

087

FILED

SID J. WHITE

OCT 5 1992

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

AMENDMENT OF RULES REGULATING
THE FLORIDA BAR - 1-3.1(a) AND
RULES OF JUDICIAL ADMINISTRATION CASE NO. 74,538
- 2.065 (LEGAL AID)

_____ /

**RESPONSE OF HARVEY M. ALPER TO
PROPOSED PRO BONO RULES FILED BY
THE FLORIDA BAR/FLORIDA BAR FOUNDATION
JOINT COMMISSION ON DELIVERY OF LEGAL SERVICES
TO THE INDIGENT IN FLORIDA**

This Court announced in its decision In Re: Amendments to Rules Regulating The Florida Bar - 1.3.1(a) and Rules of Judicial Administration - 2.065 (Legal Aid), 598 So.2d 41 (Fla. 1992) that it approved the recommendations of the Joint Commission on the Delivery of Legal Services to the Indigent in Florida, with some modifications. See In Re: Amendments to Rules, supra. at 43.

In that decision this Court summarized the recommendations of the Joint Commission which were approved as being "a range of activities for volunteer lawyers . . . a minimum for each attorney of 20 hours of voluntary pro bono legal services." (Emphasis added). Further, the Court noted that the Board of Governors of The Florida Bar "has endorsed the Commission's voluntary pro bono plan." See In Re: Amendments to Rules, supra. at 42.

There is nothing in this Court's decision which indicates that it was ever intended that lawyers be coerced into giving legal services involuntarily and without charge.

Indeed, a reading of the concurrences of Justices McDonald, Grimes, Barkett

and Kogan clearly evidences that this Court's decision is that pro bono legal service is not a requirement but rather a suggestion; others have suggested it is an "aspirational standard" set by the Court.

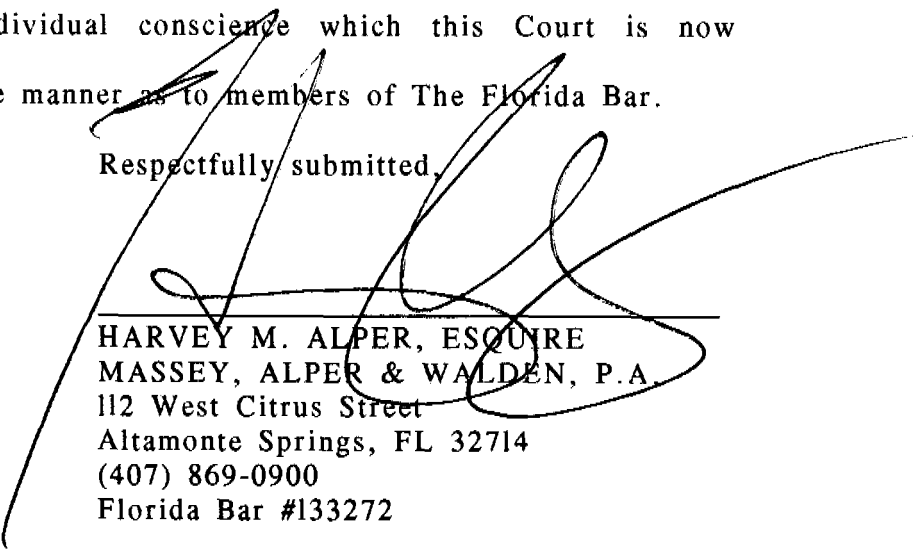
Thus, when proposed Rules 4-6.1, 4-6.2 and 4-6.3 are read in light of this Court's decision referenced above, it is clear that they are a slick attempt to make the content of the proposed rules mandatory as a consequence of being included within Chapter 4, Rules of Professional Conduct. This is a clear contravention of the Court's directives. Violation of the contents of Chapter 4 is grounds for discipline --- or worse. Therefore, the pro bono standard becomes mandatory, not voluntary.

Justice Barkett at a recent Orlando meeting of the Florida Academy of Certified Mediators, where she spoke on Saturday, September 12, 1992, talked fleetingly about Florida's "pro bono requirement." Her language as used at this meeting is contrary to the decision of this Court as announced on February 20, 1992. So are the proposed rules, which clearly are intended to be coercive rather than suggestive in nature. This simply is wrong. And if the Court intends a mandatory program then it should say so. It is unfair to say one thing and do another. Such actions are simply beneath the dignity of our Court.

