In Re: Amendment to Florida Rules of Criminal Procedure- Rule 3.112- Standards for conflict Attorneys in Capital C

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE FRIDAY ORAL ARGUMENT OF THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE CALENDAR IS AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE. WE ASK YOU TO STAY WITHIN YOUR TIME LIMITS, SO THAT EVERYONE HAS AN OPPORTUNITY, AND WE BEGIN, I BELIEVE, WITH JUDGE PADOVANO.

GOOD MORNING. I AM PHIL PADOVANO, AND I AM HERE ON BEHALF OF THE COMMITTEE OF ATTORNEYS REGARDING MINIMUM STANDARDS FOR CONFLICT IN ATTORNEYS FOR CAPITAL CASES. YOU I SHOULD YOUR -- YOU ISSUED YOUR LAST OPINION IN OCTOBER OF '99. AS YOU MAY RECALL, IN THAT OPINION, THE COURT ADOPTED, WITH SOME MODIFICATIONS, THE STANDARDS THAT THE COMMITTEE HAD ORIGINALLY PROPOSED. THE MAIN MODIFICATIONS AMONG THEM BEING GREATER LATITUDE FOR THE TRIAL COURTS, TO ALLOW A SINGLE ATTORNEY, AS OPPOSED TO TWO. THE ORIGINAL RULE WE RECOMMENDED MORE OR LESS REQUIRED TWO LAWYERS IN CAPITAL CASES, BUT THE COURT ALLOWED MORE LATITUDE IN THAT AREA AND, ALSO, MORE DISCRETION ON THE PART OF TRIAL COURTS, TO FIND EXCEPTIONS FROM THE MINIMUM STANDARDS, WHEN THAT IS REQUIRED. THE COURT, ALSO, EXPRESSED A GREAT INTEREST IN EXPANDING -- AT THAT TIME THE RULE, REALLY, WAS PROPOSED ONLY FOR CONFLICT ATTORNEYS. THERE WERE A NUMBER OF REASONS FOR THAT, AND I AM NOT SURE IT IS WORTH GETTING INTO HERE, BUT THE COURT PROPOSED EXPANDING THE REACH OF THIS RULE TO CONFLICT LAWYERS, PRIVATE LAWYERS, AND, ALSO, TO ADOPT A SET OF STANDARDS FOR LAWYERS APPEARING IN POSTCONVICTION CASES AND ASKED THE COMMITTEE TO ADDRESS ALL OF THESE PROBLEMS IN THE OPINION. NOW, WE SENT BACK A LETTER, IN DECEMBER OF '99, OUTLINING ALL OF THIS, MORE OR LESS, IN A TEXT FORM, AND THEN WE GOT A REQUEST, FROM THE COURT, AFTER THAT, SAYING WOULD YOU PLEASE PUT THIS IN THE FORM OF A RULE, AND THE COURT SPECIFICALLY ASKED FOR TWO PROPOSED RULES, ONE WHICH APPLIES THESE STANDARDS TO PRIVATE -- EVERYBODY, INCLUDING PRIVATE COUNSEL, ONE THAT APPLIES THESE RULES TO EVERYBODY, EXCLUDING PRIVATE COUNSEL, AND THAT IS WHAT YOU HAVE BEFORE YOU TODAY. YOU HAVE A NUMBER OF COMMENTS THAT YOU HAVE RECEIVED. I HAVE LOOKED THROUGH THEM. IT SEEMS TO ME THAT THERE IS, IN THIS CASE, A GOOD DEAL OF AGREEMENT, AND WHAT I WOULD LIKE TO DO IS FOCUS ON THE THINGS THAT WE, PERHAPS, AREAS WHERE WE FIND DISAGREEMENT. THE ONE -- LET ME ADDRESS ONE MATTER FIRST, AND THAT IS THE MATTER OF PRIVATE COUNSEL, BECAUSE I ASSUME THAT THE COURT, IN REQUESTING TWO PROPOSALS, HAS SOME QUESTION WHETHER OR NOT THIS SHOULD BE AND PLIVED TO PRIVATE ATTORNEYS, AND I THINK THAT IS AN ISSUE THAT THE COMMITTEE DEBATED, IN SOME DETAIL, INITIALLY, AND, AGAIN, AT THE COURT'S REQUEST. THE COMMITTEE RECOMMENDS THAT THE RULE BE APPLIED TO PRIVATE ATTORNEYS, AS WELL AS COURT-APPOINTED ATTORNEYS, AND IT, REALLY, IS -- THERE ARE ARGUMENTS ON BOTH SIDES.

HOW WOULD YOU PRACTICALLY APPLY IT TO PRIVATE ATTORNEYS?

THE -- MECHANICALLY, IT DOES PRESENT A LITTLE BIT OF A DIFFERENT CHALLENGE, BECAUSE WE CONTROL THE POINTS, BUT WHAT WE HAVE TRIED TO DO TO ADDRESS THAT IS PUT IT IN THE RULE. THERE IS A PROVISION IN THE RULE THAT EVERY ATTORNEY, WHEN APPEARING FOR A CAPITAL CHARGE DEFENDANT, MUST FILE A NOTICE, CERTIFYING THAT HE OR SHE DOES MEET THE REQUIREMENTS OF THE RULE, SO THAT THE COURT WOULD, THEN, HAVE SOME CONTROL OVER THE ISSUE, WHETHER THAT LAWYER IS OR IS NOT QUALIFIED.

I GUESS MY QUESTION, REALLY, IS, IF AN ATTORNEY DOES NOT, BUT HE OR SHE HAS BEEN RETAINED AND PAID FOR BY THE DEFENDANT OR HIS FAMILY. WHAT CAN THE TRIAL COURT PRACTICALLY DO? DO YOU REQUIRE ANOTHER ATTORNEY TO ASSIST HIM, WHO MEETS THESE QUALIFICATIONS, OR JUST SAY YOU CAN'T REPRESENT THIS DEFENDANT, BECAUSE YOU DON'T MEET THESE --

I THINK THE COURT DOES HAVE THE AUTHORITY TO SAY YOU CAN'T REPRESENT THIS DEFENDANT, BUT YOU ASKED A VERY INTERESTING QUESTION OF WHAT HAPPENS NEXT, I THINK. THAT COULD BE VERY COMPLICATED. I SUPPOSE, IF A DEFENDANT HAD FINANCIAL RESOURCES AND REFUSED TO HIRE COUNSEL, THEN YOU WOULD BE IN A DIFFICULT SITUATION. I DON'T KNOW. I GUESS APPLYING IT TO PRIVATE COUNSEL DOES PRESENT A SEPARATE SET OF PROBLEMS. BUT IN THE END, I THINK IT IS BETTER TO DO THAT. YOU HAVE A -- YOU KNOW, YOU HAVE, ON THE ONE HAND, YOU HAVE THIS INTEREST OF THE DEFENDANT, TO RETAIN COUNSEL OF HIS OR HER CHOOSING, BUT ON THE OTHER HAND, YOU HAVE THE COURT'S OBLIGATION TO MAKE SURE THAT DEFENDANTS RECEIVE ADEQUATE ASSISTANCE OF COUNSEL.

IS THERE ANY OTHER PRECEDENT THAT YOU CAN CALL TO OUR ATTENTION, IN WHICH THE COURT HAS THE POWER TO REGULATE WHO A PERSON HIRES AS COUNSEL, OUTSIDE OF THE AREA, WHEN THE COUNSEL IS PAID FOR AT PUBLIC EXPENSE?

YES, SIR. WHEAT VERSUS THE UNITED STATES IS A CASE THAT IS CITED IN THE LETTER THAT I WROTE TO THE COURT, AND IT IS A CASE IN WHICH THE DEFENDANT WANTED TO HIRE AN ATTORNEY, WHO HAD -- PRIVATE ATTORNEY, WHO HAD REPRESENTED A DEFENDANT, WHO HAD ENTERED A PLEA OF GUILTY AND AGREED TO TESTIFY AGAINST THE DEFENDANT ON TRIAL, AND HE AGREED TO WAIVE CONFLICT-FREE COUNSEL, BUT HIS DECISION TO RETAIN THAT LAWYER CAME AT THE LAST MINUTE, AND THE COURT SAID, NO, I AM NOT GOING TO LET YOU HIRE THAT ATTORNEY, EVEN THOUGH HE WAS WILLING TO PAY FOR THAT ATTORNEY, AND COURT SAID THE ESSENTIAL AIM OF THE CONSTITUTIONAL RIGHT TO COUNSEL IS TO GUARANTEE AN EFFECTIVE ADVOCATE FOR EACH CRIMINAL DEFENDANT, RATHER THAN TO ENSURE THAT A DEFENDANT WILL, IN EXORBLY BE REPRESENTED, BY AN ATTORNEY WHO HE REFERS PREFERS. THE COURT IS SAYING THE OBLIGATION TO PROVIDE EFFECTIVE COUNSEL CAN, IN SOME INSTANCES, BE GREATER THAN THE CONSTITUTIONAL RIGHT TO CHOOSE COUNSEL.

ANY OF THE FEDERAL REQUIREMENTS, THE LOCAL RULES, SEVERAL OF THE DISTRICTS IN FLORIDA HAVE SPECIAL RULES THAT YOU MUST SATISFY, BEAUTIFUL YOU CAN PRACTICE IN THAT COURT. HAVE ANY OF THOSE BEEN TESTED OR LITIGATED, UNDER THE SAME --

I DON'T KNOW. I MEAN, THAT IS THE PLAIN ANSWER TO YOUR QUESTION. I DON'T KNOW. WHEN WE DID ADDRESS THIS QUESTION, WE DID SOME RESEARCH ON IT, AND WHAT WE HAVE IN THE LETTER, HERE, IS ABOUT ALL WE WERE ABLE TO FIND, BUT IT IS A GOOD QUESTION. I ASSUME THERE IS A GOOD ANALOGY TO BE DRAWN THERE, IF SOME -- IF SOMEONE HAD EVER CHALLENGED ONE OF THOSE, WE WOULD HAVE DECISION.

I GUESS THAT IS WHAT I WAS THINKING ABOUT. WE HAVE A LOT OF CERTIFICATION OF CIVIL TRIAL LAWYERS. IF, INSTEAD, THE APPROACH WAS THERE WAS A CERTIFICATION FOR CAPITAL REPRESENTATION, COULD THAT BE LINKED, THEN, TO THE PRIVILEGE FOR APPEARING IN COURT ON CERTAIN MATTERS?

