Amendments to Florida Rules of Judicial Administration

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING, LADIES AND GENTLEMEN. WE WELCOME YOU TO THE FLORIDA SUPREME COURT. WE HAVE A SPECIAL OCCASION, AS WE BEGIN OUR ORAL ARGUMENTS TODAY. WE ARE GOING TO SWEAR TOM HALL IN AS THE CLERK OF THE SUPREME COURT OF FLORIDA. SOME INTERESTING FACTORS THAT YOU MAY WISH TO KNOW ABOUT. THE CLERK OF OUR COURT, DURING THE 20th SENTRY, ONLY FIVE -- THE 20th CENTURY, ONLY FIVE PERSONS SERVED IN THAT CAPACITY. BARTOW WILSON, FROM 1897 TO 1905 AND THEN MILTON MABRY, FROM 1905 TO 1915. MR. MABRY, BEFORE HE BECAME CLERK OF THE COURT, SERVED AS A JUSTICE ON THIS COURT AND, ALSO, ACHIEVE JUSTICE, AND I DON'T KNOW HOW HE GOT TO BE CLERK, BUT IN ANY EVENT. G TALBOT WHITFIELD SERVED FROM 1915 TO 1935, AND HE WAS HALF BROTHER OF CHIEF JUSTICE JAMES WHITFIELD, AND I DON'T KNOW HOW HE GOT TO BE CLERK, EITHER. [LAUGHTER] HE WAS REMEMBERED, IN ADDITION TO BEING AN OUTSTANDING CLERK, FOR WEARING A TUXEDO TO WORK EVERYDAY, AND HIS PORTRAIT IS IN THE CLERK'S OFFICE. IN 1939 THROUGH 1964, GUY T McCHORD SERVED AS CLERK. HE BECAME CLERK AT AGE 55 AND SERVED UNTIL HE WAS 80, AND HE PRACTICED LAW FOR 30 YEARS, PRIOR TO THAT SERVICE AS CLERK, AND HE WROTE THE CHARTER, IN 1909 -- 1919, THAT ESTABLISHED TALLAHASSEE'S COMMISSIONER/MANAGER FORM OF GOVERNMENT, AND, OF COURSE, THAT HAS BEEN CHANGED IN THE INTRIM. HE WAS, ALSO, THE FATHER OF A LEON COUNTY CIRCUIT JUDGE AND A DISTRICT COURT OF APPEAL JUDGE, GUY T. McCHORD Jr. AND THEN IN 1975 SERVED UNTIL RETIREMENT IN 1999. IN THE 19th CENTURY, BETWEEN 1846 AND 1897, THERE WERE 14 CLERKS. ALL OF THEM WERE LAWYERS EXCEPT TWO, ANDERSON PEELER AND EDWARD BLAKE, AND THEY WERE METHODIST MINISTERS, AND THEY WERE PRESSED INTO SERVICE DURING THE CIVIL WAR. BEFORE I DO SWEAR IN TOM HALL, AS CLERK OF THE COURT, I WANT TO EXPRESS, TO DEBBIE CASALL, WHO HAS BEEN ACTING CLERK SINCE THE RETIREMENT OF MR. WHITE, THE SPECIAL APPRECIATION OF THE COURT FOR HER OUTSTANDING SERVICE IN THAT CAPACITY. AND, MR. HALL, IF YOU AND YOUR WIFE WOULD COME FORWARD. AND YOUR FAMILY. WE WOULD BE HAPPY TO SWEAR YOU IN. REPEAT AFTER ME. I DO SOLEMNLY SWEAR THAT I WILL SUPPORT, PROTECT AND DEFEND, THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES AND OF THE STATE OF FLORIDA. THAT I AM DULY-QUALIFIED TO HOLD OFFICE, UNDER THE CONSTITUTION OF THE STATE, AND THAT I WILL WELL AND FAITHFULLY PERFORM THE DUTIES OF CLERK OF THE SUPREME COURT OF FLORIDA, OF WHICH I AM NOW ABOUT TO ENTER. SO HELP ME GOD.

SO HELP ME GOD.

CONGRATULATIONS. [APPLAUSE] NOW, THE FIRST CASE ON THE COURT'S CALENDAR, THIS MORNING, IS THE AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, AND, COUNSEL, IF YOU WOULD BE -- COME FORWARD AND BE PREPARED, WE WILL BE HAPPY TO HEAR FROM YOU. JUDGE DAWSON, ARE YOU GOING TO PROCEED?

YES. MAY IT PLEASE THE COURT, I AM CIRCUIT JUDGE DANIEL DAWSON. JUDGE DOYEL AND I WERE COCHAIR OF THIS AD HOC COMMITTEE AND MADE THESE RECOMMENDATIONS, AND SO I WILL PRESENTING FIRST AND WILL BE COVERING PROPOSED AMENDMENTS TO 2.050 SUBI, 2.161 SUBD, AS WELL AS THE COMMENT AND NOTICE FORM THAT HAS BEEN RECOMMENDED. JUDGE DOYEL WILL BE COMMENTING ON THE RECOMMENDATIONS TO 2.050-K.

JUDGE DAWSON, I UNDERSTAND THAT LAST WEEK THE LEGISLATURE AFFECTED SOME LAWS

REGULATED BY THIS AREA. WHAT IMPACT, IF THAT IS SIGNED BY THE GOVERNOR, AND WE DON'T HAVE ANY INDICATION THAT IT WILL NOT BE, HAVE ON THESE RULES?

WE ARE CONFIDENT THAT THE GOVERNOR WILL SIGN THE NEW LEGISLATION. THE TWO AREAS THAT IT IMPACTED THAT WOULD BE RELEVANT TO THESE RULES, IT DOES REMOVE THE CRIMINAL PENALTY SECTION AS IT APPLIES TO JUDGES AND THE MANDATORY REPORTING. IT, ALSO, MODIFIES THE DUTY TO REPORT FOR JUDGES AND JUDICIAL PERSONNEL ON MULTIPLE REPORTINGS. IT DOES NOT REQUIRE A MULTIPLE REPORT, IF THE JUDGE OR JUDICIAL PERSONNEL KNOWS THAT THERE IS AN ACTIVE DEPENDENCY CASE OR THE INFORMATION IS ALREADY KNOWN TO THE DEPARTMENT. THE IMPACT, AS FAR AS THE AD HOC COMMITTEE'S POSITION WOULD BE THAT THE SECOND TO LAST LINE ON 2.050 SUB-I, IS, AT THIS POINT, WE DO NOT BELIEVE IT IS NECESSARILY STILL NEEDED. IT IS THE LINE THAT DEALS DIRECTLY WITH THE FAILURE OF ANY JUDGE TO COMPLY WITH THIS REQUIREMENT SHALL BE CONSIDERED NEGATIVE LECTURE OF DUTY -- NEGLECT OF DUTY. WE BELIEVE, NOW THAT THE CRIMINAL PENALTIES HAVE BEEN REMOVED, THAT IS NO LONGER NECESSARY. AS FAR AS THE REMAINDER OF THE RECOMMENDATIONS, WE DO NOT BELIEVE THAT THE STATUTORY CHANGES THE NEED FOR THOSE.

LET ME ASK YOU THIS QUESTION, THOUGH. DOES IT REALLY PUT, WITH RESPECT TO JUDGES, THEM BACK THE WAY IT WAS BEFORE THIS ACT WAS PASSED, WHICH IS THAT JUDGES WERE, AS I UNDERSTAND IT, WOULD BE UNDER ANY PERSONS, AND SO THAT RESPONSIBILITY WAS ALWAYS THERE, SO I GUESS THE QUESTION IS, GIVEN SOME OF THE CONCERNS THAT HAVE BEEN RAISED AND, OF COURSE, WILL BE ADDRESSED, IS THE RULE, COULD YOU TELL US WHY THE RULE WOULD STILL BE NECESSARY, IN LIGHT OF THESE AMENDMENTS.

WELL, THE JUDGES HAVE, ALWAYS, BEEN, AS YOU NOTED, REQUIRED TO REPORT, UNDER THE "ANY PERSONS", AND THEY STILL ARE. IT DOES NOT REMOVE ANY REQUIREMENT TO REPORT. THE ONLY THING THE LEGISLATION DID WAS REMOVE JUDGES FROM THE CRIMINAL PENALTY SECTION AND DOES, SPECIFICALLY, REFER BACK TO JUDGES WHO ARE SUBJECT TO DISCIPLINE UNDER THE CONSTITUTION. THAT IS WHY WE BELIEVE THIS IS IMPORTANT, IS THAT THE -- WE BELIEVE THE LEGISLATURE RECOGNIZED THE SEPARATION OF POWERS IN THE CONSTITUTIONAL ISSUES, IN IMPOSEING A CRIMINAL PENALTY. WE BELIEVE IT IS IMPORTANT FOR THE COURT TO POLICE ITSELF. THE STATUTE STILL MAKES IT VERY CLEAR THAT IT IS IMPORTANT THAT THESE TYPES OF CASES OR THIS TYPE OF INFORMATION BE PASSED ON TO THE DEPARTMENT OF CHILDREN AND FAMILIES, SO THAT CHILDREN CAN BE SAFE AND PROTECTED, IF THEY ARE IN AN ENVIRONMENT WHERE THEY COULD BE HARMED.

