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CLERK, SUPREME COURT
By _____ Deputy Clerk

September 25, 1987

Mr. Sid J. White
Clerk of the Supreme
Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Civil Procedure Rule 1.491
Case 71-074

Dear Sid:

I read your notice of September 1, 1987 published in the last issue of THE FLORIDA BAR JOURNAL concerning the proposed Rule 1.491. I also have a copy of Mr. Wilfred C. Varn's letter of September 21 to the Court concerning the rule.

I agree with Will Varn's letter. I am particularly concerned about the tendency of the Court to bypass its own order establishing a rule adoption procedure. On each occasion when this occurs, problems have resulted in the rule adopted by the Court. In at least one instance the problems continue to exist because the Court has refused to make any suggested changes in that particular rule.

If the intent is to adopt a rule concerning the conducting of hearings by someone other than the Court in Title IV-D of the Social Security Act, the rule should be limited to that alone. Due care should be paid the constitutional provisions that access to the courts shall not be denied and that the courts shall be composed of elected judicial officers to determine the matters before them. If the legislature wants to handle matters in a different way, the proper method is to change the constitution or, if possible, to adopt a constitutional statute making the collection of Title IV-D payments an administrative duty performed by an administrative agency.

I have the following specific comments:

1. Subsection (b) permits the rule to be extended to other than Title IV-D proceedings. This emasculates the special master rule and the decision of this court in Slatcoff v Dezen, 74 So.2d 59. This matter was extensively debated several years ago as pointed out by Will Varn and cited by the court in accordance with the Slatcoff decision. That

should remain unchanged.

2. Subsection (c) does not prescribe any qualifications for a hearing officer other than that he must be a member of The Florida Bar. There should be a length of practice qualification as well. The court should not be able to waive any qualification requirement. There may be other persons who are qualified to act as nisi prius judges in these matters, but the odds are against it and the problems that unqualified persons can cause will be enormous. Most of the persons who will be involved in these proceedings cannot afford the luxury of counsel or of an appeal. Every effort must be made to see that qualified persons pass judgment.

3. Subsection (f) does not permit an appearance before the court before issuance of the order. I submit that this violates the access to the courts provision of the Constitution. Sometimes judges, like all other persons, get pride of authorship. An opportunity should be afforded to appear before entry of the order. If such an opportunity is afforded, the opportunity to vacate or to modify the order can be deleted. It is already covered by other procedures.

4. Will Varn says the rule should be in the civil rules. I agree. Since it is not a rule of statewide effect, it should be in the Rules of Judicial Administration.

We have had debates from time to time about the Committee notes. It is now generally agreed between the Court and the Committee that the notes are those of the Committee and not of any other person. The note should be deleted entirely. The Civil Rules Committee has always provided notes, even for rules that the Committee did not process. I am sure the Committee can be relied on to do so again.

Respectively submitted,

Henry P. Trawick, Jr.

HPT/dlw