I THINK IT COULD. I THINK IT IS THE SAME THING THAT GOES BACK TO THIS COURT'S POWER TO ADMIT LAWYERS TO THE BAR, TO DETERMINE WHETHER THEY CAN BECOME SPECIALISTS,, IN CIVIL TRIAL PRACTICE OR ANY OTHER PARTICULAR AREA. THE COURT HAS THE AUTHORITY TO DO. THAT I THINK THE BIGGER QUESTIONS AND THE MORE TROUBLING -- JUSTICE QUINCE ASKS THE MOST TROUBLING QUESTION, I THINK, ABOUT THE PRACTICAL PROBLEMS WITH THIS, AND WE HAD SOME DEBATE, ON THE COMMITTEE, ABOUT THIS, TOO, ABOUT SOME OF THE COMMITTEE

MEMBERS, I SHOULD SAY, ARE NOT IN FAVOR OF THIS PRIVATE ATTORNEY PROVISION. WHAT HAPPENS IF A DEFENDANT WANTS TO HIRE A WELL-KNOWN CRIMINAL ATTORNEY, LIKE ROY BLACK, LET'S SAY, BUT IT HAPPENS THAT MR. BLACK DOES NOT MEET THE QUALIFICATIONS OF THESE RULES. ARE WE GOING TO SAY, NO, YOU CAN'T HAVE THIS LAWYER? NOW, OTHER MEMBERS OF THE COMMITTEE SAY, WELL, THERE ARE OTHER PROVISIONS IN THE RULE THAT ALLOW THE COURT TO MAKE EXCEPTIONS, AND MAYBE THE EVIDENCE THAT COULD BE SHOWN, IN A CASE LIKE THAT, WOULD BE A VALID EXCEPTION, SO THERE ARE -- I SHOULD SAY THAT I ACKNOWLEDGE THERE ARE PRACTICAL ISSUES ASSOCIATED WITH THIS.

DID YOU SEE -- DID THE COMMITTEE SEE, IN LOOKING AT THE LITIGATION IN THE CAPITAL AREA, OVER THE LAST IT 20 YEARS, THAT THE -- OVER THE LAST 20 YEARS, THAT THE ISSUE OF LACK OF COMPETENCE IN THE PRIVATE BAR HAS BEEN A SIGNIFICANT SOURCE OF PROBLEMS, IN POSTCONVICTION? BECAUSE, AGAIN, WE ARE LOOKING AT TWO INTERESTS HERE. ONE IS THE INTEREST OF THE DEFENDANT, TO BE REPRESENTED BY EFFECTIVE COUNSEL BUT, ALSO, THE INTEREST OF THE VICTIM, TO MAKE SURE THAT, IN THE FIRST INSTANCE, THAT THE CASE IS TRIED IN AN APPROPRIATE WAY, SO THAT THE CONVICTION, REALLY, CAN BE FINAL?

THE COMMITTEE HAD NO STUDY OF ANY SORT ON THAT. WE DID REVIEW A GOOD BIT OF DATA THAT WAS PRODUCED BY THE AMERICAN BAR ASSOCIATION, AND I DON'T KNOW IF THERE IS SOMEONE HERE, SPEAKING. I KNOW THEY FILED A WRITTEN COMMENT, BUT TO ANSWER YOUR QUESTION, MOST OF OUR -- MOST OF OUR RECOMMENDATION IS BASED ON THE BELIEF OF THE COMMITTEE MEMBERS THAT THIS WOULD BE A BETTER APPROACH. YOU KNOW, LET ME, ALSO, ADD THAT THIS SAME DEBATE, A VERY SIMILAR DEBATE OCCURRED, WHEN THE COURT WAS DECIDING WHETHER TO APPLY INEFFECTIVE ASSISTANCE OF COUNSEL PRINCIPLES TO PRIVATE COUNSEL. YOU KNOW, AT ONE TIME, I THINK, THERE WAS A BELIEF THAT, IF YOU HIRED YOUR OWN LAWYER, WE COULD NOT SAY THAT THE LAWYER WAS INEFFECTIVE. AND ULTIMATELY THE COURT CAME AROUND TO THE VIEW THAT THE RIGHT TO EFFECTIVE COUNSEL APPLIES, WHETHER YOU PAY THE LAWYER OR NOT, AND I THINK WE ARE SORT OF SEEING A MODERN-DAY RERUN OF THAT SAME ISSUE, AND I SUGGEST THAT, IN THE END, IT OUGHT TO COME OUT IN THE SAME WAY.

LET ME ASK A QUESTION CONCERNING THE COMMITTEE'S COMMENTS AND VIEWS, IN RESPECT TO A MIGHT NOT STANDARD, IN THAT THERE IS A COMMENT, HERE, IN THE RULE, WHICH SAYS THAT THIS -- THESE RULES ARE NOT TO BE USED AS A BASIS FOR INEFFECTIVE ASSISTANCE OF COUNSEL, IN -- WAS IT THE COMMITTEE'S VIEW THAT THIS -- THAT IT SHOULD, CLEARLY, BE, STILL, A STRICKLAND STANDARD, AS FAR AS INEFFECTIVE ASSISTANCE OF COUNSEL?

YES, SIR. ABSOLUTELY. AND I WOULD SAY TO YOU THAT, IF YOU DON'T DO THAT, YOU SHOULD NOT ADOPT THIS RULE, BECAUSE, AND I KNOW THAT THE PUBLIC DEFENDER ASSOCIATION, IN ITS COMMENTS, IS AGAINST THIS, IN ITS COMMENT TO THE COURT, IS AGAINST THIS PARTICULAR COMMENT, IN THE OPINION, BUT I DON'T THINK WE SHOULD MAKE THE REQUIREMENTS OF STRICKLAND A GREATER. I DON'T THINK THAT THE INTENT OF THIS RULE IS TO ADD A LIST OF SUBSTANTIVE REQUIREMENTS THAT ARE A SUPPLEMENT TO THE STRICKLAND REQUIREMENT, AND I THINK, IF WE DID THAT, IT WOULD BE A TOTAL DISASTER. WE WOULD HAVE INEFFECTIVE ASSISTANCE OF COUNSEL HEARINGS, WHERE PEOPLE WOULD BE ARGUING THAT, NO, WELL, HE DIDN'T REALLY DO THE FIVE TRIALS. HE ONLY DID FOUR, OR THAT WE WOULD HAVE TO HAVE AN EVIDENTIARY HEARING ABOUT WHETHER SOMEBODY ACTUALLY ATTENDED THE FULL TEN HOURS OF THE COURT OR WHETHER HE SKIPPED OUT IN THE AFTERNOON. I DON'T THINK WE OUGHT TO BE LITIGATING THESE MATTERS THAT ARE INHERENT IN THESE STANDARDS, AND IF WE ALLOW THE STANDARDS TO BECOME SOME SORT OF SUPPLEMENTAL REQUIREMENT TO STRICKLAND, THAT IS WHAT IS GOING TO HAPPEN, WE STANDBY THAT VERY FIRMLY. WE BELIEVE THAT IS A VERY IMPORTANT PART OF THIS RECOMMENDATION. THESE STANDARDS SHOULD NOT CREATE ANY SUBSTANTIVE RIGHT, UNDER THE LAW.

JUDGE PADOVANO, WITH REGARD TO THE PRIVATE LAWYERS AND TRYING TO CREATE A SYSTEM

THAT IS WORKABLE FOR THEM, IS THERE A SUFFICIENT MECHANISM IN PLACE, SO THAT THEY COULD OBTAIN THE EXPERIENCE? LET'S ASSUME THAT ONE DOES NOT COME UP THROUGH A PUBLIC DEFENDER'S OFFICE BUT IS A PRIVATE LAWYER. CAN THAT PRIVATE LAWYER GET THAT, SOMEHOW, IN CONNECTION WITH THE PUBLIC DEFENDERS OR SOME OTHER WAY? IS IT PRACTICAL THAT THEY CAN ACTUALLY COMPLY?

WELL, I THINK IT IS. I THINK IT IS. I THINK THAT MANY OF THEM WILL HAVE GOTTEN THEIR EXPERIENCE IN PUBLIC PROSECUTION OR DEFENSE,, TO BEGIN WITH. THOSE WHO HAVE NOT, WILL HAVE GOTTEN IT BY WORKING WITH OTHER LAWYERS. THAT WAS THE CASE WITH ME, FOR EXAMPLE. I WORKED WITH ANOTHER LAWYER IN -- WAS ABLE TO DO TRIALS WITH HIM AND THEN SOME ON MY OWN AND THEN COME ALONG IN THAT WAY. I THINK THAT THERE WILL BE AN OPPORTUNITY, AND, CERTAINLY, THERE ARE MORE AND MORE EDUCATIONAL OPPORTUNITIES, NOW, THAN THERE HAVE BEEN, TO FULFILL THOSE PARTS OF THE RULE.

BUT THERE IS SUFFICIENT OPPORTUNITY TO GET INTO THE COURTROOM, TO DO THAT -- TO SATISFY THAT CRITERIA?

I THINK SO, YES, SIR.

WHAT WAS THE -- IF ANY, INFORMATION SUPPLIED TO THE COMMITTEE, AS TO THE AVAILABILITY OF COUNSEL, IN RURAL CIRCUITS, THAT WOULD MEET THIS CRITERIA, PARTICULARLY, THINKING ABOUT THE 14th CIRCUIT?

THE COMMITTEE WAS VERY CONCERNED ABOUT THE FACT THAT YOU MIGHT HAVE SOME SMALL CIRCUITS, LIKE THE THIRD CIRCUIT OR THE FOURTEENTH, THAT MIGHT MEET THE REQUIREMENT OF THE RULE, BUT I THINK THE GENERAL RULE OF THE COMMITTEE IS THAT SHOULD NOT BE AN IMPEDIMENT TO ADOPTING MINIMUM STANDARDS. IF THERE IS ENOUGH OF THAT KIND OF WORK IN THAT COUNTY, THEN SOMEBODY WILL BE QUALIFIED, AND IF THERE IS NOT, THEN, PERHAPS, SOMEONE ELSE OUGHT TO BE -- WILL COME IN AND DO THAT. BUT THERE IS A REQUIREMENT. I MEAN THERE IS A CONCERN THAT WE ARE GOING TO HAVE SOME COUNTIES, WHERE WE WILL HAVE VERY FEW PEOPLE WHO WILL BE QUALIFIED, BUT, AGAIN, I DON'T THINK THAT SHOULD BE AN IMPEDIMENT TO THE COURT'S ADOPTION OF A STANDARD, BECAUSE, IN THE END, THE GOAL IS NOT, REALLY, TO SAY, WELL, WE GAVE YOU THE BEST LAWYER WE HAD IN BROOKSVILLE. IN THE END, IT IS TO MAKE SURE THAT YOU GOT AN ADEQUATE LAWYER TO HANDLE THIS VERY DIFFICULT TASK.

WHAT IS -- SOME CONCERN, IN MY MIND, HAVING BEEN A TRIAL LAWYER, NOT IN THESE KINDS OF CASES BUT IN A LOT OF RURAL AREAS. IS IT GOING TO WORK, TO THE DISADVANTAGE OF A DEFENDANT, WHO IS ONLY GOING TO BE ABLE TO HAVE COUNSEL FROM OUTSIDE THAT AREA, WHEREAS, IN MANY RURAL AREAS, HAVING COUNSEL WHICH IS LOCAL, IS PARTICULARLY IMPORTANT.

