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SID J. WHITE
OCT 12 1992
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

AMENDMENTS TO RULES REGULATING THE FLORIDA BAR - 1.3.1(a) AND RULES OF JUDICIAL ADMINISTRATION - 2.065 (LEGAL AID)

Case No. 74,538

THE FLORIDA BAR'S RESPONSE TO PROPOSED PRO BONO RULES

THE FLORIDA BAR files this response to the Proposed Pro Bono Rules and Memorandum of The Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal Services to the Indigent in Florida. and states as follows:

1. This filing has substantial time implications because it concerns the release of a Florida Bar member's personal record of activity in furtherance of any pro bono plan adopted by this Court. As noted in the Joint Commission's August 31, 1992 submission to this Court (p. 27, n. 2), the proposed "Sunshine Amendments" to Articles I and XII of the Florida Constitution appearing on the General Election ballot, if passed on November 3, 1992, would seemingly effect immediate and complete public access to such records in the absence of a pre-existing court rule regarding this information.

2. This Court's February 20, 1992 approval of the Joint Commission's report concluded that "a reporting scheme is necessary" to any final pro bono plan, and that "some basic

information is necessary to properly evaluate the effectiveness of pro bono services" while acknowledging "a need to avoid large scale administrative costs." In re Amendments to Rules, 598 So.2d 41 at 44 (Fla. 1992).

3. In its review of preliminary implementation rules prepared by the Joint Commission, the Board of Governors of The Florida Bar advised the Commission that the preceding commentary did not specifically address the release of an attorney's personal pro bono data. And, because of this Court's particular reference to "basic" information and its appreciation of potential costs, the Board logically favored a more member-sensitive administrative policy whereby circuit committees would be provided with cumulative data regarding the pro bono performance of local lawyers.

4. Notwithstanding the Joint Commission's assertion that such limited reports would "cripple" a circuit pro bono committee's to refine its local plan or to target its recruiting, the Board of Governors maintains that the absence of individualized compliance data would not frustrate any meaningful evaluation, review or accounting of this evolving program. Simply stated, the Joint Commission has not convincingly argued the absolute need for--or careful use of--personal pro bono accounts of every Bar member for this noble yet voluntary program.

5. For a worthwhile evaluation of this statewide plan, if an attorney has volunteered for localized pro bono work without resulting fulfillment from an organized activity, the identity of that program seems eminently more important than the lawyer's. Bar members should otherwise be allowed to approach some aspects of pro bono compliance on their own terms, surely inspired by adequate information through existing communications channels at the local and state levels. The Board considers the release of cumulative pro bono information as consistent with traditional notions of charity that include respect for the privacy of volunteer

donors--and appreciation of the rights of all attorneys to be free from potentially overzealous appeals for particular service.

6. Throughout its consideration of this topic, the Board of Governors has favored some reasonable deference to its membership with regard to the publication of legal services contributed and reported pursuant to any comprehensive pro bono program. If the plan as currently envisioned by this Court is truly voluntary, then each attorney's credited contribution of time in furtherance of their professional obligation should be likened to a gift. And, as with any other gift, an individual may prefer to bestow that donation discreetly--or at least control any publication of such charitable activity.

7. Member commentary received by and reported to the Bar (attached as Exhibit A) confirms that unrestrained access to an attorney's personal pro bono records is a particularly unwanted component of a codified pro bono obligation that has been otherwise promoted as non-mandatory in its terms and conditions. Significant lawyer sentiment questions the depth of this regulatory intrusion, and expresses arguable concern over mischievous or coercive use of such information in the context of a voluntary program.

8. The Bar readily agrees with the Joint Commission's observation that each lawyer's role as "an officer of the legal system and a public citizen having special responsibility for the quality of justice." However, a claimed need for total access to personal membership data should be challenged when it is premised on a contorted argument that pro bono is "a lawyer's public responsibility as an officer of the court" and therefore may be unquestionably "publicized" on an individual basis. Generally positive media treatment of all past reports of the Bar's collective pro bono performance--heretofore generated from anonymous member surveys--do not support an argument that personal pro bono data is crucial to public support of the legal profession's voluntary charitable activities.

