

O/A 6-8-87 Legal Services
of Justice Miami

IN THE SUPREME COURT OF

FILED
SID J. WHITE

CASE NO. 70,366

MAY 18 1987

CLERK, SUPREME COURT
By _____
Deputy Clerk

IN RE: Petition to Amend the Rules Regulating the
Florida Bar (Chapter 13 - Authorized Legal
Aid Practitioners Rule)

REPLY TO RESPONSE OF THE FLORIDA BOARD OF
BAR EXAMINERS IN SUPPORT OF PROPOSED
LEGAL AID PRACTITIONERS RULE

The Florida Bar Delivery of Legal Services Committee files this reply to the response of the Florida Board of Bar Examiners and submits that the petition filed by The Florida Bar proposing an authorized legal aid practitioners rule should be granted.

I. BACKGROUND

There can be no dispute that legal aid for the poor in the State of Florida is understaffed and under-resourced, and that access of the poor to legal aid is severely limited. This has been confirmed and reconfirmed, most recently by the Commission on Access to the Legal System. Legal aid for the poor is now the subject of scrutiny by the Florida Bar Board of Governors Access Committee.

Although pro bono efforts by members of the private bar are of great assistance to legal aid organizations, they are only a supplement to staff and not a substitute. The core of the legal aid delivery system is the staff program. "The Delivery Systems Study - A Policy Report to the Congress and the President of the United States." The Legal Services Corporation, June 1, 1980. (Exhibit A).

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Experienced attorneys are essential to the successful operation of legal aid organizations. Because of the nature of the work and the low salary structure (starting salaries range from \$16,000 to \$19,000), legal aid organizations experience a high rate of turnover. The impact of this is that there is constantly a new pool of law school graduates and young inexperienced attorneys who must be supervised and trained. This can only be done by experienced attorneys, and specifically by attorneys with poverty law expertise. When experienced staff who can provide this supervision and training resign as they ultimately do, they must be replaced in order to maintain high quality representation by program staff.

There are only two places to recruit experienced legal aid attorneys - within Florida and outside of Florida. Because there are virtually no experienced attorneys with poverty law expertise outside of the legal aid network, recruitment within Florida must be directed at other legal aid organizations. This merely "passes the buck" and creates a problem for another legal aid organization.

Recruitment outside of Florida is directed at other legal aid organizations nationwide. There is a large pool of experienced poverty law attorneys in the United States, many of whom want to relocate for a variety of reasons including funding cutbacks in their program, opportunity for career advancement, relocation of a spouse, or desire to relocate to live near family. Most of these attorneys are career legal aid attorneys committed to serving the poor.

These attorneys can move to approximately 15 other states to work for legal aid organizations and be certified to practice law for up

to one year under the supervision of an attorney while they take the bar and await admission. (Exhibit B). They therefore suffer no interruption in their ability to practice law and are able to work to their full potential immediately.

In Florida, these attorneys must work with one hand tied behind their back for as long as six months to one year while they await admission. They can interview clients, do legal research, prepare draft pleadings, and perform other law clerk type functions. They cannot go to court. These limitations make it more difficult for Florida to recruit from the available pool of attorneys nationwide. If recruitment efforts are successful, the limited use of these highly qualified attorneys has a substantial negative impact on the already understaffed legal aid organizations. The end result is that fewer poor people get the help that they need.

The legal aid practitioners rule proposed by The Florida Bar would remedy this inefficient system. It would authorize non Florida attorneys with at least three years experience to practice law under the supervision of a member of the Florida Bar while employed by a legal aid organization. The certification would be for up to one year while the attorney takes the Florida Bar Examination and awaits admission.

The legal aid practitioners rule would put attorneys with a minimum of three years experience on an equal footing with law students who can be certified to practice law while in law school if they are employed by a legal aid organization, and for up to one year from the date of graduation. Chapter 11 of the Rules Regulating the Florida Bar. It would also put those attorneys on an equal footing with the emeritus attorneys. Chapter 12 of the Rules Regulating the Florida Bar.

The end result would be that legal aid organizations would be able to use their limited resources in the most maximal way, and more poor people would be served.

II. REASONABLE NEED

The Board of Bar Examiners raises several concerns. First, they allege that there is no "reasonable need" for the rule. In support of this position, the Board of Bar Examiners misstates the purpose of the rule to be to allow experienced attorneys to move to Florida "without suffering a financial detriment". This is not the purpose of the rule. The purpose of the rule is clearly stated:

"13-1.1 Purpose. The purpose of this rule is to expand the delivery of legal services to poor people."

The Board of Bar Examiners also alleges that increased pro bono efforts would solve the problem. There is no support for this statement. As previously stated, pro bono can at best be a supplement to the staff attorney programs. "The Delivery Systems Study," supra. Neither does this rule excuse the Florida Bar from participation in pro bono efforts, as alleged by the Board of Bar Examiners. Efforts to expand pro bono representation by private attorneys are ongoing by the Florida Bar Delivery of Legal Services Committee and the Florida Bar Board of Governors Access Committee.