Further, it appears that despite this Court's pronouncement that "lawyers should not be encouraged to satisfy their pro bono obligation collectively," (In Re: Amendments to Rules, supra. at 44) the rules as proposed would nonetheless allow lawyers in large firms to have others meet their moral responsibilities as established by this Court. This creates a surrogate class of lawyers who carry out the moral responsibility of their supervisors; it is akin to the Civil War practice, now widely condemned, of hiring others to fight one's own war as a substitute for the draftee.

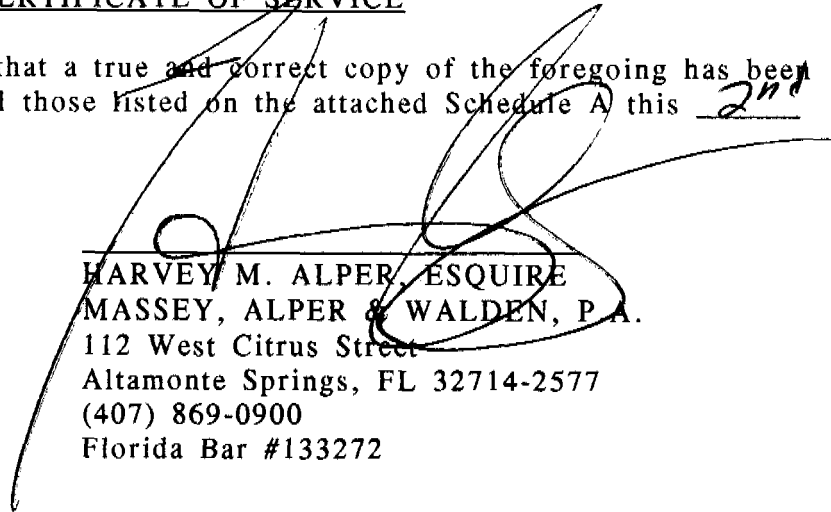
Finally, in a surfeit of desperation and knowing full well that this comment will go unheeded still again, the undersigned decries the destruction of liberty, free will, self determination and individual conscience which this Court is now implementing in a quasi legislative manner as to members of The Florida Bar.

Respectfully submitted,


HARVEY M. ALPER, ESQUIRE
MASSEY, ALPER & WALDEN, P.A.
112 West Citrus Street
Altamonte Springs, FL 32714
(407) 869-0900
Florida Bar #133272

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all those listed on the attached Schedule A this 2nd day of October, 1992.


HARVEY M. ALPER, ESQUIRE
MASSEY, ALPER & WALDEN, P.A.
112 West Citrus Street
Altamonte Springs, FL 32714-2577
(407) 869-0900
Florida Bar #133272

SCHEDULE A

Talbot D'Alemberte
Steel, Hector & Davis
4000 S.E. Financial Center
Miami, FL

Jerry A. DeVane
Post Office Box 1028
Lakeland, FL 33802

Joseph W. Little
3731 N.W. 13th Place
Gainesville, FL 32605

Michael H. Davidson
605 Suwannee Street
Room 562
Tallahassee, FL 32399-0450

Bertram Shapero
339 Royal Poinciana
Suite H
Palm Beach, FL 33480-4019

Benjamin H. Hill, III
101 E. Kennedy Blvd., #3700
P. O. Box 2231
Tampa, FL 33601

John F. Harkness, Jr.
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399

James E. Tribble
2400 First Federal Building
1 S.E. 3rd Avenue
Miami, FL 33131

Anthony C. Musto
999 Ponce de Leon Boulevard
Suite 510
Coral Gables, FL 33134

Paul D. Doyle
The Florida Bar Foundation
109 East Church Street
Suite 405 Orlando, FL 32801-3340

Henry P. Trawick, Jr.
Post Office Box 4019
Sarasota, FL

William A. VanNortwick, Jr.
3000 Independent Square
One Independent Drive
Jacksonville, FL 32202

John Beranek
Office of the Governor
The Capitol
Room 209
Tallahassee, FL 32399-0001

Brian C. Sanders
P. O. Box 2529
Ft. Walton Beach, FL 32549

James H. Baxter
1340 S. Myrtle Avenue, #301
P. O. drawer 2636
Clearwater, FL 34617

Mary Ellen Bateman
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399

James Fox Miller
4040 Sheridan Street
Hollywood, FL 33021