9. The Joint Commission's August 31, 1992 filing herein (p. 27, n. 1) sets forth a partial confidentiality provision proposed by that body but nevertheless rejected in its subsequent deliberations. That draft rule would have still fallen short of the Board's latest resolve of September 25, 1992 (with only one governor's dissenting vote) that prompts this pleading. However, using that Commission proposal as a basis, the Board proffers its own confidentiality rule (Exhibit B) that allows for cumulative reporting--or even "masked" data on an individualized basis--while still providing lawyers an option for personal release of their own pro bono performance record upon waiver and appropriate notice to The Florida Bar.

10. This Court and the Joint Commission both contemplate a review of any final pro bono plan two years after its implementation. Consequently, if a limited confidentiality component of a truly voluntary program has generated any of the difficulties envisioned in the Joint Commission's analysis of this issue, the topic can simply be revisited as a matter that was preserved for this Court's exclusive jurisdiction via adoption of a pertinent rule prior to any possible changes in the law governing access to the records of the judicial branch and its agencies.

Respectfully submitted,

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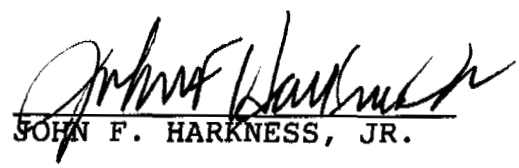
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing response has been mailed to Talbot D'Alemberte, Esquire, 4000 Southeast Financial Center, 200 Biscayne Boulevard, Miami, Florida 33131; Alan T. Dimond, President, 1221 Brickell Avenue, Miami, Florida 33131; Patricia A. Seitz, President-elect, 4000 Southeast Financial Center, 200 Biscayne Boulevard, Miami, Florida 33131; James A. Baxter, Esquire, 918 Drew Street, Suite A, Clearwater, Florida 34615; Mary Ellen Bateman, Esquire, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; Anthony C. Musto, Esquire, 999 Ponce de Leon Boulevard, Suite 510, Coral Gables, Florida 33234; Henry P. Trawick, Esquire, Post Office Box 2051, Main Street, Sarasota, Florida 34230; Brian C. Sanders, Esquire, Post Office Box 2529, Ft. Walton Beach, Florida 32549; Joseph W. Little, Esquire, University of Florida College of Law, Gainesville, Florida 32611; Harvey M. Alper, Esquire, 112 West Citrus Street, Altamonte Springs, Florida 32714; James E. Tribble, Esquire, 2400 First Federal Building, One S.E. Third Avenue, Miami, Florida 33131; Jerry A. Devane, Esquire, Post Office Box 1028, Lakeland, Florida 33802; Michael H. Davidson, 2400 E. Commercial Boulevard, #815, Ft. Lauderdale, Florida 33308; John Beranek, Esquire, Post Office Drawer 11307, Tallahassee, Florida 32302; Bertram Shapiro, Esquire, 339 Royal Poinciana Plaza, Suite H, Palm Beach, Florida 33480; William A. VanNortwick, Jr., Martin, Ade, Birchfield & Mickler, 3000 Independent Square, One Independent Drive, Jacksonville, Florida 32202; Paul C. Doyle, The Florida Bar Foundation, 109 East Church Street, Suite 405, Orlando, Florida 32801; by U.S. Mail this 12th day of October, 1992.



JOHN F. HARKNESS, JR.

EXHIBIT A

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PFH

September 10, 1992

Editor
The Florida Bar News
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399

IN RE : MANDATORY REPORTING OF A LAWYER'S
PRO BONO OBLIGATION - CONFIDENTIALITY OF

Dear Sir:

Former ABA President, Sandy D'Alemberte, who spearheaded the petition filed with the Florida Supreme Court that led to the "voluntary" pro bono ruling, objects to keeping the mandatory pro bono participation reports confidential on the basis that lawyering is a "public profession". I disagree.

Virtually every business trade or profession which deals with the public is a "public profession", so that stance is on quicksand. However, lawyering, unlike other professions, involves a relationship with a client which is one of confidentiality based on attorney-client privilege. That makes the nature of lawyering very much a "private profession".