WELL, I GUESS --

DID THE TRIAL COURT HAVE ANY WAY TO --

WELL, IT SEEMS LIKELY, TO ME, IF THEY FOLLOW THE TWO-LAWYER PART OF THIS, AT LEAST THE SPIRIT OF IT, THAT AT LEAST SOMEONE FROM THAT COUNTY WOULD BE THERE, WHETHER THAT PERSON IS THE LEAD COUNSEL OR CO-COUNSEL. BUT I DON'T, REALLY, CONTEST THE IMPORT OF YOUR QUESTIONS. THERE ARE PRACTICAL PROBLEMS WITH THE STANDARDS, AND I THINK WHAT THE COURT HAS TO DECIDE IS WHETHER -- WHETHER THE GOOD OUTWEIGHS -- WHETHER THE POSITIVES OUTWEIGH THE NEGATIVES. I, REALLY, I DON'T DENY THAT THERE WILL BE SOME DIFFICULTY IN SMALL COUNTIES.

JUDGE, BEFORE YOU SIT DOWN, LET ME ASK YOU SORT OF A BROADER POLICY QUESTION, AND

THAT IS THAT YOU HAVE BEEN INVOLVED IN THIS FOR SEVERAL YEARS, NOW, AND YOU HAVE REPRESENTATION FROM YOUR COMMITTEE FROM ALL OVER THE STATE. COULD YOU GIVE US SOME INSIGHT, IN THE DELIBERATIONS OF YOUR COMMITTEE AND YOUR OWN OPINION, AS TO WHETHER OR NOT THIS HAS BEEN A CONSTRUCTIVE EFFORT, AND WHETHER OR NOT YOU SEE THAT THIS IS HAVING ANY IMPACT OUT THERE, ON THE QUALITY OF REPRESENTATION AND THE INTEGRITY OF THE PROCESS, IN CAPITAL CASES.

WELL, I DON'T KNOW, FOR SURE, IF I COULD SAY WHAT EFFECT IT HAS HAD, BUT IT SEEMS TO ME THAT, ANY TIME YOU HAVE A PROCESS LIKE THIS, IT IS GOING TO RAISE AWARENESS OF THE PROBLEM, AND IT IS GOING TO CAUSE PEOPLE TO BE THINKING ABOUT IT AND GEARING UP FOR IT, AND WE HAVE -- YOU HAVE, IN CONVENING THE COMMITTEE AND ASKING THESE QUESTIONS, GOTTEN THE INTEREST OF MANY DIFFERENT GROUPS, AND FRANKLY IT SEEMS TO ME THAT MANY OF THEM AGREE WITH YOU, THAT WE OUGHT TO BE DOING THIS, AT LEAST IN SOME FASHION, SO I THINK IT HAS HAD, OVERALL, A POSITIVE EFFECT.

THE PROBLEMS THAT YOU MENTIONED, AND THE COURT HAS INQUIRED INTO, AGAINST THE PROBLEM? ARE WE FIXING SOMETHING THAT IS MAKING MORE OF A PROBLEM, THAN WE ARE CORRECTING, WHEN WE, ESPECIALLY IN THE AREA OF PRIVATE COUNSEL, IT SEEMS TO AND REALLY SLIPPERYRY SLOPE -- A SLIPPERY SLOPE, THERE, AND I AM JUST WONDERING IF WE ARE NOT HEADED INTO MORE PROBLEMS THAN WE HAVE.

YOU KNOW, IT VERY WELL MIGHT BE, AND I THINK THAT IS A QUESTION THAT THE COURT IS GOING TO HAVE TO DECIDE. IF OUR COMMITTEE CAME OUT FIRMLY, ONE WAY OR THE OTHER ON THIS, I SUPPOSE I WOULD BE STANDING HERE, TRYING TO GIVE YOU THE BEST POSSIBLE ARGUMENTS TO SUPPORT THE VIEW OF THE COMMITTEE. THE FACT OF THE MATTER IS THAT THE COMMITTEE ORIGINALLY RECOMMENDED AGAINST IT. IT WAS THE COURT THAT REQUESTED US TO ADDRESS THE ISSUE, AND WE DID. OUR REASON FOR INITIALLY RECOMMENDING AGAINST IT WAS, BASICALLY, THE POINT THAT YOU ARE MAKING, AND THE POINT THAT OTHERS HAVE MADE, BUT WE, SINCE IT BECAME APPARENT, FROM THE COURT'S OPINION IN OCTOBER, THAT THERE WAS AN INTENT TO MAKE THIS APPLICABLE MUCH MORE BROADLY, WE DID STUDY IT AGAIN, AND I THINK A MAJORITY OF THE MEMBERS BELIEVE IT SHOULD BE APPLIED, BUT IT IS, BY NO MEANS, A EASY QUESTION, SO I AM NOT GOING TO STAND HERE AND ADVOCATE THAT, YES, YOU HAVE TO DO THIS. THE TRUTH IS YOU DON'T. LET ME JUST MAKE ONE MORE POINT, BUT I YIELD MY TIME, AND THAT IS I THINK WE ARE IN AGREEMENT WITH THE PUBLIC DEFENDER ON THE QUESTION THAT JUSTICE WELLS ASKS WITH REGARD TO APPOINTING A PUBLIC DEFENDER AND THE POINTS THAT THE PUBLIC DEFENDER WANTS THE RIGHT TO REFUSE, IF THE CASE LOAD IS SUCH THAT THEY CAN'T HANDLE POINTS IN CAPITAL CASES. WE, IN THE COMMITTEE, DID NOT PUT THAT IN, AND THE COMMITTEE DOES UNIFORMLY STANDBY THAT POSITION. WE THINK THE BETTER APPROACH WOULD BE TO HAVE THE PUBLIC DEFENDER GO TO THE COURT AND EXPLAIN THAT, JUST AS THEY DO IN OTHER SITUATIONS, WHERE THEIR CASELOADS ARE OVERWHELMING, AND THEN THE COURT CAN DECIDE WHETHER OR NOT TO APPOINT OUTSIDE COUNSEL. IF YOU ALLOW THE PUBLIC DEFENDERS TO SAY THEY REFUSE AN APPOINTMENT, IT SEEMS TO ME THAT IT TAKES A LARGE ELEMENT OF CONTROL, OVER THE QUALIFICATION ISSUES, FROM THE COURTS, AND THAT WOULD, REALLY, NOT BE GOOD, I DON'T THINK, FOR THE WAY THE -- THE MECHANICAL RULE IN WHICH THIS -- THE MECHANICAL WAY IN WHICH THIS RULE SHOULD OPERATE. I THINK MR. MILLER WANTED TO ADD A FEW COMMENTS.

MAY IT PLEASE THE COURT. I AM JIM MILLER FROM JACKSONVILLE. I REPRESENT THE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. YOUR HONOR, WE HAVE DISCUSSED, IN MY ORGANIZATION, THIS ISSUE ABOUT WHETHER THIS SHOULD APPLY TO PRIVATE COUNSEL. LET ME TELL YOU WHETHER THAT CAN BE OF ANY ASSISTANCE TO THE COURT. FIRST OF ALL, WE HAVE ALL COME TO THE CONCLUSION THIS COURT DOES HAVE THE AUTHORITY TO DO THIS. JUDGE PADOVANO HAS, ALREADY, MENTIONED THIS, BUT I WOULD DIRECT YOU TO THE CASE OF VAGNER VERSUS WAYNE RIOT. THAT IS -- WAINWRIGHT. THAT IS 398 SO.2D 384. IT TALKS ABOUT

ALL OF THESE ISSUES OF APPLYING INEFFECTIVE ASSISTANCE OF COUNSEL TO PRIVATE COUNSEL, AND SO A LOT OF THE ARGUMENTS THAT YOU ARE MAKING TODAY, YOU HAVE ALREADY COVERED IN THAT CASE, SO I THINK YOU HAVE THE AUTHORITY. THE PROBLEM OF THE PRACTICAL PROBLEMS THAT HAVE ALREADY BEEN RAISED, I APOLOGIZE TO THE COURT. MY ORGANIZATION SHOULD HAVE ALREADY HAD THIS VOTED ON AND DECIDED BUT WE HAVEN'T. WE MEET, AGAIN, IN JANUARY, AND I KNOW THIS THING HAS DRUG ON, BUT I WANT TO BRING THIS UP AND SEE IF WE CAN ADDRESS THE PRACTICAL PROBLEMS THAT JUSTICE QUINCE HAS TALKED ABOUT, AND, ALSO, YOU, JUSTICE WELLS, BECAUSE WE ARE AWARE OF THESE. IN PLINS PELL, MY ORGANIZATION -- IN PRINCIPLES, MY ORGANIZATION SUPPORTS AFTERNOON PLYING THIS RULE TO EVERYONE, INCLUDING PRIVATE COUNSEL.

HAVE YOU LOOKED AT POSTCONVICTION COUPS HE WILL? I KNOW ONE OF THE PARTIES BROUGHT IT UP, THAT THERE DOESN'T SEEM TO BE ANY ROOM IN THERE FOR APPELLATE COUNSEL, THAT YOU HAVE TO HAVE SOME EXPERIENCE AND BE QUALIFIED FOR POSTCONVICTION COUNSEL. HAVE YOU DISCUSSED THAT AT ALL?

NO, JUSTICE QUINCE. WE LIMITED OUR DISCUSSIONS JUST TO THE TRIAL COUNSEL ASPECT OF THIS, NOT TRIAL COUNSEL NOR POSTCONVICTION COUNSEL, SO I AGREE WITH THE COURT THERE ARE SOME PRACTICAL PROBLEMS, AND, AGAIN, I APOLOGIZE. WE ARE ACTUALLY TRYING TO GET IT DONE. WE ARE TRYING TO GATHER SOME DATA. IT MAY NOT BE STATISTICAL DATA BUT AT LEAST ANECDOTAL DATA AS TO WHETHER OR NOT THIS IS A PROBLEM WITH PRIVATE COUNSEL IN THE STATE OF FLORIDA, IN OTHER WORDS, OUR COUNSEL ARE MEETING THE STANDARDS, ANYWAY, AND I THINK THE COURT SHOULD KNOW THAT, IN TERMS OF WHETHER YOU SHOULD ADOPT THESE STANDARDS,, TO BEGIN WITH. IN ANSWER TO YOU, JUSTICE QUINCE, IS WE PUT ON SEMINARS TO PRIVATE ATTORNEYS AS WELL AS TO THE PUBLIC DEFENDERS OFFICE, BUT YOU ARE ASKING THE QUESTION WHETHER THERE WOULD BE ANY WAY FOR PRIVATE COUNSEL TO GET THE EXPERIENCE TO WORK, AND I DON'T KNOW OF NO WAY, UNLESS THE PRIVATE COUNSEL GETS PERMISSION TO SIT WITH COUNSEL. I KNOW OF NO PROGRAMS.

WOULD IT BE POSSIBLE TO WORK SOME TYPE OF MECHANISM WITH PUBLIC DEFENDERS OFFICES ACROSS THE STATE? IS THAT IMPOSSIBLE?

NO. I CAN'T SAY THAT IS IMPOSSIBLE.

IS IT IMPRACTICAL?