WHAT ABOUT THE CONCERN THAT, IF YOU USED A STANDARD OF "REASON TO SUSPECT" AND THERE IS NO JUDICIAL HEARING PRIOR TO THAT TIME, THAT THE JUDGE, HIMSELF OR HERSELF, IS BEING PLACED IN A POSITION WHERE THE IMPARTIALITY MIGHT BE QUESTIONED AND AT OPPOSED TO SOMETHING DIFFERENT, LIKE A PROBABLE CAUSE DETERMINATION, WHICH I KNOW THAT YOU HAVE RESPONDED THAT IT IS SIMILAR TO THAT, BUT THAT IS ACTUALLY SOMETHING THAT IS REQUIRED WITHIN THE JUDICIAL PROCESS, SO COULD YOU DIRECT YOURSELF TO THAT ASPECT, THAT IT IS AS IF THIS COURT IS NOW IMPOSING, MAYBE, SOMETHING THAT IT COULD BE READ AS THAT IS THAT THIS COURT IS IMPOSING SOMETHING THAT IS NOT EXPLICITLY REQUIRED BY LAW, AND COULD BE -- COULD LEAD TO THOSE ADDITIONAL PROBLEMS.

WELL, WE BELIEVE THAT THE STANDARD, FIRST OF ALL, SHOULD BE -- THE STATUTORY STANDARD IS WHAT SHOULD BE IN THE RULE, AND THE REASON FOR THAT IS THAT IS A LONG-STANDING STANDARD. ALSO, IF WE MADE THE STANDARD HIGHER, SUCH AS PROBABLE CAUSE, THERE WOULD BE CASES THAT WOULD NOT BE REPORTED THAT MOST LIKELY SHOULD HAVE BEEN AND WHERE CHILDREN SHOULD BE HARMED. IF THE STANDARD WAS MADE LOWER, AS SOME PEOPLE HAVE RECOMMENDED, SO THAT THE JUDGE WOULD HAVE NO THINKING PROCESS ENGAGED, WHEN THEY MAKE THESE REPORTS. WE BELIEVE THAT THERE WOULD BE REPORTS,

EXCUSE ME, LET ME TURN THAT AROUND. IF IT WAS LOWER, CORRECT, IF IT WAS LOWER, THEN THERE WOULD BE REPORTS MADE THAT WOULD NOT BE ACCEPTED. IN OTHER WORDS --

LIKE MY QUESTION WASN'T WHETHER IT SHOULD BE A LOWER STANDARD. MY QUESTION IS THE CONCERN THAT IT WILL GIVE THE IMPRESSION THE JUDGES WILL BE REPORTING SOMETHING THAT THEY LEARNED FROM PAPERS, WITHOUT THE BENEFIT OF THERE HAVING BEEN A HEARING, WHERE, IN THE REGULAR COURSE OF THEIR HEARING, THEY WOULD MAKE DETERMINATIONS, AND IF THAT WOULD CALL INTO QUESTION THEIR IMPARTIALITY TO RULE ON THE CASES, AND I WAS DIFFERENTIATING THAT FROM THE PROBABLE CAUSE SITUATION, WHERE THAT IS SOMETHING THAT IS ACTUALLY REQUIRED BY THE JUDICIAL PROCESS.

WELL, THE -- OUR BELIEF IS THAT THE PROBABLE CAUSE STANDARD IS HIGHER THAN THE STANDARD THAT WE ARE RECOMMENDING IN THE RULE. AND THAT IS WHERE A JUDGE ACTUALLY MAKES A FINDING OF PROBABLE CAUSE. THE CASE LAW IS CLEAR THAT THAT SAME JUDGE CAN EVEN PRESIDE OVER A NONJURY TRIAL, WHERE THEY ARE THE FINDER OF FACT, AND DOES NOT REQUIRE THEM TO BE REMOVED. SO WE BELIEVE, SINCE THE PROBABLE CAUSE STANDARD IS HIGHER, AND IT IS CLEAR FROM CASE LAW THAT THAT WOULD NOT REQUIRE A REMOVAL OF THAT JUDGE, THAT AT THIS LOWER STANDARD, THAT THERE IS NO REASON WHY THE MERE FACT THEY ARE PASSING ON INFORMATION WOULD AUTOMATICALLY REQUIRE THEM TO BE REMOVED AND, IN FACT, AS WE SAID BEFORE, EVERYONE SEEMS TO ACCEPT, INCLUDING THE COURTS AND THE BAR, THAT A JUDGE WHO SIGNS A SEARCH WARRANT OR SIGNS AN ARREST WARRANT, WHERE THEY FIND PROBABLE CAUSE THAT THE PERSON COMMITTED THE CRIME AND SHOULD BE ARRESTED AND PUT IN JAIL, CAN SIT ON THAT PARTICULAR CASE.

BUT IN REGARDS TO THE RECUSAL OF A JUDGE, SHOULD THERE BE A DIFFERENT STANDARD, IF THE JUDGE MAKES A REPORT, BASED ON PERSONAL OBSERVATION, VERSUS A REPORT BASED ON ALLEGATIONS MADE BY A THIRD PARTY?

I AM NOT SURE THAT THERE SHOULD BE A DIFFERENCE. IN A SEARCH WARRANT OR AN ARREST WARRANT SITUATION, THEY ARE TAKING SWORN TESTIMONY FROM A PERSON AND MAKING --

BUT ON AN ARREST WARRANT-TYPE OF SITUATION, I CAN'T THINK OF A CASE WHERE THE JUDGE ACTUALLY HAD PERSONAL KNOWLEDGE OF THIS SITUATION, SO IF THE JUDGE HAS ACTUALLY OBSERVED SOMETHING ABOUT A CHILD OR SITUATION THAT THE JUDGE BELIEVES SHOULD BE REPORTED. IS THAT A DIFFERENT SCENARIO?

IF ACTUAL ABUSE HAPPENED IN FRONT OF THE JUDGE IN THE COURTROOM IS THE ONLY SCENARIO I CAN THINK OF WHERE THE INFORMATION THE JUDGE RECEIVED WOULD NOT BE SIMILAR -- EVERYTHING ELSE A JUDGE RECEIVES IS IN THE FORM OF TESTIMONY OR EVIDENCE, WHICH IS THE SAME WAY THEY RECEIVE THE INFORMATION THEY NEED FOR A SEARCH WARRANT OR AN ARREST WARRANT. THE ACTUAL PERSON WHO IT WAS HAPWILLING TO -- WHO IT WAS HAPPENING TO MAY BE THE ONE WHO GIVES THE SWORN TESTIMONY TO THE POLICE OFFICER, AND IT WOULD BE THE CRIME, BUT THE ONLY WAY THE JUDGE WOULD BE A WITNESS TO THE EVENT WOULD BE IF IT WAS HAPPENING IN THE COURTROOM. IN THAT CASE, THE COURT WOULD PROBABLY HAVE TO RECUSE HIMSELF, BECAUSE HE WOULD BE A POTENTIAL WITNESS IN A DEPENDENCY PROCEEDING.

IN A SITUATION WHERE YOU DON'T ACTUALLY OBSERVE THE ABUSE TAKING PLACE BUT YOU OBSERVE WHAT LOOKS LIKE THE RESULT OF SOME ABUSE?

AGAIN, IF YOU ARE SAYING SOMEONE CAME IN WITH BRUISES AND THAT WAS THE CAUSE OF THE REPORT, THAT MIGHT RAISE TO THE LEVEL OF WHERE THEY WOULD HAVE TO REMOVE THEMSELVES FROM ANY CASE INVOLVING THE PROSECUTION OF THOSE BRUISES OR THE DEPENDENCY RELATED TO THOSE BRUISES.

SO THAT WOULD SORT OF -- I GUESS, THEN, THE GROUP THAT IS IN FAVOR OF PUTTING A -- NOT SOMETHING, SOME LANGUAGE IN THIS THING ABOUT RECUSAL THAT SAYS "MAY" --

OUR RECOMMENDATION ON THE RECUSAL IS THAT THE MERE FILING OF THE NOTICE, BY ITSELF, WOULD NOT BE SUFFICIENT FOR RECUSAL. IT DOES NOT MEAN THAT, DEPENDING ON WHAT THE JUDGE WROTE IN THAT NOTICE, IF WHAT THEY WROTE OR THE WAY THEY WROTE IT WOULD BE SUFFICIENT FOR RECUSAL OR HOW THE JUDGE RESPONDED IN THE COURTROOM OR HOW THE JUDGE MAY HAVE DONE SOMETHING ELSE CONNECTED WITH THE CASE, OUR RECOMMENDATION, AS FAR AS THE LANGUAGE, IS THAT SIMILAR TO THE MERE SIGNING OF A SEARCH WARRANT OR THE MERE SIGNING OF AN ARREST WARRANT BY ITSELF WOULD NOT BE SUFFICIENT, BUT OBVIOUSLY IF THE JUDGE MADE INAPPROPRIATE COMMENTS IN THE NOTICE, THE JUDGE MADE INAPPROPRIATE COMMENTS IN THE COURTROOM OR HAD SOME OTHER -- THERE WERE SOME OTHER EVIDENCE THAT THE JUDGE SHOULD NOT BE SITTING ON THAT PARTICULAR CASE, THEN THE JUDGE WOULD STILL BE SUBJECT TO THE MOTION TO RECUSE.