Indeed, it could be that the "poor person" who is receiving the pro bono legal services might not want information regarding their representation to be made public, because: (a) they are not necessarily proud of being deemed a "poor person", and (b) they may not wish to have information about the nature of their legal problems held up to public scrutiny.

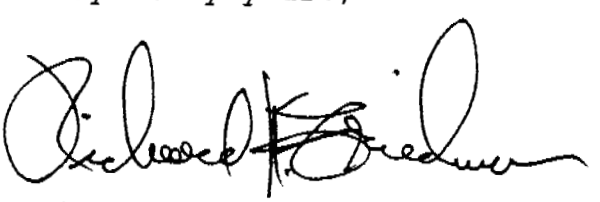
The most likely consequence of the mandatory pro bono reporting rule will be that the Miami Herald and like newspapers will do a statistical analysis to show what percentage of lawyers participated and what percentage did not, what number of attorneys "donated" $350 to the legal services agency and what percentage did not. Beyond that, undoubtedly the newspapers will attack lawyers who run for public office who have not participated in the pro bono

LAW OFFICES
RICHARD N. FRIEDMAN

program and their political opponents will use that information against them. Therefore, public disclosure of mandatory pro bono reports of voluntary participation may be used as a political weapon against lawyers who may otherwise perform outstanding public services for the benefit of their community.

I think The Florida Bar and the Florida Supreme Court ought to get their respective feet wet first regarding this program before they start embarrassing attorneys and, most probably, themselves.

Very truly yours,



RICHARD N. FRIEDMAN

RNF/d

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JAMES D. O'DONNELL
KEITH H. JOHNSON

September 23, 1992

Judson H. Orrick, Editor
The Florida Bar
650 Apalachee Pkwy.
Tallahassee, FL 32399-2300

Re: Letter to the Editor/"Voluntary" Pro Bono

Dear Mr. Orrick:

With the direction in which we are gravitating, and despite any denials to the contrary, a skeptical person could logically assume that the Florida Supreme Court and the Florida Bar leadership have a hidden agenda which will require Florida Bar members to satisfy a minimum pro bono obligation.

In a response letter published in the September 1, 1992 Florida Bar News, Sandy D'Alemberte went to great lengths to explain that the current rules adopted by the Florida Supreme Court with respect to the Florida Bar members' pro bono obligations are not mandatory. Ironically, however, the front page headlines claimed that the Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal Services to the Indigent in Florida ("Joint Commission") has recommended that the mandatory reporting feature of the existing rules be open to public scrutiny.

In summarizing its position regarding the proposed amendments recently sent to the Florida Supreme Court, the Joint Commission concluded that:

> While it has not recommended and does not support a mandatory pro bono plan, the Joint Commission does conclude that the critical problem of providing access to justice to the poor should be addressed by a strong voluntary program that is open to public scrutiny.

If adopted, this will effectively convert the voluntary pro bono plan into a mandatory plan. In essence, any attorney who might ever aspire to a political or appointed office (including a judgeship) would then be compelled to meet his or her pro bono

obligation regardless of his or her personal views. I seriously doubt that a judicial nominating committee would submit to the Governor the name of a person who has not satisfied his or her "voluntary" pro bono obligation. Further, an attorney's political opponents would routinely examine these records to determine if the attorney had been "community spirited" throughout his or her legal or non-legal career. Regardless of how many hours spent serving the community in a non-legal capacity, it would also be necessary to spend additional time in the area of law regardless of whether an individual was a practicing attorney should a mandatory pro bono plan be adopted. In addition, such a mandatory plan would require that attorneys keep close track of the number of pro bono hours worked to avoid falling short.

Certainly pro bono work is worthwhile, and the Florida Bar should actively encourage its membership to participate. I seriously doubt that the majority of members object to the Florida Bar and the Florida Supreme Court establishing a voluntary minimum ideal as to the number of pro bono hours an attorney should spend in a given year. However, it also appears as though the vast majority of the Florida Bar strongly disapproves of a mandatory pro bono plan.

In tax law, one quickly learns that the courts will look at the substance of the transaction rather than its form. Similarly, with respect to the Joint Commission's recommendations, the substance is that, if adopted by the Florida Supreme Court, Florida will have a mandatory pro bono obligation.