IT VERY WELL MAY BE. TO BE HONEST, AGAIN, WE ARE TRYING TO WORK THROUGH ALL OF THESE PROBLEMS, BECAUSE, AGAIN, WE STRONGLY BELIEVE, IN PRINCIPLE, THAT THIS SHOULD APPLY TO PRIVATE COUNSEL. WE BELIEVE INJUSTICE. IF IT IS GOING TO APPLY TO PUBLIC DEFENDERS, IT SHOULD APPLY TO EVERYONE. THE ONLY ISSUES ARE THE PRACTICAL PROBLEMS THAT THIS COURT HAS RAISED. IT MAY BE SOMEWHAT INTRACTABLE. WE MAY NOT KNOW THE ANSWER, UNTIL WE LEAP INTO THE WATER, SO TO SPEAK. THE LAST THING I WOULD LIKE TO SAY, THOUGH, IS WE DON'T DOUBT YOUR AUTHORITY TO DO THIS, AND WHILE THERE MAY BE SOME PROBLEMS, I THINK I CAN REPRESENT MY ORGANIZATION, TO BE THIS, IF IT COMES DOWN TO NOT HAVING ANY STANDARDS, WE WOULD PREFER TO HAVE THE STANDARD. WE STRONGLY BELIEVE THAT THIS WILL INCREASE THE LEVEL OF REPRESENTATION FOR CAPITAL DEFENDANTS. THERE IS NO QUESTION ABOUT THAT, SO IF IT, REALLY, COMES DOWN TO THAT, IN YOUR MINDS, WE WOULD RATHER HAVE THE STANDARDS AND WORK ALL THIS THROUGH LATER. NOW, PERHAPS, AS JUSTICE SHAW SAID, THAT MAY CREATE MORE PROBLEMS, BUT YOU KNOW THIS IS VERY SERIOUS BUSINESS HERE, AND PERHAPS WE ARE JUST GOING TO HAVE TO WORK THROUGH THOSE PROBLEMS, AND THEREFORE I WOULD ASK THE COURT, IF IT REALLY COMES DOWN TO THAT, TO GO AHEAD AND ADOPT THE STANDARDS. I THINK THERE IS ENOUGH ROOM, HERE, AND DISCRETION FOR THE TRIAL COURTS TO DEAL WITH THESE PROBLEMS.

AROUND THE STATE, WHEN YOU ARE TALKING ABOUT A CAPITAL CASE, IS THERE A GREAT DEAL OF SELF-SELECTION GOING ON? IN OTHER WORDS THAT A CRIMINAL DEFENSE ATTORNEY, WHILE THERE MAY BE OTHER CASES THAT THEY MAY BE COMPETING FOR, THAT THERE IS BASIC UNDERSTANDING OF THE AWESOME UNDERTAKING AND THEREFORE LESS EXPERIENCED COUNSEL ARE NOT TAKING THESE CASES, OR DO WE KNOW THAT?

I DON'T THINK WE CAN REALLY SAY THAT. YOU KNOW, THE REAL TRUTH IS, AND I DON'T KNOW HOW TO PUT THIS, OTHER THAN JUST TRUTHFULLY. THERE IS A DEFENDANT OUT THERE THAT CAN AFFORD PRIVATE COUNSEL IN A PRIVATE CASE, HOPEFULLY THEY HAVE ENOUGH, YOU KNOW, INFORMATION TO HIRE GOOD COUNSEL, BECAUSE THERE ARE GOOD COUNSEL OUT THERE, BUT I KNOW, PERSONALLY, AND THIS IS TRUE THROUGHOUT THE STATE, SOME PEOPLE CANNOT AFFORD THE BEST, SO THEY ARE HIRING PEOPLE THAT ARE, PERHAPS, NOT THE BEST CAPITAL ATTORNEYS AND, PERHAPS, DON'T MEET THE STANDARDS, BUT QUITE FRANKLY WE WOULD LIKE TO GET SOME MORE DATA, TO REALLY SEE THE EXTENT OF THAT TOTAL.

IN OTHER WORDS THE IMPACT MAY BE ON THE PERSON THAT IS -- DOESN'T QUALIFY FOR THE PUBLIC DEFENDER BUT DOESN'T HAVE ALL OF THE MONEY IN THE WORLD, SO THERE MAY BE CAUGHT IN A --

I CAN'T SAY. THAT I KNOW SPECIFIC --

YOU ARE IN YOUR REBUTTAL.

THANK YOU VERY MUCH, YOUR HONORS.

THANK YOU. MS. DANIELS.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM NANCY DANIELS, THE SECOND JUDICIAL CIRCUIT PUBLIC DEFENDER. WE HAVE A NUMBER OF PEOPLE HERE TO SPEAK THIS MORNING. WE ARE LISTED, OFFICIALLY, AS OPPONENTS OF THE RULES, BUT WE WANT TO MAKE IT CLEAR THAT WE ARE IN FULL SUPPORT OF THE SETTING OF STANDARDS FOR CAPITAL REPRESENTATION, FOR ALL LEVELS. TRIAL REPRESENTATION, APPELLATE, AND POSTCONVICTION, AND WE THINK IT OUGHT TO APPLY ACROSS THE BOARD, TO CONFLICT LAWYERS, PUBLIC DEFENDERS, AND PRIVATELY-RETAINED ATTORNEYS. I THINK WE HAVE PEOPLE, HERE, TO ADDRESS ALMOST ALL OF THE QUESTIONS THAT HAVE COME UP SO FAR, SO I WOULD LIKE TO INTRODUCE THEM TO YOU. BEFORE I DO, I WOULD LIKE TO SAY THAT WE FULLY SUPPORT THE COURT'S EFFORTS TO SET AND ENFORCE STANDARDS FOR CAPITAL REPRESENTATION AND APPRECIATE THE EFFORTS YOU HAVE ALREADY MADE AND THE WORK OF THE COMMITTEE TOWARD THAT END. THE PEOPLE WE HAVE TO SPEAK, THIS MORNING, ARE JUDY GALLANT, WHO WORK WITH THE DEATH PENALTY PROJECT RESPECT AND ALAN CHIPPER FIELD, AN ASSISTANT PUBLIC DEFENDER WHO TRIES A LOT OF CAPITAL CASES IN THE JACKSONVILLE PUBLIC DEFENDERS OFFICE. WE HAVE MIKE RIDER, AND THEN GREG SMITH, THE CCRC NORTH DIVISION AND JOHN MOSER, AND MY TWO APPELLATE LAWYERS, BILL McCLAIN AND CHET KAUFMAN AND NEAL A DUPREE, SOUTHERN REGION CCRC. I WILL TURN IT OVER TO JUDY GALLANT.

MAY IT PLEASE THE COURT. CHIEF JUSTICE WELLS AND OTHER DISTINGUISHED JUSTICES. MY NAME IS JUDY GALLANT, AND WE, VERY MUCH, APPRECIATE THE OPPORTUNITY TO ADDRESS THIS COURT, ON BEHALF OF THE ABA, ON THE ISSUE OF PROPOSED STANDARDS GOVERNING CAPITAL COUNSEL. I AM ASSUMING THE COURT IS FAMILIAR WITH THE COMMENTS WE HAVE SUBMITTED PREVIOUSLY, AND I WILL EMPHASIZE THE MOST VALIANT POINTS. THE ABA SUPPORTS PROMULGATING STANDARDS FOR CAPITAL COUNSEL, TO HELP ENSURE DEFENDANTS ARE REPRESENTED BY COMPETENT COUNSEL IN ALL CASES. MINIMUM STANDARDS ARE A PREREQUISITE TO ENSURE A FUNDAMENTAL PROCESS IN CAPITAL CASES, AND THE ABA RESPECTS THE COURT'S LEADERSHIP AND EXPECTS IT TO GO FURTHER, IN MAKING ITS STANDARDS SUPPORT THE ABA GUIDELINES. AS YOU KNOW, THE ABA GUIDELINES PROVIDE THE MINIMUM STANDARDS

NECESSARY FOR EFFECTIVE ASSISTANCE OF COUNSEL. THEY WERE ADOPTED IN 1989, BASED ON WHAT WAS TOLERABLE AS A MINIMUM STANDARDS AT THAT TIME. SINCE THEN, THE INCREASED CAPACITY OF CAPITAL LITIGATION, AND CHANGES IN BOTH STATE AND FEDERAL LAW, ALL REQUIRE LAWYERS TO POSSESS A GREATER LEVEL OF SKILL, RESOURCES AND TRAINING THAN CONTEMPLATED IN 1989. THE PROCESS, THE ABA HAS GUN TO REEXAMINE THE MINIMUM STANDARDS OF 1989. IT MAKES US EVEN MORE COGNIZANT OF THE INCREASED CAPACITY OF CAPITAL LITIGATION TODAY. ACCORDINGLY THE ABA IS ENCOURAGING THAT THE GUIDELINES BE MADE MORE STRINGENT, IT COMPLY WITH THOSE CHANGES. AS THE ABA ASKS FOR STANDARDS THAT CONFORM TO ITS GUIDELINES AND ASKS AND EXPRESSES THE AGREEMENT THAT THE COURT GO FURTHER. IT ALL COMES DOWN TO THE FACT THAT THE GUIDELINES WERE INTENDED SIMPLY TO PROVIDE A STARTING POINT. WHILE THE COMMITTEE'S PROPOSED STANDARDS CLOSELY TRACK THE ABA GUIDELINES, THEY FALL SHORT IN JUST A FEW SIGNIFICANT RESPECTS. FIRST, AS A THRESHOLD MANNER, THE GUIDELINES REQUIRE TWO LAWYERS IN ALL STAGES OF THE PROCEEDING, INCLUDING TRIAL, APPEAL, AND POSTCONVICTION. THE COMMITTEE ACKNOWLEDGES THESE ARE ABA STANDARDS BUT FAILS TO DIRECT THE APPOINTMENT OF TWO ATTORNEYS AT ALL STAGES AND LEAVES THE DISCRETION OF THE APPOINTMENT OF TRIAL COUNSEL TO THE COURT.

YOU MAY BE, AS FAR AS FROM A NATIONAL ORGANIZATION AND, PERHAPS, HAVING A PERSPECTIVE, NATIONALLY, IN BEING IN A POSITION, PERHAPS, TO ADVISE US OF SOME OTHER STATES WHERE YOU BELIEVE THAT STANDARDS HAVE BEEN ADOPTED THAT WE COULD LOOK TO, FOR EXPERIENCE. ARE THERE ANY PARTICULAR STATES THAT, ALREADY, HAVE TRACK RECORDS, AND THAT WE COULD LOOK TO FOR THIS KIND OF REVIEW AND EXPERIENCE, THAT YOU WOULD PARTICULARLY COMMEND TO US?