I GUESS WHAT I AM STILL TRYING TO UNDERSTAND, BECAUSE I KNOW, AS PART OF YOUR REPORT, YOU ENVISION THAT THIS WHOLE REPORTING CONCEPT WOULD ACTUALLY REQUIRE MORE JUDICIAL PERSONNEL, THAT THERE SHOULD BE SOMEONE IN CHARGE OF REPORTING, AND THIS IS SOMETHING THAT, AS I UNDERSTOOD AT THE TIME, WAS IN DIRECT RESPONSE TO WHAT HAD BEEN IMPOSED, THE SPECIFICS IMPOSED BY THE KAYLA McLEAN ACT. MY CONCERN, AND I THINK IT WAS EXPRESSED IN SOME OF THE COMMENTS THAT WE RECEIVED, IS THAT IT IS LOOKING AS IF JUDGES ARE CONSIDERING THEY HAVE SOME OTHER RESPONSIBILITY, OTHER THAN WHAT ACTUALLY IS IMPOSED BY THE ACTUAL PROS PEST IN FRONT OF THEM. FOR EXAMPLE, A DEPENDENCY PETITION. THE VERY PURPOSE OF THAT PETITION IS GOING TO BE TO DETERMINE IF THERE IS ABUSE, NEGLECT OR ABANDONMENT, AS OPPOSED TO THE JUDGE, ON HIS OWN OR HER OWN, GOING, PRIOR TO THAT TIME, BECAUSE YOUR COMMENT ACTUALLY SAYS THE HEARING IS NOT REQUIRED, AND ACTUALLY SENDING THAT NOTICE ON. THEN MAYBE GETTING THE REPORT BACK FROM THE DEPARTMENT OF CHILDREN AND FAMILY AND ALL OF A SUDDEN THE JUDGE IS SOME OTHER PLAYER IN SOME PROCESS THAT IS NOT A JUDICIAL PROCESS.

WELL --

AND THAT IT INVOLVES ALL OF THIS JUDICIAL PERSONNEL TO TO DO -- TO DO IT.

WE BELIEVE THERE ARE TWO SEPARATE ISSUES, THE REPORTING REQUIREMENT AND GETTING THE REPORT BACK AND WHETHER YOU SHOULD GET A REPORT BACK AND WHAT YOU SHOULD DO WITH IT, AND JUDGE DOYEL IS GOING TO COVER THAT. WE BELIEVE THAT THE REPORTING REQUIREMENT IS MANDATED BY STATUTE. EVERYONE HAS A DUTY TO. I THINK WHAT THE COURT NEEDS TO DO IS TO COME UP WITH RULES THAT REGULATES HOW JUDGES WOULD COMPLY WITH THAT REQUIREMENT, AND THAT IS WHAT WE HAVE TRIED TO DO IN OUR FORM, AS WELL AS OUR RULE. WE ARE, ALSO, CONCEDING, IN THE FORM SECTION, THAT IT SHOULD NOT HAVE THE WORDS DONE IN ORDER THAT IT IS NOT AN ORDER TO NOTICE AND IT SHOULD MERELY HAVE A DATE AND A SIGNATURE LINE, BUT WE DO BELIEVE THAT THE RULE CHANGES WE PROPOSED, AS WELL AS THE FORM THAT, THE NOTICE FORM WE HAVE PROPOSED, WOULD SATISFY THE STATUTORY REQUIREMENT TO REPORT. I THINK JUDGE DOYEL IS GOING TO COVER, AT THIS POINT, THE ISSUES, AS FAR AS THE RECEIVING OF THE NOTICE, EXCUSE ME, THE RECEIVING OF THE REPORT BACK FROM THE DEPARTMENT.

MAY IT PLEASE THE COURT. I AM BOB DOYEL. I AM A CIRCUIT JUDGE FROM THE TENTH JUDICIAL CIRCUIT. I AM ADMINISTRATIVE JUDGE OF THE FAMILY DIVISION, AND MY DOCKET IS COMPOSED ENTIRELY OF DOMESTIC AND REPEAT VIOLENCE INJUNCTION CASES. SINCE JULY 1 OF 1999, UNTIL APRIL 30, I HAVE MADE 409 REPORTS, UNDER THE KAYLA McKEAN ACT. I HAVE DEALT WITH APPROXIMATELY 2500 CASES IN THAT PERIOD OF TIME. IT IS A HIGH PERCENTAGE OF MY DOMESTIC VIOLENCE CASES THAT REQUIRE ME TO MAKE THE REPORTS.

AND UNDER WHAT CIRCUMSTANCES? WHAT, GENERALLY, HAPPENS TO GENERATE ONE OF THESE REPORTS?

I RECEIVE A PETITION FOR AN INJUNCTION, GENERALLY FOR DOMESTIC VIOLENCE, SOMETIMES REPEAT VIOLENCE, AND IN THAT REPORT THERE WILL BE AN ALLEGATION, UNDER OATH, BY THE PETITIONER, THAT THE RESPONDENT IN THE CASE HAS STRUCK A CHILD OR HAS STRUCK THE PETITIONER WHILE SHE IS HOLDING A CHILD OR HAS OTHERWISE COMMITTED DOMESTIC VIOLENCE OF A GREAT NATURE IN THE PRESENCE OF A CHILD, ALL OF WHICH WOULD FALL WITHIN THE DEPENDENCY, WITHIN CHAPTER 39'S ABANDONMENT, ABUSE OR NEGLECT DEFINITIONS.

BEFORE JULY 1, 1999, YOU WERE, ALSO, SERVING IN THIS DIVISION, AND, I KNOW, VERY CONSCIOUSLY. DID YOU RECEIVE, PRIOR TO JULY 1999, WHEN THE KAYLA McLEAN ACT WENT INTO EFFECT, THAT YOU HAD AN INDEPENDENT OBLIGATION, UNDER THE STATUTE, TO REPORT, AND, AGAIN, I GUESS THE SAME QUESTION TO YOU, IS YOUR LETTER, IT WAS, REALLY THAT, STARTED A LOT OF THIS GOING IN A GOOD WAY. YOU WERE VERY CONCERNED ABOUT IT. WHAT DO YOU SEE, AS THE DIFFERENCES, NOW, THAT THE ACT HAS BEEN AMENDED TO EXCLUDE JUDGES IT FROM IT, SPECIFICALLY ENUMERATED INDIVIDUALS THAT HAVE A DUTY TOY REPORT.

I THINK, AS MOST JUDGES DO, THAT THE LEGISLATURE COULDN'T REQUIRE ME, AS A MEMBER OF THE JUDICIARY, TO MAKE SUCH A REPORT, AND I HAD THE SAME KINDS OF CONCERNS THAT PEOPLE ARE EXPRESSING NOW, ABOUT THE APPEARANCE OF IMPROPRIETY IN MAKING A REPORT, AND I JUST DIDN'T MAKE IT. I DIDN'T THINK IT WAS MY OBLIGATION, AND I WAS CONCERNED ABOUT THE EXPARTE COMMUNICATIONS. ALL OF THOSE THINGS HAVE BEEN RAISED, AND WE ARE GOING TO HAVE IT EXACTLY THE SAME WAY IF WE DON'T HAVE A RULE T THAT IS WHY WE NEED THE RULE. THAT IS WHY WE HAVE THE OBLIGATION. LAST THURSDAY -- I HAVE SO MANY OF THESE CASES THAT I HAVE TO HAVE A SPECIAL AFTERNOON DOCKET THAT INVOLVES JUST DEPARTMENT OF CHILDREN AND FAMILY SERVICES. IRSEE I AM INTO MY REBUTTAL TIME. MAY I AT LEAST ANSWER THIS QUESTION?

YOU MAY CONTINUE AS LONG AS YOU NEED TO.

