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FILED

IN THE SUPREME COURT OF FLORIDA

IN RE: PETITION TO AMEND THE RULES
REGULATING THE FLORIDA BAR

JUN 5 1987

CASE NO. 70,502

CLERK SUPREME COURT

By _____

COMMENTS OF SERENA DUNN et al. *jb*

The Board of Governors of The Florida Bar has petitioned this Court to amend the rules regulating The Florida Bar relating to the unlicensed practice of law. Specifically, its petition proposes to add a new definition to Rule 10-7.1(a)(5), which will exclude from the unlicensed practice of law certain activities. Under the Bar's petition, non-lawyers would be permitted

to engage in limited oral communications to assist individuals in the completion of legal forms approved by the Supreme Court of Florida. Oral communication by non-lawyers is restricted to those communications essential to elicit factual information necessary for the completion of the form(s) and inform the individual how to file such form(s).

These comments are submitted to assist the Court in assessing the petition of The Bar.

These comments are submitted on behalf of Serena Dunn and the other members of the certified plaintiff class in the case of Serena Dunn, et al. v. The Florida Bar, et al., No. 83-243-Civ.-J-12, which is now pending before the Honorable Howell W. Melton, United States District Judge for the Middle District of Florida, Jacksonville Division. A pretrial order has been filed, and the case is scheduled to go to trial on October 13, 1987. Briefly stated, Dunn is a class action brought under 42 U.S.C. § 1983, in which the members of the class are individuals who wish to obtain dissolutions of their marriages, but are unable to afford a lawyer, are ineligible for a variety of reasons for legal aid,

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are ineligible to obtain the assistance of the clerks of the court, and are unable to do the work necessary to prepare the required papers themselves. The complaint alleges, however, that there are available non-lawyers who, but for the restrictions imposed by this Court's rules on the unlicensed practice of law, which are enforced by The Florida Bar, would be available to help these individuals. If this Court's restrictions on lay assistance were removed, the members of the plaintiff class in Dunn could afford to hire these lay persons, since they charge much less than lawyers, and this would enable them to exercise their fundamental constitutional right to obtain dissolutions of their marriages. Thus, the plaintiff class in Dunn is among the principal groups who would benefit from the proposed change in this Rule, along with those who are seeking adoptions or name changes. Those three areas are the principal ones for which there are forms prescribed by this Court and for which the services of non-lawyers could reasonably be expected to provide substantial help in assisting individuals in effectuating their legal rights.

In our view, The Bar's petition is definitely a step in the right direction, and we urge the Court to support its general thrust. However, we are troubled by some of the restrictions contained in it, and we urge the Court to modify them.

The basic idea behind The Bar's petition is to help resolve a fundamental problem of access to justice by eliminating a strict definition of the unlicensed practice of law and by

permitting non-lawyers to assist individuals in filling out forms necessary for court proceedings. We applaud that basic approach and believe that, if adopted, it will go a long way toward satisfying the objections of the class in Dunn.

While removing this barrier is an important first step, the concern that we have is that the remaining restrictions will discourage both those who need the service and those who are in a position to provide it from coming forward. If that were to occur, then a problem that everyone agrees exists -- the need to help those who are unable to help themselves and unable to afford the services of an attorney -- would still remain.

We have no difficulty with the first sentence of the proposed addition. Although it is limited to oral communications, this Court's prior opinion in The Florida Bar v. Brumbaugh, 355 So. 2d. 1186 (Fla. 1978), makes it clear that written communications between individuals and non-lawyers providing this kind of information do not constitute the unlicensed practice of law.

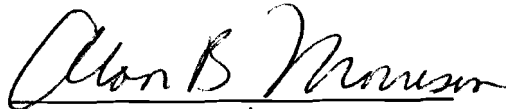
Our problems relate to the second sentence. In particular, the word "essential" is exceedingly harsh and places individuals in the position of having to guess what The Florida Bar and/or this Court may deem to be "essential." While we recognize The Bar's desire and that of the Court to assure that legal advice is not rendered by non-lawyers, we believe that the word "essential" should be changed to "reasonably necessary," which would largely eliminate the in terrorem effect that now appears. Along the

same lines, we believe that the phrase "necessary for the completion of" is also unduly threatening, and we urge that it be changed to "to complete." In the interest of clarity and consistency we would also change the sentence to plural from singular. Thus, the second sentence would read as follows:

Oral communications by non-lawyers are restricted to those communications reasonably necessary to elicit factual information to complete the form(s) and inform the individual how to file such form(s).

Our final comment is not directed at a specific change in The Bar's proposal, but is a request that the Court clarify the final portion relating to informing the individual "how to file such form(s)." If read literally, that function could be construed far too narrowly. Given the purpose of this rule change, we believe that The Bar intended, and the Court should make it clear, that non-lawyers may tell the individuals, for example, how many copies must be filed, what the filing fees are, what is the proper method of payment, how long the typical period is before a hearing will be scheduled, and other matters of a routine administrative nature that are necessary to assure that the matter goes forward, but are hardly the types of information which the rules on the unlicensed practice of law were intended to be conveyed only by members of The Bar. Thus, we urge the Court to make this clear in a brief opinion accompanying the approval, hopefully with the modifications suggested above, so that everyone will know that this change is truly intended to be effective and so that this change will substantially alleviate the problems of access for the poor and near-poor.

Respectfully submitted,



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