THAT IS AN IMPORTANT QUESTION, AND UNFORTUNATELY WE ARE UNABLE TO ANSWER THE QUESTION, DUE TO THE LACK OF RESOURCES. WAY BACK WHEN, WHEN THE RESOURCE COUNSEL EXISTED, THE PROJECT WAS ABLE TO DEVOTE A VERY SMALL PORTION OF THEIR RESOURCES TO THE ISSUE AND THE EMPIRICAL INFORMATION, BUT THE RESOURCE FUNDING IS TO PROVIDE COUNSEL, AND WE DO KNOW THAT, WHEN THE ABA ADOPTED THE MORATORIUM ON EXECUTIONS, THAT THE EVIDENCE PRESENTED WITHIN THE MAJORITY OF JURISDICTIONS, HOWEVER IT IS DEFINED, COUNTY OR STATE, AND ADOPTED THE GUIDELINES. THAT HASN'T CHANGED.

THE PROBLEMS THAT HAVE BEEN MENTIONED, WITH REGARD TO APPLICATION OF PRIVATE COUNSEL, WHAT HAS BEEN YOUR GROUP'S EXPERIENCE WITH THOSE, AND DO YOU HAVE ANY INFORMATION YOU COULD SHARE WITH US THAT WOULD ADDRESS THOSE KINDS OF PROBLEMS?

WHEN YOU SAY PRIVATE COUNSEL, YOU MAY RETAINED COUNSEL?

YES.

THE ABA ACTUALLY, THE GUIDELINES DON'T ADDRESS THE QUESTION OF STANDARDS, PERTAINING TO RETAINED COUNSEL. THE TASK FORCE INCLUDED A SUGGESTED LEGISLATIVE PLAN FOR PROVIDING COMPETENT AND ADEQUATELY-COMPENSATED COUNSEL, WHICH BASICALLY TRACK THE GUIDELINES AND WAS INTENDED TO APPLY ONLY TO APPOINTED COUNSEL, BECAUSE RETAINED COUNSEL IS, FRANKLY, A VERY RARE OCCURRENCE, AT THAT TIME, BUT AS JUDGE PADOVANO MENTIONED, I THINK HE MENTIONED, MAYBE HE DIDN'T, A SPECIAL COMMITTEE OF THE ILLINOIS SUPREME COURT WAS ASSIGNED TO SUBMIT PROPOSALS TO IMPROVE CAPITAL TRIALS, AND FOUND THAT APPLYING STANDARDS TO RETAIN COUNSEL WAS NOT UNPRECEDENTED, NOTING THAT THE ILLINOIS STATE BAR HAD MADE THIS RECOMMENDATION, AND THE SPECIAL COMMITTEE, ALSO, LOOKED TO BOTH STATE AND FEDERAL PRECEDENT, IN ADOPTING THE POSITION THAT, WHEN THE RIGHT TO EFFECTIVE COUNSEL AND THE RIGHT TO COUNSEL CONFLICT, THE RIGHT TO EFFECTIVE COUNSEL MUST PREVAIL, AND THAT IS, AGAIN, THE WHEAT CASE.

YOU INDICATED MOST JURISDICTIONS HAD NOT ADOPTED THE ABA PROPOSED STANDARDS, CONCERNING TWO COUNSEL. DO YOU HAVE ANY INFORMATION AS TO WHY THAT IS? IS IT A MATTER OF MONETARY RESOURCES OR WHAT?

ACTUALLY OUR INFORMATION IS THAT THEY HAVEN'T ADOPTED THE STANDARDS OVERALL, NOT JUST WITH REGARD TO TWO COUNSELS, AND I DON'T KNOW THE REASON. I CAN ONLY GUESS. BUT I JUST DON'T KNOW.

HAS THERE BEEN ANY INCREASED ACTIVITY, WITHIN THE ABA, IN OTHER WORDS, IS THERE ANY PLAN TO EXPAND YOUR ACTIVITIES, SO AS TO BE MORE ACTIVE, NATIONWIDE, IN SURVEYING WHAT THE STATES ARE DOING? IN OTHER WORDS CAN WE LOOK TO THE ABA FOR ANY ADDITIONAL HELP IN THE NEAR FUTURE?

YOU CAN CERTAINLY LOOK TO THE ABA FOR ADDITIONAL HELP. WE ARE CONCERNED, AS EVERYONE ELSE IS, BY BUDGETARY CONSTRAINTS. THE PROJECT IS THREE PEOPLE. THE DIRECTOR, THE STAFF ATTORNEY AND MYSELF AND THREE ASSISTANCE -- ASSISTANTS, BUT THE ABA PRESIDENT, MARTHA BEAR, HAS MADE THIS ISSUE HER PRIORITY, AND I THINK WE CAN HOPE TO BE MUCH MORE INVOLVED IN THE NEXT YEAR. IN ANY CASE, THE ABA IS AWARE OF THE 1999 OPINION OF THIS COURT, ABOUT LEAVING THE APPOINTMENT OF TWO COUNSEL TO THE DISCRETION OF THE TRIAL COURTS, BUT THE POSITION THAT WE HAVE IS UNEQUIVOCAL THAT TWO ATTORNEYS BE APPOINTED AT EVERY STAGE IN THE PROCEEDINGS. THE COMMITTEE, ALSO, INCLUDED A PROPOSAL TO REQUIRE THE PUBLIC DEFENDER TO APPOINT CO-COUNSEL AT TRIAL IN EVERY CASE, AND WHILE WE APPLIED -- APPLAUD THAT EFFORT, THE CO-COUNSEL IS NECESSARY NOT JUST FOR PUBLIC DEFENDERS. MANY COLLEAGUES DO IT WITHOUT CO-COUNSEL, AND IT CREATES A DISPARITY BETWEEN PUBLIC DEFENDERS AND COURT-APPOINTED COUNSEL. TO AVOID CONFLICT OR OTHER REASON, MUST BE APPOINTED BY PRIVATE COUNSEL, SHOULD, OF COURSE, RECEIVE NO LESS RESOURCES THAN THE DEFENSE AND REPRESENTED BY THE PUBLIC DEFENDER. AND IT PREINCLUDES THE COURTS FROM APPOINTING MORE THAN ONE COUNSEL IN POSTCONVICTION CASES, RAISES THE SAME CONCERN. IN TERMS OF POSTCONVICTION COUNSEL, IT IS CRITICAL THAT ANY PROPOSED STANDARDS INCLUDE POSTCONVICTION COUNSEL, GIVEN THE SEVERE LACK OF COMPETENT COUNSEL TO REPRESENT DEFENDANTS IN THAT STAGE OF THE PROCEEDINGS. THE ABA APPLAUDS THE COURT'S EFFORTS TO INCLUDE THIS CRITICAL PHASE, WITHIN THE PRIMERS OF THE STANDARDS, IN DECIDING THAT TWO ATTORNEYS SHOULD BE PROVIDED AT ALL STAGES OF THE PROCEEDINGS BUT PARTICULARLY AT THE POSTCONVICTION STAGE. THE ABA CONCLUDED THAT REPRESENTING A DEATH SENTENCE INMATE IS AS DEMANDING OR MORE DEMANDING THAN THE TASK FACED BY COMPETENT COUNSEL.

PLEASE BE COGNIZANT OF YOUR TIME, FOR OTHER COUNSEL'S SAKE. I BELIEVE YOU USED YOUR SEVEN MINUTES.

ALL RIGHT. WE VERY MUCH APPRECIATE THE TIME TO ADDRESS YOU. THANK YOU VERY MUCH.

THANK YOU. MR. CHIPPER FIELD.

MAY IT PLEASE THE COURT.

I AM INTERESTED IN -- GO AHEAD. GIVE YOUR NAME.

MY NAME IS ALAN CHIPPER FIELD. I AM WITH THE PUBLIC DEFENDER IN JACKSONVILLE, AND I AM PLEASED TO BE HERE, ON BEHALF OF THE PUBLIC DEFENDER ASSOCIATION.

I AM INTERESTED IN POSTCONVICTION COUNSEL. I DON'T KNOW WHETHER YOU ARE THE ONE TO ASK.

I AM NOT. THEY ARE GOING TO BE COMING AFTER ME, AND I AM NOT GOING TO TAKE TOO LONG.

WE FILED, THE PUBLIC DEFENDERS ASSOCIATION FILED A COMMENT, DEALING WITH ALL EIGHT ISSUES, AND WE WOULD LIKE YOU TO CONSIDER ALL EIGHT ISSUES, BECAUSE WE STRONGLY BELIEVE IN THEM, HOWEVER, BECAUSE OF TIME CONSTRAINTS, I WILL JUST DEAL WITH THE DISPUTE. ONE OF THE DISPUTES THAT WE HAVE WITH THE PROPOSED RULE IS THAT IT GIVES THE TRIAL JUDGE THE POWER TO DECIDE EXCESSIVE CASE OVERLOAD, AND WE THINK THAT SHOULD BE LEFT IN THE HANDS OF THE PUBLIC DEFENDER AND NOT THE TRIAL COURT. I THINK THE BEST WAY -- WE PROPOSED LANGUAGE THAT WAS REJECTED BY THE COMMITTEE AND NOT PLACED INTO THE RULE. IT SAYS THAT DISTINCTLY. I THINK THE BEST WAY TO SEE THE PROBLEM IS TO LOOK AT SUBSECTION K OF THE PROPOSED RULE THAT DOES TWO THINGS. FIRST, IT TELLS THE TRIAL JUDGES TO WATCH OUT FOR EXCESSIVE CASELOADS AND DON'T APPOINT ATTORNEYS WHO HAVE EXCESSIVE CASELOADS, AND THEN THE LAST SENTENCE, IT SAYS THAT A PRIVATE ATTORNEY SHOULD NOT TAKE EXCESSIVE LOADS IN A CASE, IF THE CASE LOAD IS HIGH UNLAWFUL IT MIGHT IMPAIR THE QUALITY OF REPRESENTATION PROVIDED TO THE DEFENDANT. ALL WE WANT IS FOR THAT TO SAY NO ATTORNEY SHOULD UNDERTAKE THE REPRESENTATION OF A DEFENDANT IN A CAPITAL CASE. IT MIGHT IMPAIR THE QUALITY. IN OTHER WORDS, THE PUBLIC DEFENDERS WANT TO BE TREATED JUST LIKE ANY OTHER LAWYER, AND WE ARE UNDER THE SAME ETHICAL RULES AS ANY OTHER LAWYER, AND WE SHOULD BE TREATED AS A PRIVATE ATTORNEY IN THAT RESPECT. MOREOVER, A PUBLIC DEFENDER IS A CONSTITUTIONAL OFFICER WHO, ULTIMATELY, IS UNDER THE SCRUTINY OF THE MEET YEAH AND UNDER THE SCRUTINY OF THE PUBLIC, WHO ELECT THE PUBLIC DEFENDER ANYWAY. AND --

PUBLIC DEFENDERS, ALSO, UNDER THE FUNDING PRESCRIPTIONS BY THE LEGISLATURE, CORRECT?

YES, SIR.

AND AS WE MOVE INTO STATE FUNDING, OF THE JUDICIAL SYSTEM, IN ALL OF THIS FUNDING, IT IS PROBABLY GOING TO BE BY THE LEGISLATURE. ISN'T THAT CORRECT?