LAST THURSDAY, I HAD FOUR FAMILIES ON REPORTS THAT I HAD MADE, COMPRISING SEVEN OR EIGHT CHILDREN, THAT WERE SHELTERED AS A RESULT OF THE REPORTS THAT I MADE. IF WE GO BACK TO THE WAY WE WERE BEFORE, ASSUMING THAT WE DON'T HAVE TO MAKE REPORTS, BECAUSE WE ARE IMMUNE FROM LEGISLATIVE INSTRUCTION ON HOW TO PERFORM OUR DUTIES, THEN THESE PEOPLE, THESE CHILDREN WOULD NOT HAVE BEEN SHELTERED. I WOULD -- I DON'T KNOW WHAT I WOULD DO, UNDER THE CIRCUMSTANCES NOW. WITH THAT SITUATION, I DON'T SEE HOW I CAN GO BACK NOW. I DON'T SEE HOW WE, AS A JUDICIARY, CAN GO BACK. I THINK WE HAVE GOT TO DEAL WITH MODERN PROBLEMS WITH MODERN SOLUTIONS.

SHOULDN'T THE SOLUTION BE THAT A REPRESENTATIVE FROM THE DEPARTMENT OF CHILDREN AND FAMILIES IS PRESENT DURING THESE HEARINGS AND MAKES THEIR OWN -- THEY HEAR THE EVIDENCE AND THEY DECIDE WHETHER THERE IS ENOUGH EVIDENCE TO SEPARATELY INITIATE A SHELTER PETITION?

WELL, THERE IS NO HEARING, WHEN I RECEIVE THE PETITION, AND A LOT OF TIMES NO ONE SHOWS UP AT THE HEARING.

WHAT IS YOUR VIEW OF THIS DIFFERENCE BETWEEN THE REASONABLE CAUSE AND THE NOTICE SUGGESTION TO US?

I UNDERSTAND THAT TO BE TWO DIFFERENT THINGS.

RIGHT.

WITHOUT MAKING A SPECIFIC FINDING AND AN ORDER OF PROBABLE CAUSE -- I MEAN REASONABLE CAUSE, REMEMBER, IT IS REASONABLE CAUSE TO SUSPECT, AND ALL WE NEED IS INFORMATION THAT WOULD CAUSE A REASONABLE PERSON TO SUSPECT ABANDONMENT, ABUSE OR NEGLECT. SO WE ARE NOT MAKING A FINDING THAT THERE IS, IN FACT, ABANDONMENT, ABUSE OR NEGLECT. ALL WELL ARE DOING IS FINDING THAT A REASONABLE PERSON WOULD HAVE CAUSE TO SUSPECT THAT THERE IS.

HOW, ON A PRACTICAL BASIS, DAY-TO-DAY, DO YOU GO ABOUT MAKING THE DECISION AS TO WHETHER YOU NEED TO FILE A REPORT OR NOT?

WELL, BASED UPON THE UNDERSTANDING THAT I HAVE, RIGHT OR WRONG, OF CHAPTER 39, I MAKE THE EVALUATION WHEN I RECEIVE INFORMATION AS TO WHETHER THE PERSON, FIRST OF ALL, WHO HAS COMMITTED THE ABUSE OR FAILED TO PROTECT THE CHILD, WHETHER THAT IS A CUSTODIAL PERSON, BECAUSE THEY ARE THE ONLY ONES THAT WE DEAL WITH, IN MAKING REPORTS. I HAVE TO MAKE THAT JUDGMENT. AND IF IT IS SUCH A PERSON THAT I HAVE TO MAKE A JUDGMENT AS TO WHETHER, IF TRUE, THE ALLEGATIONS WOULD FALL WITHIN THE AMBIEN OF CHAPTER 39'S ABUSE OR NEGLECT, AND THEN, THIRD, I HAVE TO MAKE AN EVALUATION AS TO WHETHER THERE IS REASONABLE CAUSE FOR A REASONABLE PERSON TO SUSPECT THAT IS THERE ABUSE.

DO YOU GO THROUGH SOME SORT OF CHECKLIST, OR DO YOU JUST DO THIS AS THE CASES PRESENT THEMSELVES TO YOU?

I DO IT AS THE CASE PRESENTS ITSELF TO ME, AND I DON'T HAVE A CHECKLIST, NO, SIR.

OKAY.

IT IS JUST MY JUDGMENT.

OKAY. THANK YOU.

I AM INTO MY REBUTTAL TIME, SO I WILL SIT DOWN. THANK YOU.

THANK YOU VERY MUCH. JUDGE KAHN.

MAY IT PLEASE THE COURT. EXCUSE ME. CHARLES KAHN OF TALLAHASSEE, ON BEHALF OF THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE. IT IS MY PRIVILEGE TO OFFER THE COMMENTS OF THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE OF THE FLORIDA BAR. I AM, OF COURSE, I DON'T NEED TO REMIND THE COURT HERE, HERE AS A MESSENGER, BRINGING TO YOU THE UNANIMOUS VIEW OF THE RULES, WHICH HAS BEEN SET OUT IN OUR WRITTEN RESPONSES. THE COMMITTEE, IN NO WAY, MEANS ANY DISRESPECT TO THE AD HOC KAYLA McKEAN COMMITTEE. IN FACT, WE APPLAUD THE EFFORTS OF JUDGE DOYEL AND JUDGE DAWSON. THEY HAD A TASK TO PERFORM. THEY PERFORMED IT VERY WELL. WE DON'T MEAN, IN ANY WAY, TO DENY GRATE THEIR WORK. OUR FIRST PURPOSE -- WE HAD TWO PURPOSES AND OUR COMMENTS ARE SET UP ACCORDINGLY -- OUR PURPOSE IS TO INVITE THE COURT TO CRITICALLY ANALYZE THIS AREA, BEFORE IT MOVES INTO THE AREA, AND THE COURT MAY, WELL, DECIDE TO MOVE INTO THIS AREA, AND WE CERTAINLY RECOGNIZE THAT, BUT WE DO INVITE, AND IF I NEGLECTED TO INTRODUCE COME COUNSEL MR. COLEMAN, LARRY COLEMAN, ON BEHALF OF THE FAMILY LAW COMMITTEE, AS WELL AS TWO OTHER RESPONDENTS THAT ARE NOT PRESENT HERE TODAY, WE DO INVITE THE COURT TO ENGAGE IN A THOUGHTFUL AND CRITICAL ANALYSIS, BEFORE IT MOVES HEADLONG INTO THIS AREA. THE 700-PLUS JUDGES OF THIS STATE WOULD BECOME, UNDER THE ADOPTION OF THIS RULE, DEPUTIZED, INVESTIGATING AND REPORTING AGENTS, AND I DON'T THINK THERE IS ANY WAY AROUND THAT. THE SUGGESTION THAT THIS STANDARD OF PROBABLE CAUSE, SOMEHOW, IS WITHIN THE CONFINES OF TRADITIONAL JUDICIAL ACTIVITY IS,

