IN THE SUPREME COURT OF FLORIDA

FLORIDA RULES OF CIVIL PROCEDURE, CASE NO. 71,074

RULE 1.491 (CHILD SUPPORT ENFORCEMENT)

COMMENT OF INTERESTED PERSON

COMES NOW HARVEY M. ALPER, member of the Florida Bar, and as an interested person herewith files this comment concerning proposed Florida Rule of Civil Procedure, Rule 1.491, and says:

1. The undersigned until November, 1986, served for five years as General Master to the Circuit Court (18th Judicial Circuit) in Seminole County, Florida, hearing an estimated 12,500 support enforcement hearings such as the ones which would be subject to Rule 1.491, if adopted.

2. Such Rule appears to be facially unconstitutional in that it denies equal protection of the law to a class of persons described as being subject to Title IVD of the Social Security Act. Such persons would have their judicial matters effectively handled by a special court of limited jurisdiction established by Rule 1.491. Further, upon information and belief such persons are primarily Black, Hispanic and male.

3. The persons thus affected are deprived of the necessary option (to secure the Rule as being Constitutional) that they may elect to have their case heard by the Court rather than its "hearing officer."

4. The existing provision in Rule 1.490(c) that "No reference shall be to a master, either general or special, without the consent of the parties," should be preserved in the proposed Rule 1.491. Without such provision, the Rule will be unconstitutional in that under the State Constitution, Article V, §1, the Judicial Power is vested in the Courts. Furthermore, there is no cognizable reason for such language to appear in one Rule (1.490), but not in another (1.491).

5. Upon information, belief and experience, a further

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reason for great circumspection in this regard is the fact the Department of Health and Rehabilitative Services will, as a practical matter, pay the "Support Enforcement Hearing Officers," monitor their time and performance, provide their equipment and staff and otherwise severely impair their independence. This is in fact the manner in which many such hearings officers are presently funded both in Florida and elsewhere. To allow funding by an interested party to these actions, without granting the option of permitting hearings before independent and Constitutionally constituted Judicial Officers is unconstitutional. Further, such funding is a facial slur on the independence of the Courts, notwithstanding various conduits which are used to "indirectly" channel the necessary funds from the Department of Health and Rehabilitative Services to the Judiciary's hearings officers.

6. Rule 1.491 is unnecessary except to the Department of Health and Rehabilitative Services, because it permits the Department of Health and Rehabilitative Services to effect the undesirable situation aforesaid. The present Rule 1.490 is adequate to meet the needs of litigants and the courts regarding all matters properly referred for hearing before persons other than the Circuit Judge(s).

7. Similarly, Rule 1.491(e)(iii) is mere surplusage. Any "hearing officer" or "master" has the inherent authority to accept stipulations.

8. Rule 1.491(f)(i) and (ii) is senseless. If Rule (f)(ii) is adopted then Rule (f)(i) is unnecessary. More important, however, an "Order" should not be entered prior to a reasonable objection period being provided since to do otherwise denies any meaningful right of appeal or protest. Persons subject to this Rule, if it is adopted, should have no fewer rights than persons before any Judge or General Master. That an unfair or onerous Order may be vacated quickly does not bar its adoption or offset the effect of it being adopted. MOST IMPORTANT, THIS FEATURE (sub-section f) IN EFFECT MAKES THE HEARING OFFICER A DEFACTO JUDGE SINCE THE JUDICIARY EFFECTIVELY CONSTITUTES A RUBBER STAMP AS TO THE HEARING OFFICER'S ACTIONS.

9. Upon information and belief this Rule is intended by the Department of Health and Rehabilitative Services to be implemented state-wide and is not "a fall back mechanism."

10. Title IV-D proceedings are, as a practical matter, legally equivalent to all family matters where an issue of support exists.

11. The privilege of Oral Argument hereon is requested.

DATED this 30th day of September, 1987.

Respectfully submitted,

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