-- AND SO ONE OF THE CONCERNS HAS TO BE THE AVAILABILITY OF PROVIDING COUNSEL FOR ALL DEFENDANTS WITHIN THE BUDGETARY FUNDING THAT IS PROVIDED BY THE LEGISLATURE. DON'T YOU AGREE WITH THAT?

I DO AGREE WITH THAT. I THINK THE ISSUE, THOUGH, IS WHO IS IN THE BEST POSITION TO DECIDE IF THERE IS A CASE OVERLOAD. AND IT IS OUR POSITION THAT THE LAWYERS WHO ARE ACTUALLY DOING WORK IN THE TRIAL LAWYER'S CONTEXT, AND I CAN SPEAK FROM EXPERIENCE ABOUT THAT, THE TRIAL LAWYERS, IN THE PUBLIC DEFENDERS OFFICE, DON'T WANT TO GET RID OF THESE CASES. WE WANT TO HANDLE ALL OF THEM, AND WE KNOW WHAT IT TAKES TO DO THE INVESTIGATION AND TO PRESENT THE CASE TO THE TRIAL COURT AND TO THE JURY. AND WHAT WE ARE AFRAID OF IS THAT THE TRIAL COURTS SEE THE END RESULT. THE WITNESSES WHO ACTUALLY ARE PRESENTED IN COURT AT GUILT PHASE AND PENALTY PHASE, BUT THEY DON'T SEE THE BASE OF THE PYRAMID. THEY ARE SEEING THE TOP OF IT, BUT THEY DON'T SEE ALL THAT HAS TO BE DONE TO SIFT OUT ALL THE DEAD ENDS, ALL THE ROADS THAT YOU GO DOWN THAT DON'T PRODUCE SOMETHING THAT GETS PRESENTED IN COURT, AND THEREFORE DON'T KNOW THE EXTENT OF THE WORK THAT IS INVOLVED IN HANDLING OUR CASELOADS. THE PUBLIC DEFENDERS DO, BECAUSE THEY ARE CLOSE TO IT, AND THEY ARE INVOLVED WITH IT EVERYDAY. WE DON'T THINK THE ISSUE, WHEN JUSTICE HARDING IS HOLDING, IN THE CASE WHERE ONE OF THE PUBLIC DEFENDERS WANTED TO DRAW FROM A GREAT NUMBER OF APPELLATE CASES, THAT THE COURT SHOULD NOT BE IN THE BUSINESS OF MICROMANAGING THE PUBLIC DEFENDERS OFFICE AND SHOULD TRUST THE ELECTED OFFICIAL TO DO THE JOB THAT HE IS ELECTED TO DO, AND IT IS OUR --

BUT WE ARE COMING OUT AFTER SYSTEM, NOW, IN WHICH, WHERE THERE WAS THE CONFLICTING OUT MEANT THAT YOU WENT BACK TO COUNTIES AND GOT THE COUNT TOYS FUND IT. CORRECT? BECAUSE CONFLICT COUNSEL HAVE BEEN PAID BY THE COUNTIES.

BY THE COUNTIES. OKAY.

NOW, IT IS GOING TO TOTALLY BE PAID BY THE STATE, CORRECT?

I WILL ACCEPT THAT.

WELL, MY CONCERN IS THE VERY PRACTICAL ONE OF TAKING THE LOCAL TRIAL COURT OUT OF THE EQUATION, AS TO WHAT IS OR IS NOT A WORKLOAD ISSUE, IN THE PUBLIC DEFENDERS OFFICE, AND HOW THAT IS GOING TO WORK, FROM A BUDGETARY STANDPOINT. YOU DON'T HAVE ANY CONCERN ABOUT THAT?

OUR MAIN CONCERN IS THE PROPER REPRESENTATION OF THE CLIENT, AND IF WE ARE -- IF WE GET DOWN TO A POSITION WHERE THE TRIAL COURT SAYS -- WE SAY TO THE TRIAL COURT, WE JUST CAN'T HANDLE THIS ADDITIONAL CASE BECAUSE OUR CASE LOAD IS TOO GREAT, AND WE DON'T BELIEVE THAT WE CAN BE EFFECTIVE, AND THE TRIAL COURT SAYS DO IT, ANYWAY, WELL, THEN, WHERE DOES THAT PUT US? WE FEEL LIKE THAT PUTS US IN A POSITION WHERE WE ARE GOING TO SAY WE ARE GOING TO DO IT, IN WHICH CASE WE ARE TAKING TIME AWAY FROM OTHER CLIENTS AND GIVING EVERYBODY SUBSTANDARD REPRESENTATION. WE ARE GOING TO CONTEST THAT, BY FILING MOTION SZ OR FILING AN APPEAL OR PROHIBITION OR SOMETHING, THEREBY TAKING EVEN MORE TIME AWAY FROM THE CLIENTS WHO DESERVE OUR ATTENTION, AND DOING THAT AT THE TRIAL LEVEL, AT A TIME WHEN WE OUGHT TO BE OUT INVESTIGATING THAT NEW CASE OR SOMEWHERE OUGHT TO BE OUT DOING THAT, I AGREE THAT SOMEBODY IS GOING TO HAVE TO PAY, EITHER THE PUBLIC DEFENDERS BUDGET OR YOU PAY THE ATTORNEY WHO TAKES OVER THE CASE BECAUSE OF CASE LOAD.

WELL, DO WE KNOW --

WE HAVE NEVER DONE IT. WE HAVE OTHER OFFICES THAT ARE QUALIFIED, BUT I THINK THAT YOU WOULD FIND THAT, IN THE PUBLIC DEFENDERS OFFICES, WHERE THE BULK OF THIS WORK IS DONE, THOSE LAWYERS WANT THESE CASES. A LOT OF OFFICES REACT THAT WAY AND DON'T WANT TO SAY WE ARE TOO BUSY. WE WOULD TEND TO TAKE ON MORE WORK THAN TRY AND GET RID OF IT.

CAN YOU GIVE US SOME IDEA, BOTH FROM YOUR CIRCUIT AND FROM AROUND THE STATE, IF YOU ARE ABLE, TO HOW MUCH OF AN EXISTING PROBLEM THERE IS ON THIS ISSUE. IS THERE AN EXISTING PROBLEM? IS IT A SERIOUS ONE, AND TELL US ABOUT IT, FROM YOUR CIRCUIT.

YOU KNOW, IT IS HARD TO ANSWER THAT, BECAUSE WHEN YOU TALK ABOUT WHAT IS A CAPITAL CASE, IN OUR EXPERIENCE, THERE ARE -- WE CAN IDENTIFY THE CASES THAT, REALLY, ARE GOING TO GO TO TRIAL AS DEATH CASES, PRETTY EARLY IN THE PROCESS, BUT THERE ARE A LOT MORE THAT ARE FILED AS CAPITAL CASES, WHERE THE NOTICE OF INTENT TO SEEK THE DEATH PENALTY IS FILED, AND IT IS FILED IN A HAMMER, BECAUSE THEN IT IS A DEATH PENALTY CASE, AND YOU ARE ENCOURAGED TO PLEAD IT DOWN, TO WORK IT DOWN TO SECOND-DEGREE MURDER. IF A BETTER JOB WAS DONE OF SIFTING OUT THE NONDEATH CASES, EARLY IN THE PROCESS, I DON'T THINK WE WOULD HAVE THAT BAD OF A PROBLEM WITH OVERLOAD. EVEN AS IT IS --

MR. CHIPPER FIELD, I AM SORRY TO ADVISE YOU, BUT I BELIEVE -- I HAVE BEEN ADVISED THAT YOUR TIME HAS -- IS UP.

I AM SORRY. I CAN'T COMPLETELY ANSWER, IT BUT I THINK THAT GIVES AWE IDEA. I APPRECIATE THE TIME TO APPEAR IN FRONT OF THE COURT.

THANK YOU. MR. REITER. CCRC IN TAMP A I WOULD LIKE ADDRESS TWO SPECIFIC POINTS. UNDER JUDGE PADOVANO'S COMMITTEE, SUBSECTION I, SUBSECTION III. AS IT WAS EXPRESSED EARLIER, WITH PRACTICALITY, IN PRIVATE COUNSEL, IT DOES THE SAME FROM OUR OFFICES, FROM TWO

PERSPECTIVES. WE, ALSO, HAVE INDIVIDUALS WHO HAVE BEEN WORKING WITH OUR OFFICES RIGHT OUT OF LAW SCHOOL, WHO SPENT THREE, FOUR, FIVE YEARS, AND IN SOME CASES MORE THAN FIVE YEARS WORKING POSTCONVICTION, WHERE, BY THIS PARTICULAR RULE, THEY WOULD BE REJECTED FROM BEING LEAD COUNSEL. I SUGGEST TO YOU RIGHT NOW THERE ARE QUITE A NUMBER OF CASES WHERE THEY REPRESENT INDIVIDUALS IN THE LEAD COUNSEL SITUATION. SECONDLY, WE COULD NEVER HIRE INDIVIDUALS OUT OF LAW SCHOOL, BECAUSE IF THEY COULD NEVER BE LEAD COUNSEL, THEY WOULD NEVER DO IT IN THE FIRST PLACE. I SUGGEST YOU TAKE ONE AND PUT THEM IN THE PD'S OFFICE AND LET THEM HANDLE CASES FOR FIVE YEARS AND PUT ANOTHER IN OUR OFFICE AND LET THEM HANDLE CASES FOR FIVE YEARS, I WOULD EXPECT THAT INDIVIDUAL TO BE MORE EXPERIENCED THAN A COUNSEL ONLY AT THE TRIAL LEVEL. WE DO HEARINGS AND DEAL WITH EXPERTS AND ARE, AS WELL, IN TRIAL AND APPELLATE REVIEW IN FRONT OF THIS COURT. THAT IS A PROBLEM. SO I AM RECOMMENDING THAT, WHERE IT SAYS IN SECTION III AS WELL AS IF YOU CHANGE TO AN AND-OR SITUATION, AND YOU ALLOW THOSE INDIVIDUALS ALREADY EXPERIENCED IN POSTCONVICTION, TO REMAIN IN THAT POSITION. THE SECOND CONCERN I HAVE IS IN SUBSECTION 6. JUSTICE PARIENTE TALKED, EARLIER, WITH REGARD TO A SPECIALIZED FIELD. ALTHOUGH I DO NOT BELIEVE THERE COULD BE A STRINGENT EXAMINATION, I DO BELIEVE THERE COULD AND EXAMINATION CREATED THAT, BEFORE SOMEONE GETS APPOINTED, EVEN IN OUR OFFICES, AS A LEAD COUNSEL, POSTCONVICTION, TESTING THE ANALOGY THAT THEY SAY THEY HAVE THE EXPERIENCE FOR. HERE IS WHY. RIGHT NOW THE RULE PROVIDES ONE YEAR TO FILE POSTCONVICTION 3.850 AFTER THIS COURT DENIES ON DIRECT APPEAL. IT SHOULD NOT BE TO THE DETRIMENT OF A CLIENT THAT THE CLOCK BEGINS TO TICK, WHILE I LEARN ABOUT THESE CASES. THERE ARE BENCHMARK CASES THAT THAT APPLY. I DON'T BELIEVE THAT, WHILE THE CLOCK TICKS, THE ATTORNEY SHOULD BE ABLE TO PASS THAT EXAM, SO THAT WE KNOW ABOUT STATE AND FEDERAL CASE LAW RULES, BEFORE HE GETS APPOINTED AND THE CLOCK STARTS TICKING. THIS WAY WE DON'T WIND UP HAVING INEFFECTIVE ASSISTANCE OR POSTCONVICTION COUNSEL CLAIMS, AS MUCH AS WE PRESENTLY HAVE, AND I THINK, ALTHOUGH IT IS NOT A VIABLE CLAIM, IT IS STILL BEING SCREAMED ABOUT. IT IS A CONCERNED WHERE -- IS A CONCERN ABOUT THIS COURT HAVING INDIVIDUALS WHO GET QUALIFIED BEFORE THEY ARE APPOINTED. A --

THERE ARE REQUIREMENTS FOR POSTCONVICTION COUNSEL IN CCR'S, CORRECT, UNDER THE STATUTE, 27.704.