WITH ALL DUE RESPECT, NOT COMPLETELY ACCURATE. JUSTICE PARIENTE POINTED OUT THAT THE FINDINGS OF PROBABLE CAUSE THAT JUDGE DAWSON REFERRED TO ARE MADE WITHIN THE TRADITIONAL CONFINES OF THE JUDICIAL PROCESS. JUNKS DO MAKE FINDINGS OF -- JUDGES DO MAKE FINDINGS OF PROBABLE CAUSE AND, YES, THEY DO MAKE THESE ON AN EXPARTE BASIS DAILY. HOWEVER, PROBABLE CAUSE DETERMINATIONS MUST, UNDER OUR CONSTITUTIONAL LAW AND UNDER THE COMMON LAW PREDECESSORS OF OUR CONSTITUTION BE MADE BY AN IMPARTIAL MAGISTRATE. THAT IS THE KEY. THAT IS THE KEY TO OUR WHOLE IDEA OF THE FOURTH AMENDMENT. EVEN WHEN MADE EXPARTE. PROBABLE CAUSE DETERMINATIONS THAT ARE MADE LETTER ON -- THAT ARE MADE LATER ON IN PROCEEDINGS, SUCH AS IN SUCH CASES, ARE MADE AT FULL HEARING, AND IN ADDITION, THESE PROBABLE CAUSE HEARINGS THAT I THINK THIS COMMITTEE WOULD ANALGIZE REPORTING, ARE ALWAYS SUBJECT TO REVIEW. THEY ARE NOT SIMPLY MADE AND PUT OUT INTO THE ETHER BY WHICH A PROCESS IS STARTED. THE PROBABLY CAUSE IS TO INSULATE THE CITIZENRY FROM THE HEAVY HAND OF GOVERNMENT. THIS INITIATES THE HEAVY HAND OF GOVERNMENT. AND EVEN THOUGH THE WORDS MAY BE SOMEWHAT LESS THAN PROBABLE CAUSE, THESE ARE THE DISTINCTIONS IN THE TYPE OF REPORTING, NOW, BEFORE YOU, IN THE TYPE OF PROBABLE CAUSE DETERMINATION THAT JUDGES HAVE MADE SINCE TIME IMMEMORIAL. SOME IDEAS ARE VERY GOOD, YOUR HONORS, BUT THEY DON'T TRANSLATE WELL INTO MANDATORY LEGISLATION. SO -- SOME IDEAS ARE EXCELLENT IDEAS. I THINK THIS IS WHAT THE JUDICIAL CONTEXT OF ETHICS IS BASED UPON, BUT THEY DON'T ALWAYS TRANSLATE, AND I BELIEVE IN THE CONTEXT WITH JUDGE DOYEL, WHERE WE TALKED ABOUT DURING THE "OTHER PERSON" PHASE OF THE LAW, WHICH, OF COURSE, HAS BEEN IN EXISTENCE FOR YEARS, JUDGES HAVE MORAL AND ETHICAL OBLIGATIONS, AND THE RULES OF JUDICIAL ADMINISTRATION AND THE COMMITTEE OF THE BAR HAS NOT, IN ANY WAY, PROPOSED THAT THOSE OBLIGATIONS WOULD BE ALTERED. NEVERTHELESS, A MANDATORY ONE SIZE FITS ALL OBLIGATION TRANSPOSES THE JUDGE FROM AN INDEPENDENT AND, INDEED, DETACHED ASHTER OF LAW, IN -- DETACHED ARBITE HIM R OF LAW, IN FACT, INTO AN INVESTIGATOR, AND I USE THAT IN THE CONTEXT HERE TODAY, BECAUSE HOW DOES ONE REACH THE DETERMINATION OF WHETHER TO REPORT, AND I BELIEVE JUST DAWSON, IN HIS INITIAL COMMENTS, MENTIONED THAT THERE IS A THOUGHT PROCESS INVOLVED HERE. WE HAVE TRIED TO COUP WITH SOME LANGUAGE, IN THE EVENT THAT THIS COURT DON'T -- THIS COURT ADD OPTS RULES, AS IT WELL MAY, THAT THIS PROCESS OUGHT TO BE MADE KNOWN TO THE JUDGE. A TRIAL JUDGE, AND BY THE WAY, I DIDN'T MENTION THIS, YOUR HONORS, BUT WE DO BELIEVE THAT THIS SHOULD BE LIMITED TO TRIAL JUDGES. DESPITE THE PROHIBITION AGAINST REPORTING, I DON'T THINK THAT THERE IS ANY WAY THAT YOU COULD EVER KNOW, ON THE APPELLATE BENCH, WHETHER A REPORT HAS BEEN REASONABLY MADE, WHEN YOU READ THE POLICE RECORD, SO WE DO SUGGEST TRIAL JUDGES FORM THE LANGUAGE THAT WE DO SUGGEST IS THAT, WHEN A TRIAL JUDGE, IN THE COURSE OF OFFICIAL DUTIES, HAS BEEN MADE AWARE THAT A CHILD HAS BEEN ABUSED, ABANDONED OR NEGLECTED, THE REPORTING DUTY ARISES. THIS DOES NOT CHANGE THE OBLIGATION, AS A MEMBER OF SOCIETY, TO REPORT THE TYPE OF INCIDENT SUCH AS WHEN A CHILD IS ABUSED IN COURT AND THAT SORT OF THING, BUT HOPEFULLY IT WOULD GIVE A JUDGE SOME SOLACE THAT, WHEN THERE HAS BEEN SOME HINT OF SOMETHING AWRY THAT, THE JUDGE NEED NOT, ON EVERY INSTANCE, MADE AN INQUIRY PRIOR TO DISPOSITION OF EVERY CASE.

ARE YOU SAYING PRIOR TO NO RULE?

I THOUGHT YOU SAID ADVOCATING, AND CAUTIOUSLY, YOUR HONORS, OUR COMMITTEE, BY MAJORITY, HAS TAKEN THE VIEW THAT THERE SHOULD NOT BE AN ADDITIONAL COURT-IMPOSED REPORTING RULE. YES, MA'AM.

YOU KNOW, BEFORE THE KAYLA McLEAN ACT HAD BEEN PASSED, WAS THERE ANY STUDY OF THIS QUESTION OR PROBLEM THAT JUDGE DOYEL BRINGS UP, IN PARTICULAR IN THE DOMESTIC VIOLENCE AREA? BECAUSE YOU KNOW, IN THE AREA WHERE IT IS ALREADY A CHAPTER 39 PROCEEDING, THAT IS NOT REALLY -- IT IS ALREADY GOING ON, BUT IN, I GUESS, THE AREA THAT IT IS MOST LIKELY TO COME UP WITH IS JUST WHAT JUDGE DOYEL MENTIONED, IN A DOMESTIC

VIOLENCE PETITION, WHERE THERE IS AN ALLEGATION OF CHILD ABUSE. DO YOU OFFER ANY SUGGESTION AS TO WHETHER THERE SHOULD BE ANY ALTERNATIVE, OR IF, IN YOUR ROLE AS THE, I GUESS IT IS THE JUDICIAL ETHICS ADVISORY COMMITTEE, IF A JUDGE WERE TO WRITE A LETTER SAYING WHAT DO I DO, IS THE ADVICE TO DO NOTHING?

WE HAVE HAD SUCH A LETTER, BUT THE LETTER DID NOT COME UP UNTIL AFTER THE EFFECTIVE DATE OF THE KAYLA McDEAN ACT, AND THAT LETTER INVOLVED THE FORM OF REPORTING, AND I SAY THIS SOMEWHAT CAUTIOUSLY, BECAUSE I DON'T KNOW THAT I HAVE AUTHORIZATION FROM THE COMMITTEE TO SAY THIS, BUT I GUESS, IF THE RULE INVOLVES SIMPLY TRANSMIDDLE OF THESE TYPE OF PETITIONS, DOMESTIC VIOLENCE PETITIONS, I DON'T KNOW THAT THIS STATE WOULD BE IN AN UPROAR ABOUT THAT. IF THERE WAS A SITUATION, SUCH AS JUDGE DOYEL DISCUSSED, WHERE NOBODY ELSE KNOWS ABOUT THE PETITION, AND IT IS NOT LIKELY THAT A COURT OBSERVER OR AN EMPLOYEE OF THE DEPARTMENT OF CHILDREN AND FAMILIES WOULD BE AWARE OF IT, AND THE COURT WERE TO SAY YOU SHALL TRANSMIT THESE PETITIONS, I DON'T KNOW THAT WE WOULD NECESSARILY STRONGLY OPPOSE SUCH A RIRT, BECAUSE -- A REQUIREMENT, BECAUSE THAT COULD BE SOMETHING THAT WOULD, MAYBE, FALL THROUGH THE REQUIREMENTS, BUT IF A JUDGE TOOK IT UPON HERSELF TO SUA SPONTE A REPORT, WITH REGARD TO ONE OF THE PREDSAYSORS, I DO NOT KNOW -- PREDECESSORS, I DO NOT KNOW. I DO KNOW THAT THE ETHICS STATUTE GAVE ALMOST AN INQUIRY ON THE PETITION. IT WAS CERTAINLY BEYOND OUR AMBIT, BUT WE WERE GOING TO SAY THAT YOU USE THE FORM PRESCRIBED BY THE DEPARTMENT AND ANOTHER FORM THAT THE JUDGE DEEMS SUITABLE COULD BE USED.

WOULD IT MAKE SENSE, BECAUSE IT SEEMS LIKE IT COULD BOIL DOWN TO AN INDIVIDUAL DETERMINATION ON THE PART OF THE JUDGE TO AT LEAST PASS A PRESCRIBED FORM, SO THAT THE JUDGE WOULD KNOW IF HE OR SHE FELT IT WAS APPROPRIATE, THAT THIS, AT LEAST WOULD BE AN APPROPRIATE FORM?

I THINK THAT WOULD MAKE SENSE. I THINK THAT IT WOULD. IN THE FORM THAT WE PROPOSED, NOT THAT DIFFERENT FROM WHAT THE AD HOC COMMITTEE HAS PROPOSED, BUT DOES HAVE THE "I HAVE BEEN MADE AWARE OF" ALLEGATIONS, WHERE THE RESPONDENT PETITION HAS BEEN FILED, AND PURPOSELY HAS LIMITED SPACE FOR COMMENTS BY THE JUDGE. THEY WEREN'T ABLE TO GET TO THIS AND COVERED ON REBUTTAL, BUT WE HAVE GRAVE CONCERNS ABOUT JUDGES REPORTING BACK. THERE HAVE BEEN TIMES, WHEN ALLOWED BY LAW, A JUDGE WOULD RECEIVE A REPORT BACK FROM THE INVESTIGATIVE AGENCY, WHETHER IT BE THE POLICE DEPARTMENT OR THE DCF OR WHOEVER, BUT WE DO HAVE A CONCERN ABOUT A JUDGE RECEIVING BACK REPORTS WHICH WOULD, SOMEHOW HAVE, TO BE SEALED IN THE FILE OR SOMETHING DONE TO DISPOSE OF THOSE REPORTS. WE DIDN'T REALLY SEE WHY THAT WOULD BE A PART OF THIS PROPOSAL, BUT AS FAR AS THE FORM, YOUR HONOR, I THINK THAT IS A COMMENDABLE IDEA, IN THE EVENT THAT A JUDGE DECIDES TO REPORT. THE PROBLEM, THE OVER ARCHING PROBLEM HERE, AND IT IS AWARE THAT THERE ARE COUNTERPROPOSALS, BUT ONCE A JUDGE HAS BECOME INVOLVED IN THE INVESTIGATIVE PROCESS, ONCE THE JUDGE HAS INITIATED SOME SORT OF CONTACT WITH AN ENFORCEMENT TYPE OF AGENCY, WHETHER IT BE -- IT WOULD BE DCF IN THIS INSTANCE, BUT WE ALL KNOW THAT THE POLICE ARE INVOLVED IN THESE THINGS ON OCCASION. HOW IS THAT JUDGE TO RECLAIM THE MANTEL OF IMPARTIALITY AND INDEPENDENCE THAT ARE REQUIRED BY CANONS ONE AND TWO OF JUDICIAL CONDUCT. THE WORK THAT THEY HAVE WELL DONE, IT MAY BE THAT THE COURT WILL HAVE TO DO SOMETHING HERE, BUT I HOPE THAT THE COURT WILL PROCEED VERY CAUTIOUSLY, IN LIGHT OF THE PROBLEMS OF PUBLIC PERCEPTION THAT WOULD BE OUT THERE AND IN LIGHT OF THE POTENTIAL CHILLING EFFECT THAT WOULD BE OUT THERE, IF IT BECAME WIDELY KNOWN THAT JUDGES ARE TURNING IN PEOPLE, BASED UPON SUSPICION.

