTIMONY,
THEY CAN HEAR ALL THE FACTS AT
ISSUE, AND IN ORDER TO USE THEIR
EQUITABLE POWERS, A HEARING
WOULD ACCOMPLISH THAT.
SO I THANK YOU FOR THE
OPPORTUNITY TO BE HEARD TODAY.
IF YOU HAVE ANY QUESTIONS, I'M
GLAD TO ANSWER THEM.
ALSO IF THERE'S ANYTHING THAT
MR. BRANDFON OR I STATED TODAY
THAT YOU WOULD LIKE
CLARIFICATION ON, WE ARE MORE
THAN HAPPY TO SUBMIT A WRITTEN
MEMORANDUM.
THANK YOU.
>> THE ONLY QUESTION I HAVE, IT
SEEMS LIKE ALL OF THE CHANGES
YOU'RE PROPOSING ARE CHANGES
THAT, IF YOU THOUGHT ABOUT IT,
YOU WOULD HAVE PROPOSED FOR THE
CURRENT SUMMARY JUDGMENT RULE,
IS THAT CORRECT?
>> I THINK THAT'S A FAIR
STATEMENT, YOUR HONOR.
YES.
>> OKAY.
>> ALL RIGHT.
WELL, WE THANK YOU BOTH FOR YOUR
ARGUMENTS IN THIS CASE TODAY.