UNDER 27.704. CORRECT.

AND SO YOU HAVE -- THE LAWYERS THAT YOU HIRE IN THESE OFFICES AT PRESENT ARE IN CONFORMING WITH THOSE STANDARDS. IS THAT CORRECT?

THEY ARE, BUT THIS NEW ONE WOULD INCREASE THAT.

IS THERE ANY CONCERN THAT THE STANDARDS RUN UP AGAINST THE CONTRACT THAT POSTCONVICTION COUNSEL HAS TO SIGN, THE AGREEMENT THAT HE SHALL NOT DO CERTAIN THINGS. IS THERE A PROBLEM THERE?

WELL, I AM -- I WANT TO SPEAK TO THOSE TWO PARTICULAR RECOMMENDATIONS. MR. SMITH WILL SPEAK TO THE OVERALL ASPECT OF IT. I THINK HE WILL HIT ON THE ISSUE, WITH REGARD TO THE CONTRACT COUNSEL AND THAT PARTICULAR ISSUE SPECIFICALLY. THE OTHER POINT I WANTED TO MAKE, WITH REGARD TO -- YOU WILL HIT THAT OVERALL PART. I DID WANT TO MAKE ONE COMMENT, WITH REGARD TO THE RULE, AS STATED BY JUDGE PADOVANO, AND THAT IS SPECIFICALLY THE CLAIM OF INEFFECTIVE ASSISTANCE EVER COUNSEL, BECAUSE SOMEONE DIDN'T MEET THAT STANDARD, WOULD BE ON BLIFIATED. I WOULD ARC EW TO THE CONTRARY, AND I WILL TELL YOU -- I WOULD ARGUE TO THE CONTRARY, AND I WILL TELL YOU WHY, BECAUSE EVEN NOW THIS COURT WOULD CONSIDER WHETHER A PERSON IS EXPERIENCED AND EFFECTIVE, YOU LOOK TO THE EXPERIENCE OF THAT PERSON. YOU SAY, OKAY, FOR THE NEW

ATTORNEY, IT MIGHT HAVE BEEN EXPERIENCE. WELL, I DON'T THINK IT SHOULD BE PREVENTED FROM SAYING, AS ONE OF THE COMPONENTS OF INEFFECTIVE ASSISTANCE OF COUNSEL, HE DIDN'T MEET THE QUALIFICATIONS. I AM NOT SUGGESTING THAT -- I DON'T THINK IT SHOULD BE AN ABSOLUTE STANDARD THAT YOU CAN'T MAKE THAT CLAIM. I THINK IT SHOULD BE ONE OF THE COMPONENTS.

THANK YOU, MR. REITER. MR. SMITH. GREG SMITH. CAPITAL COLLATERAL REGIONAL COUNSEL FOR THE NORTHERN REGION, AND I APPRECIATE THE OPPORTUNITY TO SPEAK TO YOU, TODAY, ABOUT MINIMUM STANDARDS, WHEN I HAVE ALWAYS HAD A DEEP CONCERN ABOUT. I BELIEVE, A YEAR AND-A-HALF AGO, JUSTICE HARDING PROVIDED INPUT INTO AN IMPOSEIUM IN ATLANTA, MADE UP OF FEDERAL JUDGES AND STATE JUDGES FROM THE THREE SOUTHERN STATES, AND MY THEME, AT THAT POINT, WAS THE CRITICAL NEED TO BE SURE THAT LAWYERS WHO DO POSTCONVICTION WORK ARE QUALIFIED TO DO THAT WORK AND HAVE THE TRAINING AND THE SKILLS AND THE RESOURCES TO DO IT. ONE OF THE FIRST THINGS I THINK THAT THIS COURT SHOULD CONSIDER IS THE STANDARD THAT THE NOTION THAT YOU MUST HAVE CONSTANT TRAINING, THIS IS A AREA IN MY EXPERIENCE WHICH CHANGES SO DRAMATICALLY, AT BOTH STATE AND FEDERAL LEVEL, THAT I DON'T THINK TEN HOURS A YEAR -- I DON'T THINK YOU OUGHT TO AT LEAST REQUIRE THIRTY. I PROVIDE THIRTY HOURS A YEAR TO MY LAWYERS, AND I THINK THAT SHOULD BE FEDERAL TRAINING. FEDERAL TRAINING IS EXTREMELY IMPORTANT.

HOW DO YOU GET TO THE THIRTY HOURS?

WELL, I DO SOME IN-HOUSE. I TRY TO SEND AS MANY PEOPLE AS I CAN TO THE FEDERAL PUBLIC DEFENDER PROGRAM, WHICH IS A NATIONAL PROGRAM, USUALLY, IN ATLANTA, THAT CONSISTS OF ABOUT 30 HOURS, IN ITSELF. SEND PEOPLE TO LIFE-OVER-DEATH, WHICH IS A PROGRAM PUT ON BY THE PUBLIC DEFENDERS AND DEFENSE LAWYERS. I TRY TO DO ANYTHING I CAN. I SOMETIMES WILL PULL IN AN EXPERT WHO HAPPENS TO BE HERE FOR ARGUMENT, BEFORE THIS COURT, AND ASK THEM TO COME BY MY OFFICE AND SPEND AN AFTERNOON WITH MY LAWYERS AND DO THAT.

YOU HAVE THE SAME CONCERN AS MR. REITER, ABOUT THESE STANDARDS BEING -- CAUSING PROBLEMS WITHIN YOUR OFFICE, BECAUSE OF THE TYPE OF PEOPLE THAT YOU ARE HIRING?

WELL, I BELIEVE ONE OF THE THING THAT IS I DO WANT TO ADDRESS IS THIS NOTION OF TRIALS. BECAUSE WHEN I HIRE A LAWYER, RIGHT OUT OF LAW SCHOOL, THEY ARE NOT GOING TO GET TRIAL EXPERIENCE. THEY ARE GOING TO GET EVIDENTIARY HEARING EXPERIENCE. IT IS SIMILAR, BUT IT IS NOT EXACTLY THE SAME, AND I DO THINK -- I AM SORRY.

BUT IF YOU HAD YOUR DRUTHERS, WOULD YOU BE HIRING PEOPLE RIGHT OUT OF LAW SCHOOL?

YES, MA'AM. I HAVE FOUND THAT THE MOST EFFECTIVE WAY TO TRAIN PEOPLE IS TO GIVE THEM THE EXPERIENCE WITH ANOTHER LAWYER WHO IS QUALIFIED, AND HAVE THAT PERSON GROW INTO A FIRST CHAIR LAWYER.

SO YOU DON'T THINK IT IS NECESSARY FOR THE PERSON TO HAVE HAD TRIAL EXPERIENCE, IN THE AREA OF CAPITAL CASES, TO, REALLY, BE ABLE TO DO THE MOST EFFECTIVE JOB, IN POSTCONVICTION, TO UNDERSTAND WHAT WENT ON?

I DON'T FIND THAT. I FIND TRIAL EXPERIENCE VERY USEFUL AND VERY HELPFUL, BUT EXPERIENCED TRIAL LAWYERS WHO COME INTO THE OFFICE HAVE A YEAR OF TRAINING AND LEARNING TO DO, TO BE ABLE TO DO THIS KIND OF WORK AT WHICH TIME IS VERY ARCANE. IT IS VERY DIFFERENT THAN ANY OTHER SORT OF CRIMINAL WORK, I THINK.

HOW LONG DO YOU KEEP THESE YOUNG LAWYERS?

I TRY TO KEEP THEM AS LONG AS I CAN, JUSTICE. THERE IS A TURNOVER FACTOR. MY AVERAGE IS ABOUT TWO YEARS, HOLDING ON TO A LAWYER, BUT I TRY TO ENCOURAGE PEOPLE TO GROW INTO FIRST CHAIR LAWYERS. IT USUALLY TAKES THREE YEARS, AND I HAVE BEEN SUCCESSFUL, SINCE I HAVE STARTED DOING THAT, IN GROWING ONE LAWYER, PARTICULARLY. I HAVE ONLY BEEN IN OFFICE THREE YEARS, BUT I THINK THAT IS THE BEST WAY TO HAVE PEOPLE THAT ARE EXPERIENCED AND QUALIFIED TO DO THIS WORK.

ARE THE LAWYERS THAT COME OUT THAT EXPERIENCED, IN SIGNING UP FOR THE REGISTRY?

NO. GENERALLY NOT. GENERALLY NOT. TWO OTHER THINGS I NEED TO MENTION. THE ISSUE OF FEDERAL, STATE EXPERIENCE IS CRITICAL. ONE MUST KNOW THE FEDERAL LAW, TO BE ABLE TO PROPERLY PLEAD A 3.850 IN STATE COURT AND PRESERVE THE ISSUES FOR POSSIBLE FEDERAL COURT AND, ALSO, THE ISSUES OF EXHAUSTION AND THE TIMING OF EFFECTIVEITYRARIES AND THE EFFECTIVE -- TIMING OF ITINERARIES AND THE EFFECTIVE ACT, SO THAT IS CRITICAL. EVEN THOUGH ONE MIGHT BE THINKING THEY ARE CAPABLE OF PUTTING A 3.850 IN THE CIRCUIT COURT, THEY HAVE TO UNDERSTAND HOW THAT IMPLICATES AT THE FEDERAL LEVEL. JUSTICE SHAW, YOU ASKED ABOUT THE CONTRACTING THAT WAS ON THE RIDGE STRAY STR, AND THAT WAS -- ON THE REGISTRY, AND THAT WAS PART OF WHAT MY LETTER THAT I PROVIDED TO THE COURT, WITH REGARD TO THIS RULE, DEALT WITH, AND IT IS VERY CRITICAL THAT A PERSON GET TO THE POINT OF BEING COMPETENT TEND, AND AS TO WHAT OTHER LAWYERS COULD DO ON BEHALF OF THE DEFENDANT, THAT IS MY ISSUE.