WELL, THAT IS -- THE LAST COMMENT THAT YOU MADE IS A CONCERN, AND I GUESS IT WAS EXPRESSED BY AT LEAST ONE OF THE COMMENTS, THAT, THE AFFECT OF THIS COULD HAVE A

CHILLING EFFECT ON VICTIMS OF DOMESTIC VIOLENCE EVEN FILING PETITIONS, TO BEGIN WITH. THAT IS OUTSIDE OF THE ISSUE OF THE MEANT HE WILL -- OF THE MANTEL OF IMPARTIALITY. HOW DO WE, AS A COURT, EVEN TRY TO EVALUATE THAT LAST LITTLE COMMENT THAT YOU MADE?

WELL, IT IS OUTSIDE OF THE ISSUE, AND I DIDN'T MEAN TO DROP A BOMB WITH MY LAST COMMENT, BUT I THINK THAT IS IMPLICIT IN ALL OF THIS IS THAT, AS IT BECOMES KNOWN THAT JUDGES ARE INVESTIGATORS AND REPORTERS, WHAT EFFECT WILL THAT HAVE? I WISH I COULD MORE FORTHRIGHT FORTHRIGHTLY ANSWER YOUR QUESTION, BUT IT IS A PROBLEM. IT IS A PROBLEM. I DON'T WANT TO USE UP ALL OF MR. COLEMAN'S TIME, SINCE I HOPE HE WILL SUPPORT ME.

MAY IT PLEASE THE COURT. I AM LAYER COLEMAN ON BEHALF OF THE FAMILIAR LAW RULES COMMITTEE, PROCEEDING COMMENTS TO THE AD HOC COMMITTEE'S PROPOSED RULE AND RECOMMENDATIONS TO THIS COURT. THE FAMILY LAW RULES COMMITTEE IS VERY CONCERNED WITH THE POINTS THAT JUSTICE KAHN HAS JUST PRESENTED TO THIS COURT AND IS MORE CONTAINED IN THEIR COMMENTS THAT HAVE BEEN PRESENTED TO THE COURT. I BELIEVE, AS HE CLOSED HIS ARGUMENT, THAT THE CHILLING EFFECT IS NOT AN ASIDE BUT, PERHAPS, IS THE ESSENCE OF WHAT WE ARE CONCERNED WITH. THE JUDGES, ON OUR COMMITTEE, AS WELL AS OTHER JUDGES WITH WHOM I HAVE SPOKEN, ARE VERY CONCERNED THAT THIS WOULD BE A DETERRENT, IN FACT, IF THE JUDICIARY IS AN INVESTIGATIVE OR IS PERCEIVED AS AN INVESTIGATIVE ENTITY IN FLORIDA IN REPORTING. I UNDERSTAND WHAT JUDGE DOYEL HAS INDICATED, AND I WONDER WHY, A FEW YEARS AGO, BEFORE WE HAD DOMESTIC VIOLENCE STATUTES AND THE KAYLA McKEAN ACT, THERE WAS APPARENTLY NOT MUCH DOMESTIC VIOLENCE IN THIS STATE, AND NOW IS THERE AN OVERWHELMING ABUNDANCE OF THAT. I WOULD SUGGEST TO THE COURT THAT THERE ARE MANY CAUSES THAT WE CAN LOOK AT, IN THE SITUATIONS OF A JUDICIAL MEMBER, IN THEIR REPORTING RESPONSIBILITIES. THEY MAY BE A WITNESS. THEY MAY HAVE AN INDEPENDENT DUTY, AS A CITIZEN, TO REPORT, TO BE INVOLVED, AND THAT WOULD CLEARLY NEUTRALIZE THEM AS A JUDICIAL OFFICER, FROM HAVING INVOLVEMENT WITH THAT CASE, OTHER THAN, PERHAPS, AS WITNESS. AND JUST AS THERE ARE MANY SITUATIONS WHICH COULD COME FROM THE MERE REVIEW OF INITIAL PETITION FOR DOMESTIC VIOLENCE INJUNCTIVE PROTECTION, WHICH MAY AND, IN FACT, I THINK JUDGE DOYLE WOULD AGREE WITH ME IN MANY CASES, NOT BE FOUNDED UPON THE INVESTIGATIVE FACTS THAT AN ARREST WARRANT APPLICATION OR A SEARCH WARRANT APPLICATION MIGHT HAVE, AND THEREIN LIES A KEY DISTINCTION, I BELIEVE, AS MANY OF THESE DOMESTIC VIOLENCE PETITIONS ARE VOLUNTARILY DISMISSED, MANY OF THE VICTIMS DO NOT APPEAR AT THE HEARINGS SCHEDULED AFTER THE INITIAL INJUNCTION IS ISSUED, AND PERHAPS THE COURT WOULD BENEFIT FROM A RECENT DECISION THAT CAME OUT OF THE THIRD DISTRICT, ON APRIL 5 OF THIS YEAR, ENTITLED EZP VERSUS HP JR.. IT IS REPORTED 25 LAW WEEKLY 850 D 64. THAT IS THE TYPE OF CASEY HIM TALKING ABOUT. IT STARTED IN JULY 1989, AND WHEN THIS DECISION WAS ISSUED, THE TRIAL JUDGE WAS DIRECTED, ON REMAND, TO HAVE A HEARING, TO DETERMINE THE VERACITY OF THE ALLEGATIONS OF SEXUAL MISCONDUCT, IN THAT CASE, AND THE THIRD DISTRICT IS REFERENCING THE PARTICULAR STATUTE THAT WE ARE TALKING ABOUT HERE AND REFERRAL OF THE CASE FOR DEPENDENCY COURT INVOLVEMENT. SO WHAT WE ARE GOING TO HAVE, I THINK, AS THIS EVOLVES, IS JUVENILE COURT, UNDER 39, DOMESTIC RELATIONS COURT UNDER THE DOMESTIC VIOLENCE ACT, AS WELL AS A DISSOLUTION PROCEEDING, ALL INTERRELATING THIS, AND WE HAVE GOT TO MAINTAIN THE IMPARTIALITY OF THE JUDICIARY, FOR US TO HAVE AN EFFECTIVE JUDICIAL SYSTEM, IN MY OPINION, SO WE MIRROR THE POSITION OF THE RULES OF JUDICIAL ADMINISTRATION COMMENTS, AS PRESENTED. IF, IN FACT, THERE IS GOING TO BE A RULE ADOPTED, THEN THE FAMILY LAW RULES COMMITTEE WOULD RECOMMEND TO THIS COURT THAT THAT RULE WOULD, IF PERCEIVED IMPARTIAL JUDICIAL DETERMINATION FOR REFERRAL IS MADE, NEUTRALIZE THAT JUDGE MAKING THE REFERRAL, UNLESS THAT REFERRAL IS PREDICATED UPON AN ADJUDICATION MADE BY THAT JUDGE, IN WHICH CASE THERE SHOULD NOT BE A NEUTRALIZATION OF THAT JUDGE TO PROCEED ON THE CASE. JUST AS I

INDICATED THAT THERE ARE MANY SITUATION THAT IS COULD INVOLVE THE JUDICIARY, THERE ARE, ALSO, MANY SOLUTIONS THAT I WOULD SUGGEST TO THIS COURT, OTHER THAN THE IMPLEMENTATION OF A RULE, AND SPEAKING ON BEHALF OF OUR COMMITTEE, I BELIEVE THE IMPLEMENTATION OF A RULE AS A REACTION AREA RESPONSE WOULD NOT -- AS A REACTIONARY RESPONSE WOULD NOT BE THE BEST COURSE TO TAKE. THERE IS NO PRESENTING AN EMPLOYEE OF THE DEPARTMENT AND FAMILIES SITTING FOR REVIEW, AS FILED IN THE CLERK'S OFFICE, THE SAME AS THE BAR REVIEWS, INFORMATION THAT COMES OUT, CONCERNING THE MEDIA AND OTHERWISE, TO INITIATE INVESTIGATIONS. LAW ENFORCEMENT PERSONNEL ARE CLOSELY TIED WITH DOMESTIC VIOLENCE. THESE INJUNCTIONS GO OVER FOR SERVICE BY LAW ENFORCEMENT. THERE IS NO PROHIBITION FOR LAW ENFORCEMENT TO MONITOR THESE PETITIONS AS FILED.