There is, in fact, a reasonable need for this rule. It will assist legal aid organizations to operate more efficiently with the limited resources available. This is crucial in light of the tremendous unmet need for legal aid for the poor.

III. CHARACTER AND FITNESS

The Board of Bar Examiners' main concern appears to be that attorneys with "histories of serious personal antisocial conduct" who may not meet the character and fitness requirements of The Florida Bar will be unfairly "foisted" on the poor. The legal aid practitioners rule as proposed provides numerous protections against this.

First, Chapter 13-1.2(a)(2) requires that the attorney be a member in good standing of the bar in another jurisdiction and not have been disciplined for professional misconduct within the past fifteen years. Chapter 13-1.5(a)(2) requires that a certificate from the attorney's home state to that effect be submitted with the attorney's application for certification. That certificate must also advise of any pending complaints and/or investigations involving the attorney.

Chapter 13-1.5(a)(3) requires that the attorney read and be familiar with the rules of professional conduct as adopted by the Supreme Court of Florida, submit to the jurisdiction of the Supreme Court for disciplinary purposes, and authorize his/her home state to be advised of any disciplinary action taken in Florida.

Chapter 13-1.6(a)(4) provides that certification can be withdrawn by the Supreme Court in its discretion at any time. The Board of Bar Examiners can request that the Supreme Court exercise its discretion in this area as soon as any character or fitness problem is discovered. Finally Chapter 13-1.8 provides that the rule sunsets in five years unless the court reenacts it. This allows for a trial period after which the rule can be eliminated if it poses a serious threat to the public interest.

The Delivery of Legal Services Committee submits that these safeguards, taken as a whole, protect the public sufficiently when balanced against the overwhelming need for the expansion of legal services for the poor. This is especially true when viewed in light of the estimated impact of the rule - approximately 15 attorneys per year and the overwhelmingly positive experience in other states. 1985 Survey (Exhibit C).

IV. DIPLOMA PRIVILEGE

The Board of Bar Examiners argues against the proposed rule, alleging that it is a step in the direction supported by W. Clark Durant, President of the Legal Services Corporation, that bar examinations and mandatory bar membership should be eliminated. The Delivery of Legal Services Committee agrees with the Board of Bar Examiners that ABA President Eugene Thomas is correct in stating that Durant's attack on the Bar is "designed to promote the hidden agenda of the radical right." The Committee submits, however, that the proposed rule in no way supports that agenda. The individuals who will be eligible to practice under this rule are attorneys who have taken a bar exam and who are admitted in at least one state.

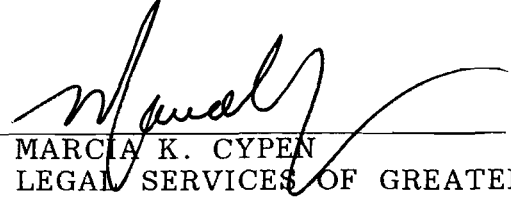
V. CONCLUSION

The Delivery of Legal Services Committee agrees with the Board of Bar Examiners that poor people are entitled to the highest quality representation by the most competent and committed attorneys. The Committee submits that the proposed rule supports that end rather than defeats it. The rule will make it easier for legal aid organizations to recruit experienced legal aid attorneys from other states, and it will allow those attorneys to work at their highest efficiency level once they

are hired. This can only impact positively upon the delivery system. The petition of The Florida Bar for the approval of the proposed Legal Aid Practitioners Rule should therefore be granted.

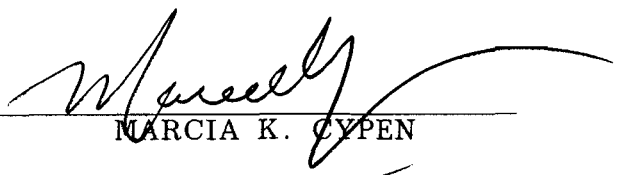
Respectfully submitted,

The Florida Bar Delivery of Legal Services Committee

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply to Response of the Florida Board of Bar Examiners in Support of Proposed Legal Aid Practitioners Rule was mailed to John Boggs, The Florida Bar, Tallahassee, FL 32301; Charles Steptor, Jr., P.O. Box 3189, Orlando, FL 32802; Thomas A. Pobjecky, General Counsel, Florida Board of Bar Examiners, 1300 East Park Ave., Tallahassee, FL 32301; Henry P. Trawick, Jr., P.O. Box 4019, Sarasota, FL 33578; C. Rufus Pennington, III, 222 East Forsyth Street, Jacksonville, FL 32202; Larry D. Beltz, P.O. Box 16008, St. Petersburg, FL 33733; and Bill Wagner, 708 Jackson Street, Tampa, FL 33602, this 15th day of May, 1987.


MARCIA K. CYPEN