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January 10, 1987

#69,676

The Honorable Parker Lee McDonald  
Chief Justice, Supreme Court of Florida  
Supreme Court Building  
Tallahassee, Florida 32301

see letter  
for C.J.

Re: Florida Rules of Civil Procedure;  
In Re Amendment to Rules 1.490 and  
1.611, Case No.  
(Fla. argued January 8, 1987)

Dear Mr. Chief Justice:

At the last meeting of the Civil Procedure Rules Committee of the Florida Bar, there was an extended amount of discussion regarding the proposed Rule which had been referred by the Committee. I know that the Committee will be responding formally to the Court, but as one member of the Committee, I wanted to pass along one view to you regarding these matters.

I am aware that the Court is acting on this matter because of pending federal legislation, which would result in the termination of welfare benefits to Florida citizens, in the event that Rules such as these are not passed. I also understand that the purpose is to provide a quick means of access to the courts and for resolution of support matters. Obviously, irrespective of whether or not federal funds are to be cut, the need to expeditiously and promptly dispose of support matters is a high priority, because of the very real strains which are put upon those least able to bear them in such situations.

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Over the years, the Civil Procedure Rules Committee has been very concerned about the shortages of judges and the increasing burden being put upon the judiciary by the constant creation of new laws and demands both by the Florida Legislature and the United States Congress. However, there is a strong feeling that the answer to this situation is for the Legislature to create more judges, rather than the judiciary and the bar attempting through "innovative" means to solve judicial needs through the use of non-judges. While the resolution of minor disputes and arbitration trends are laudatory, the delegation to non-Article 5 individuals of judicial functions is a very alarming resolution to any problem.

This Court has continually supported the concept that masters should not be given regular judicial functions without the consent of both parties. This action by the Court has terminated a number of situations where overworked judges were delegating matters to special masters, particularly in matrimonial matters, as an attempt to stem the flow of cases.

I believe that every time that this Court attempts to resolve judicial workloads by delegating matters to non-judges, the Legislature is being let off the hook and the people of this State are suffering.

Our Constitution calls for the selection of judges in a certain way. The people of the State of Florida receive protections both through the selection process of judges and in the case of

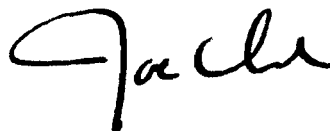
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trial judges, the requirement that they stand election. None of these protections and none of these selection processes exist for "special masters" of any kind.

It is my understanding that the federal legislation has now been stayed for at least one year. I would urge that the Court not adopt either of these pending Rules at this time, but rather through its own message to the Legislature or by direction of the Civil Procedure Rules Committee or to The Florida Bar itself, that the appropriate committees of the Legislature be urged to create sufficient judicial positions, either at the county court or the circuit court level, to handle this new need, which will arise before the next Session in 1988.

I know that the Court takes its judicial responsibilities very seriously. I also know that perhaps these new Rules would be the only immediate answer if some resolution was required before February 1, 1987. However, the emergency perhaps does not exist at this point in time, and even if it did, perhaps pressures which could be created by civil litigants who are unable to get their matters tried because of the need for judicial attention to caseloads created by this type of federal legislation would be a better resolution ultimately to the problem than the Court reaching out for non-judicial alternatives, which will ultimately weaken the system.

Very truly yours,



JPK/m

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cc: Justice Ben F. Overton  
Justice Raymond Ehrlich  
Justice Leander J. Shaw, Jr.  
Justice Rosemary Barkett  
Justice Designate Gerald Kogan  
Justice Designate Stephen H. Grimes