DO WE HAVE A PROBLEM, IF WE HAVE NO RULE, THAT WE ARE GOING TO DEVELOP A LACK OF UNIFORMITY IN THE CIRCUITS, AS TO HOW THIS IS HANDLED? I MEAN, SOMETHING COULD BE DIFFERENT IN THE FIRST CIRCUIT THAN THE WAY IT IS HANDLED IN THE ELEVENTH CIRCUIT, AND IS THAT NOT GOING TO BE A PROBLEM?

JUSTICE WELLS, THERE IS A PROBLEM. THAT IS A PROBLEM. I AM NOT SURE THIS RULE, AS DRAFTED OR PROPOSED, WILL SOLVE THAT PROBLEM.

BUT WHAT I AM PRIMARILY REACTING TO THERE IS IF WE JUST DON'T HAVE ANY RULE. DON'T WE END UP SORT OF GOING FORWARD, IN THIS STATE OF CONFUSION, AS TO WHAT THE CIRCUIT JUDGE IS TO DO?

THE PURPOSE, I GUESS, THEN, WOULD BE FOR THE RULE'S IMPLEMENTATION, IF THAT PURPOSE IS TO MAKE SURE THAT THERE WILL BE A REPORTING, THEN PERHAPS WE OUGHT TO HAVE A RULE, AND I KNOW THE TRIAL JUDGES THROUGHOUT, WILL REPORT TO THE BAR WILL REPORT TO IRS WILL REPORT TO CRIMINAL LAW ENFORCEMENT AGENCIES, BASED ON INFORMATION DEVELOPED IN HEARINGS, AND THERE IS NOT A UNIFORM RULE FOR THAT. THE QUESTION IS, IS THERE A NEED FOR A RULE, TO HAVE UNIFORMITY, AND, PERHAPS, THAT HAS SOME MERIT, BUT I BELIEVE THAT THERE ARE OTHER ALTERNATIVE SOLUTIONS THAN HAVING A RULE THAT A JUDGE, TAKING THE EASY COURSE OUT, WELL, THIS PERSON ALLEGES THERE IS DOMESTIC VIOLENCE. THERE MAY BE A CHILD'S HARM, HERE, AND CONCERN, SO I WANT TO AUTOMATICALLY REFER IT, WHEREAS ANOTHER JUDGE SAYS LET'S HAVE A HEARING ON THIS. I HAPPEN TO KNOW THAT THEY ENLIST THE THIS PARTICULAR LAWYER AND THAT, USING AN ONE ONE-UP ON THEIR CLIENTS PREVENTS AN INJUNCTION. THERE ARE A MYRIAD OF SITUATIONS OUT THERE. THE SPOUSE FILES ON MONDAY MORNING AND THEY DON'T SHOW UP FOR RELIEF. THE WAY IT IS GOING, ACTUALLY I UNDERSTAND THE COURT'S CONCERN.

YOUR OBJECTION IS THAT, BECAUSE THESE DOMESTIC VIOLENCE PETITIONS ARE ALL FILED OR THEY ALL COME IN ONE WAY, AND A LOT OF CIRCUITS ACTUALLY HAVE A PERSON THAT IS RESPONSIBLE FOR GATHERING THE INFORMATION, AND SOMEBODY, OTHER THAN THE JUDGE, HAS THE ABILITY TO LOOK AT THIS INFORMATION.

ABSOLUTELY. IT IS OPEN.

IT IS NOT PRIVATE INFORMATION.

IT IS NOT PRIVATE INFORMATION. THE DEPARTMENT OF CHILDREN AND FAMILIES COULD HAVE A REPRESENTATIVE THERE WITH THE CLERK, WHEN THESE PETITIONS ARE FILED, PERHAPS REVIEWING IT, EVEN, BEFORE THE JUDGE, DETERMINING WHETHER THERE SHOULD AND INVESTIGATION MADE OR ACTION TAKEN IMMEDIATELY ON THESE, AND THAT IS NOT LAW ENFORCEMENT, AND THAT IS NOT UNIFORM IN THE CIRCUITS ON HOW LAW ENFORCEMENT HANDLES THAT.

THERE VERY WELL MAY BE THAT, IN TAMPA, THE DEPARTMENT WILL BE THERE, BUT IS LESS

LIKELY IN BLOUNTSTOWN, THAT THE DEPARTMENT IS GOING TO BE THERE, PERHAPS. I DON'T REALLY KNOW, AND I THINK THAT THERE IS SOME CONCERN THAT I HAVE THAT WE HAVE EVERYBODY WORKING FROM THE SAME PAGE ACROSS THE STATE, AS TO HOW THIS IS SUPPOSED TO -- WE HAVE HAD A GREAT FOCUS UPON THIS. AND --

JUSTICE WELLS, I SHARE YOUR CONCERNS, AND THE COMMENT I WOULD HAVE FOR THAT IS I THINK IT IS MORE OF A LEGISLATIVE RESPONSIBILITY THAN A JUDICIAL RESPONSIBILITY. I THINK THE LEGISLATURE COULD VERY WELL DIRECT THAT A REPRESENTATIVE OF THE DEPARTMENT OF CHILDREN AND FAMILIES BE IN THE CLERK'S OFFICE OR ASSIGNED TO REVIEW EACH OF THE DOMESTIC VIOLENCE PETITIONS FOR APPROPRIATE ACTIONS, THERE BY REMOVING THE NECESSITY OF JUDICIAL INVOLVEMENT, WHICH DOES NOT PREVENT A JUDGE TAKING ACTION AND MAKING A REFERRAL, FROM WHATEVER THE CASE MAY BE, FROM A PERSPECTIVE THAT MAY COME FROM A WITNESS INVOLVED TO A REVIEW TO A DOMESTIC VIOLENCE INJUNCTION OR WHATEVER.

IF IT HAPPENED IN THE COURSE OF A HEARING, AND THE JUDGE HEARINGS WHAT -- AND THE JUDGE HEARS WHAT IS HAPPENING AND THE JUDGE, AT THAT POINT, COULD SAY, DIRECT, TO SOMEBODY, THIS IS ALWAYS OF CONCERN TO ME THAT THERE IS AN ALLEGATION OF ABUSE.

ABSOLUTELY, AND I HAVE SEEN THAT HAPPEN BEFORE THIS EVER BECAME A POLITICAL ISSUE, WHERE A JUDGE WOULD ADJOURN A HEARING AND RECESS IT AND HAVE A REPRESENTATIVE OF THE STATE THERE, TO LISTEN TO THE EVIDENCE AS PRESENTED AND REVIEW IT RIGHT THERE, FIRSTHAND, FOR THEIR OWN INDEPENDENT COURSE OF ACTION, NOT NECESSARILY LIMITED TO THAT. OTHER LAW ENFORCEMENT AGENCIES. I THINK THAT WE ARE LOOKING AT SOLUTIONS, SO -- I AM TAKING MY TIME UP. I APOLOGIZE. THANK YOU.

THANK YOU. REBUTTAL.

YES, YOUR HONOR. MAY IT PLEASE THE COURT. I WOULD LIKE TO ADDRESS SEVERAL THINGS, IF I CAN, IN THE BRIEF TIME. THE FIRST THING IS THE -- THAT I THINK I DIDN'T ADDRESS BEFORE, AND THAT IS RECEIVING THE REPORTS. WHAT TO DO WITH THEM. OUR PROPOSED RULE IS ESSENTIALLY JUST A HOUSEKEEPING RULE ON WHAT TO DO WITH THE REPORTS. THE LARGER QUESTION IS SHOULD WE RECEIVE THE REPORTS AT ALL. IN MY PARTICULAR CIRCUMSTANCES, AND I THINK I PROBABLY HIM IN THE SITUATION OF MANY JUDGES AROUND THE STATE WHO WOULD BE MOST AFFECTED BY THIS RULE, I NEED THE REPORT. AND THE DOMESTIC VIOLENCE LAW REQUIRES ME TO HAVE A HEARING WITHIN 15 DAYS. WHEN I MAKE THE REPORT TO THE DEPARTMENT OF CHILDREN AND FAMILIES, WITHIN 15 DAYS, IF THERE IS A HEARING, I HAVE TO DECIDE WHERE THESE CHILDREN ARE GOING TO LIVE AND WHAT KIND OF CONTACT THE SUPPPOSEDLY ABUSING PARTY IS GOING TO HAVE WITH THEM. IF THERE IS SOMEONE, IN THE GOVERNMENT, THAT HAS DONE AN INVESTIGATION, WITH REGARD TO THIS, THESE ALLEGATIONS, I SHOULD HAVE AN INFORMATION AVAILABLE TO ME.