HOW CONFINING IS THAT CONTRACT?

WELL, YOUR HONOR, I --

TO KNOW WHAT IT ENTAILS.

I DON'T KNOW HOW IT IS GOING TO OPERATE, YOUR HONOR. I WILL BE HONEST WITH YOU. A CONTRACT A PERSON SIGNS THAT SAYS THEY WON'T CHALLENGE CERTAIN TYPES OF CAUSES, ON BEHALF OF THEIR DEFENDANT, I DON'T KNOW WHETHER SOMEONE WHO IS TRULY ETHICAL WILL FEEL BOUND BY THAT OR WHETHER THERE IS GOING TO BE LITIGATION INVOLVING, YOU KNOW, WHEN SOMEBODY VIOLATES A CONTRACT AND DOES SOMETHING NOT CONTEMPLATED, BECAUSE THEY FELT THEY HAD AN ETHICAL DUTY. I DON'T KNOW WHERE THAT IS GOING, BUT I THINK THE COURT SHOULD BE CONCERNED ABOUT IT.

HAVE YOU SEEN THE CONTRACT?

YES, I HAVE.

WHAT DOES IT SAY?

WELL, THERE ARE CERTAIN THINGS THAT, FOR EXAMPLE, IF I HAD A CASE WHERE THERE WAS A FELONY THAT WAS USED IN AN AGGRAVATOR, AND THE FELONY CAME FROM NEBRASKA, AND I FELT THAT IT WAS NOT -- THAT THERE WAS SOME PROBLEM WITH THE THING, MAYBE THE COURT DIDN'T HAVE JURISDICTION OR SOMETHING AS FUNDAMENTAL AS THAT, I COULDN'T CHALLENGE THAT CONVICTION IN THE STATE OF NEBRASKA, WHICH WAS THE UNDERLYING BASIS FOR THE AGGRAVATORS IN MY FLORIDA CASE, BECAUSE THE CONTRACT BINDS ME AND SAYS I CAN'T GO TO NEBRASKA AND PRACTICE.

BUT THAT IS SEPARATE FROM A STANDARDS KIND OF ISSUE, ISN'T IT?

IT IS. IT DEFINITELY S I THINK IT ALL REVOLVES AROUND WHETHER A LAWYER WHO IS STANDING BEFORE YOU, YOUR HONOR, HAS THE ABILITY TO DO WHAT NEEDS TO BE DONE FOR A CLIENT, AND THAT INVISIBLE SORT OF IMPEDIMENT THAT MAY BE IMPOSED BY A CONTRACT IS

SOMETHING THE COURT SHOULD BE CONCERNED ABOUT.

THE PRACTICAL PROBLEM, OR IS IT A PHILOSOPHICAL PROBLEM THAT WE ARE TALKING ABOUT?

YOUR HONOR, I DON'T KNOW. IT HASN'T PLAYED OUT, I DON'T THINK. TIME WILL TELL, ON THAT. I, MYSELF, PROBABLY WOULD CONSIDER MY ETHICAL DUTY TO MY CLIENT PARAMOUNT, AND I WOULD, EITHER, HAVE TO COME TO THE COURT AND SAY I HAVE GOT TO VIOLATE THIS CONTRACT, OR I WOULD VIOLATE IT AND BE WILLING TO BE SUED, BUT THAT IS WHAT MY IMPRESSION OF THIS IS. I DON'T KNOW WHAT THE COURT WOULD TAKE FROM THAT. I SEE MY TIME HAS ENDED. THANK YOU VERY MUCH.

THANK YOU VERY MUCH. JUDGE PADOVANO.

LET ME MAKE JUST TWO BRIEF COMMENTS, ONE ON THE CASE LODISH EW. THE PUBLIC DEFENDERS' CONCERN ABOUT THE CASE LODISH EW, I WANT TO POINT OUT TO THE COURT, AND THIS WAS AT THE COURT'S REQUEST THAT WE INCLUDE SOMETHING IN THESE. THE COMMITTEE HAD DISCUSSIONS ABOUT OVERLOADED LAWYERS. IF YOU HAVE LAWYERS AND HANDLING TOO MUCH WORK AT ONE TIME, THAT COULD LEAD TO INEFFECTIVENESS, AS MUCH AS ANYTHING ELSE, AND WHAT THE COMMITTEE DID, IF THE -- AT THE COURT'S SUGGESTION, WAS TO PUT THE COMMENT IN THE RULE, ITSELF, AND SUBDIVISION K SAYS, AS SOON AS PRACTICAL, THE TRIAL COURT SHOULD CONDUCT AN INQUIRY RELATED TO COUNSEL'S ABILITY TO PROVIDE EFFECTIVE COUNSEL TO THE DEFENDANT. ANY COUNSEL. COURT-APPOINTED COUNSEL, CONFLICT COUNSEL, THE PUBLIC DEFENDER, A PRIVATE LAWYER. THIS SUBDIVISION K APPLIES TO ANY COUNSEL, AND THEN IT SAYS IN ASSISTING THE AVAILABILITY -- IN ASSESSING THE AVAILABILITY OF COUNSEL -- OF COURT-APPOINTED COUNSEL, IT SAYS THE COURT SHOULD ASSESS THE NUMBER OF CASES THEN BEING HANDLED BY THE ATTORNEY, AND IT GOES ON, WHERE THE COURT, ON ITS OWN INITIATIVE, THE PUBLIC DEFENDER DOES NOT HAVE TO SAY MY CASE LOAD IS TOO HIGH. ON ITS OWN INITIATIVE, THE COURT, ITSELF, BRINGS THIS UP AND SAYS IS YOUR CASE LOAD TOO HIGH? NOW, MR. CHIPPER FIELD DID SAY A SENTENCE IN THIS RULE THAT SAYS A PRIVATE ATTORNEY SHOULD KNOW NOT UNDERTAKE THE REPRESENTATION OF A DEFENDANT IN A CAPITAL CASE, IF HIS CASE LOAD IS TOO HIGH, BUT THE SENTENCE APPEARING IN THE RULE IMMEDIATELY BEFORE THAT SAYS NO APPOINTMENT SHOULD BE MADE TO AN ATTORNEY WHO MAY BE UNABLE TO PROVIDE EFFECTIVE LEGAL REPRESENTATION, AS A RESULT OF AN UNREALISTICALLY HIGH CASE LOAD, SO I WOULD SAY THERE ARE PROVISION IN HIS THE RULE THAT DEAL WITH THIS. I DON'T KNOW OF ANY CIRCUMSTANCE, ANY OTHER CIRCUMSTANCE IN THE LAW, WHERE A PUBLIC DEFENDER IS ALLOWED TO REFUSE AN APPOINTMENT. THERE ARE AMPLE PROCEEDINGS, IN THE LAW, TO WITHDRAW, IF THAT -- IF THAT NEEDS TO BE, BUT TO ALLOW AN INITIAL REFUSAL OF AN APPOINTMENT, I THINK, WOULD BE AN UNPRECEDENTED STEP. ONE OTHER COMMENT I WOULD LIKE TO MAKE, AND THAT IS WITH RESPECT TO THE ABA RECOMMENDATION, WE AGREE WITH THE ABA RECOMMENDATION, REGARDING TWO LAWYERS, AND WE HAVE, FROM DAY ONE, WITH MINOR EXCEPTIONS. WE -- THE ONLY THING THAT WE DID, IN OUR INITIAL RULE, WAS WE SAID THAT THIS SHOULD BE DONE AT THE REQUEST OF LEAD COUNSEL, IN CASES WHERE THERE IS A NEED. THE REASON BEING THAT MANY OF THESE CASES DON'T -- THEY START OUT AS DEATH PENALTY CASES BUT THEY DON'T END UP AS DEATH PENALTY CASES, AND WE THOUGHT THERE WOULD BE NO NEED TO APPOINT TWO LAWYERS, AS A MATTER OF COURSE. LET'S WAIT UNTIL WE GET INTO IT AND SEE IF THERE, REALLY, IS A DEATH CASE, BECAUSE A LOT OF THEM START OUT THAT WAY AND THEY DON'T END UP THAT WAY, SO WE MODIFIED THE ABA RECOMMENDATION TO THAT EXTENT BUT TO THAT EXTENT ONLY. WE SAID THAT IT SHOULD BE TWO COUNSEL, IF REQUESTED BY LEAD COUNSEL, ON A SHOWING OF NEED. THE COURT, IN ITS OPINION, LAST OCTOBER, LIBERALIZED THAT A BIT MORE, BUT I WANT TO SAY THAT WE BASICALLY AGREE WITH THE ABA, AND WE ARE NOT ARGUING, OF COURSE, WITH THE COURT, BUT JUST TO MAKE OUR POSITION CLEAR, WE DO STANDBY OUR ORIGINAL RECOMMENDATION THAT THERE SHOULD BE TWO LAWYERS AND THAT, IF IT REALLY IS A DEATH CASE AND LEAD COUNSEL REQUESTS IT, THAT REQUEST SHOULD BE GRANTED. AND I MADE THE ARGUMENT, SOME OF YOU MAY RECALL,

THE LAST TIME WHEN WE FIRST PRESENTED THE RULE, THAT IN OTHER VERY SERIOUS AFFAIRS, WE EXPECT THAT. NO ONE OF US WOULD GET ON A JETLINER WITH ONE PILOT. WE HOPEFULLY WOULDN'T GO THROUGH SURGERY WITH JUST ONE DOCTOR. THIS IS THE MOST COMPLICATED WORK ANYONE COULD ASK A LAWYER TO DO, AND IT STANDS TO REASON THAT THE LAWYER ON THE NOT TO HAVE TO DO IT, BY HIMSELF OR BY HERSELF.

DO YOU THINK WE HAVE LIBERALIZED THE RULE?

I DO. I DON'T MEAN TO CRITICIZE THE COURT IN SAYING THAT, BUT I THINK -- AND I KNOW WHAT YOUR INTENT WAS, TO GIVE AN OUT FOR COUNTIES THAT CANNOT AFFORD TO HAVE TWO LAWYERS, BUT THE CONCERN OF THE COMMITTEE IS JUST THIS, WHEN YOU MAKE AN EXCEPTION LIKE THAT, SOMETIMES THE EXCEPTION SWALLOWS THE RULE, AND THAT IS, REALLY, IT IN A NUTSHELL. NOW, MAYBE THE COURT IS CORRECT TO LEAVE MORE LEEWAY IN THAT RESPECT, AND I CERTAINLY DON'T WISH TO QUARREL WITH THAT, BUT I DO WANT TO MAKE OUR POSITION CLEAR. THANK YOU.

THANK YOU VERY MUCH, AND THE COURT IS APPRECIATIVE OF THE COMMITTEE'S EFFORTS, WHICH IS, NOW, SPANED MUCH TIME, AND WE ARE VERY APPRECIATIVE OF THAT, AND THE COMMENTS AND CONCERNS OF ALL COUNSEL IN THIS VERY, VERY CRUCIAL AREA, SO THANK YOU VERY MUCH FOR BEING HERE.