JUDGE, LET ME ASK YOU, BEFORE YOU -- AND THIS BROADER QUESTION, ABOUT ONCE WE DIP OUR TOW INTO THESE -- OUR TOE INTO THESE WATERS, HOW WE ARE EVER GOING TO AVOID JUST JUMPING INCOMPLETELY, AND NOW HAVING, REALLY, AN ENORMOUS LEVEL OF BUREAUCRACY OR WHAT HAVE YOU IN THE COURT SYSTEM, ITSELF, AS OPPOSED TO THE EXECUTIVE AGENCY, THAT IS CHARGED WITH THIS RESPONSIBILITY, IN MY CONCERN IS THE MYRIAD NUMBER OF WAYS THAT ISSUES LIKE THIS ARISE. FOR INSTANCE IN DISSOLUTION MATTERS, WHERE THE RHETORIC IS HOT AND HEAVY AND THE ALLEGATIONS GOING BACK AND FORTH, AND IN MANY INSTANCES THE JUDGE NEVER EVEN SEES THE PETITION OR THE ANSWER OR THE CROSS PETITION, AND MATTERS ARE SETTLED EVENTUALLY OR WHATEVER. TEMPORARY HEARINGS ARE CONDUCTED, FOR INSTANCE, AFTER ALL OF THESE ALLEGATIONS, AND THE PARTIES ANNOUNCE THAT THEY HAVE RESOLVED THE CUSTODY PARTS OF THE THING, AND SO THE JUDGE MAY NOT EVEN READ, AGAIN, THE PETITION, EVEN THOUGH HE DOES HAVE A TEMPORARY SUPPORT, CUSTODY HEARING, YOU

KNOW, BASED ON THOSE THINGS. A JUDGE MAY READ A PRESENTENCE INVESTIGATION REPORT THAT INVOLVES FAMILIES OF ACCUSED OR WHATEVER, AND THERE MAY BE ALL OF THIS RHETORIC ANALOGY ASIANS, AND I AM JUST BEGINNING WITH ALL OF THIS, AND I REALIZE THAT YOU HAVE THE SAME CONCERNS, BUT HOW CAN WE RESPOND TO SOMETHING LIKE THAT, THAT IS, THAT ONCE WE -- WE WANT TO MAKE IT UNIFORM AROUND THE STATE. HOW CAN WE MAKE IT UNIFORM, WITHOUT JUMPING IN, YOU KNOW, COMPLETELY, NOW, AND HAVING TO MAKE DECISIONS ABOUT IT MAY SEEM EASY TO SAY, WELL, IT IS ONLY IF THE JUDGE, WITH HER OWN EYES, SEES SOMETHING, FOR INSTANCE, IN AN ALLEGATION OR A SWORN COMPLAINT OR SOMETHING LIKE THAT, ARE WE EVER REALLY GOING TO BE ABLE TO DRAW THESE LINES IN SOME INFORM AND MEANINGFUL WAY? AND SHOULDN'T SOMETHING LIKE THIS BE LEFT UP TO THE RESPONSIBILITY OF THE EXECUTIVE AGENCIES THAT ARE CHARGED WITH THIS, AND THEN, OF COURSE, WITH THE FULL COOPERATION OF THE JUDICIAL BRANCH?

MR. CHIEF JUSTICE, I SEE THAT MY TIME IS OUT. I ATTEMPTED TO RESERVE SOME TIME EARLIER, BECAUSE OF THE QUESTIONS WHEN I WAS UP HERE BEFORE, AND THIS, I HAVEN'T REACHED THE END OF MY TIME. MAY I HAVE AN ADDITIONAL TIME TO ANSWER THAT?

ANSWER HIS QUESTION FIRST.

THE LINE DRAWING IS VERY DIFFICULT. WE HAVE TO KEEP IN MIND, FIRST OF ALL, WHAT WAS THE PURPOSE OF THE STATUTE, AND THAT WAS THE PROTECTION OF CHILDREN, AND ESPECIALLY THOSE OF US WHO ARE IN THE FAMILY LAW AREA HAVE TO DEAL WITH THOSE ISSUES ALL OF THE TIME, SO MY FIRST RESPONSE IS THAT WE NEED SOMETHING, BECAUSE EXPERIENCE, MY EXPERIENCE, SUGGESTS THAT THERE ARE CHILDREN NOT BEING PROTECTED, BECAUSE OF OTHER BELIEF. WE JUDGES, OUR BELIEF THAT WE WERE IMMUNE TO THIS SORT OF THING, THAT WE DIDN'T -- THAT IT WASN'T APPROPRIATE FOR US TO MAKE THESE REPORTS, SO IF IT MEANS THAT WE HAVE TO HAVE NEW PERSONNEL AND ADDITIONAL PROCEDURES SET UP, I THINK THAT IS A PRICE THAT WE HAVE TO PAY. IN ORDER TO --

JUDGE, THERE IS NOT A DAY GOES BY, I AM SURE, IN YOUR COURT, AND IN EVERY COURT AROUND THIS STATE, WHERE JUDGES SEE SITUATIONS WHERE CHILDREN ARE IN NEED OF ENORMOUS RESOURCES, AND THERE AREN'T ANY RESOURCES OUT THERE PROVIDED BY THE STATE, AND, OF COURSE, WE HAVE INVALIDATED ORDERS BY JUDGES THAT HAVE MANDATED THAT THE STATE PROVIDE CERTAIN RESOURCES THAT THAT IS BEYOND, SO HOW DO YOU PROPOSE THAT, NOW, IN THIS AREA, WE ARE GOING TO ENACT A TOTALLY DIFFERENT RULE, AND WE ARE GOING TO SAY, WELL, YES, WE CAN MANDATE ALL OF THE RESOURCES TO DO ALL THAT, AND WE HAVE HELD FUNDAMENTALLY THAT, EVEN WHEN A JUDGE SEES THAT A CHILD NEEDS TO BE IN A PARTICULAR FACILITY OR NEEDS PSYCHIATRIC CARE OR MEDICAL CARE OR WHATEVER, THAT IT IS BEYOND THEIR AUTHORITY, THAT THAT IS AN EXECUTIVE BRANCH FUNCTION, DESIGNED, YOU KNOW, BY WHAT THE LEGISLATURE HAS COME UP WITH IN THAT SCHEME, SO HOW DO WE FIT THOSE TWO THINGS TOGETHER?

YOUR HONOR, WE ARE NOT SUGGESTING THAT WE MANDATE THAT THE EXECUTIVE BRANCH DO ANYTHING, BUT THAT, WITHIN THE JUDICIAL BRANCH, WE NOT BURY OUR HEADS IN THE SAND, AND SAY WE CAN'T DO ANYTHING, BECAUSE IT IS NOT OUR JOB. IT IS OUR JOB. THESE CHILDREN ARE SUBMITTED INTO OUR JURISDICTION. I HAVE TO MAKE THE DECISION WHAT TO DO WITH THEM. AND I THINK IT IS APPROPRIATE FOR US TO BE IN A POSITION TO DO WHATEVER IS NECESSARY TO PROTECT THE CHILDREN. AT LEAST WHATEVER WE CAN WITHIN OUR POWER.

IS IT ANY PLEASURE JOB, TODAY, THAN IT WAS BEFORE THIS LEGISLATION WAS PASSED?

NO, SIR. BUT BEFORE IT WAS PASSED, THE LEGISLATION DID NOT SAY THAT JUDGES WERE MANDATORY REPORTERS, AND BEFORE THAT WE DIDN'T HAVE TO ADDRESS THE SEPARATION OF POWERS ISSUE, AND WE DIDN'T HAVE TO DISCUSS THE EXPARTE COMMUNICATION ISSUES, BOTH

IN MAKING THE REPORTS AND RECEIVING THE REPORTS. ALL OF THIS HAS COME AROUND BECAUSE JUDGES ARE NOW MANDATORY REPORTERS, UNDER THE SYSTEM, AND WE ARE STILL GOING TO HAVE TO DEAL WITH THOSE ISSUES, AND, NOW, THE QUESTION IS THE GENIE IS OUT OF THE BOTTLE. DO WE GO BACK, DO THOSE FOUR FAMILIES WHOSE CHILDREN WERE SHELTERED LAST WEEK, AS A RESULT OF MY REPORT, DO THEY NOT GET SHE WOULDISHED -- DO THEY NOT GET SHELTERED, AS A RESULT OF THE RULES OF THIS COURT? AND IF SO, I NEED TO KNOW HOW TO GET THEM BACK.

THANK YOU.