Sincerely,

Keith H. Johnson

orrick/KHJFILE

SFH
PFH

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September 18, 1992

The Florida Bar News
650 Apalachee Parkway
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1/28 ✓

Re: Pro Bono

Dear Editor:

Has the Florida Bar Association been struck with schizophrenia? Have we Florida lawyers gone off the "deep end?" What in the world would possess us to create something so blatantly liberal as the "Anti Bias Rules," (the ABA going so far as to recognize the National Lesbian and Gay Law Association by a vote of 318 to 123), and force "voluntary" pro bono legal services for the "poor" with "mandatory" reporting, while at the same time completely forgetting the "needs" and "wants" of the members of the Bar. For those of us sole practitioners who are already overworked and underpaid, who are trying to meet our overhead and take a few dollars home, and who are attempting to balance our legal profession with raising children, keeping our marriage solid, and community work such as PTA, Service Clubs, Little League, etc., we now heap on ourselves the added responsibility of representing the "poor" for free. Oh! I forgot. We could just pay a meager $350 rather than "donate" 20 hours of our time.

Well, I can tell you that I don't have 20 hours of free time to donate, and I don't have $350 to give away. I closed my law office in May of 1991 so that I could spend more time with my 4 children, aged 16 to 2. It was a difficult decision for me to make, but it was the right decision. One is excused from jury duty when one has a pre-school child at home, so I consider myself justly excused from performing any pro bono legal services, or remitting any monies to any legal clinics. I'm sure that there are other men and women in my same position who are desperately short of time to spend with their families, but need to work long hours just to make ends meet. The Bar Association should be encouraging them to find time for their families, instead of "heaping" guilt upon them through this ill conceived "voluntary" pro bono plan.

Sincerely,

Martha Jean Eichelberg

Martha Jean Eichelberg

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September 9, 1992

The Florida Bar News
650 Apalachee Parkway
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In D'Alemberte Responds (Bar News September 1) does Mr. D'Alemberte suggest with a straight face that the Comprehensive Pro Bono Plan, although called "voluntary," does not, by virtue of the mandatory reporting feature, aim to coerce compliance? Why should a bona fide "volunteer" be required to report his "voluntary" compliance with the suggested standard? Or a non-volunteer his non-compliance? Shades of The Scarlet Letter! And does anyone seriously seriously suggest the statistical data so collected will not be used to justify a mandatory plan if todays "volunteers" fall short of meeting the arbitrary goals of its proponents? Hardly!

If the Bar and the Court are so bent on this pro bono idea then why provide for a buy-out option at all? And if the buy-out option is so necessary, why should it not be calculated at twenty times the attorney's customary hourly rate? I can imagine the waning enthusiasm among the plan's $300.00 per hour proponents at the prospect of a $6,000.00 buy-out option. The blatant disparity of the present plan in favor of large firms and well-heeled attorneys is, sadly, inescapable.

If Mr. D'Alemberte feels that "all Americans" should share a sense of guilt over the implicit absence of "justice for all" in our society, then the imposition of further corrective burden should more appropriately befall "all Americans" instead of just the one segment that already probably does the most to achieve that goal in an unregulated voluntary atmosphere.

Sincerely,

TILDEN R. SCHOFIELD

TRS/js

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JEH
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September 9, 1992

May I include an editor's note that last year was "next year"...?

Editor
Florida Bar News
The Florida Bar
Tallahassee, Florida

Dear Editor:

I read with interest Mr. D'Alemberte's recent letter pointing out the misconception that the "...unique Florida Comprehensive Pro Bono Plan." is not a mandatory plan. It may not be now, but it's going to be mandatory soon.

Everyone knows that if you want to introduce your child to the taste of fish, you don't serve the whole mackerel with its eyes, lips, and teeth. A taste here, a dab there, and pretty soon your poor kid thinks that stuff is wonderful.

If there is never going to be a mandate to do pro bono work, and if there is never going to be any sanctions for failure to do pro bono work, why have a plan at all? Why create a bureaucracy and waste the Bar's scarce resources? Why burden members with another reporting deadline? The answer is obvious.

As the old University of Florida cheer goes, "Wait till next year". Mr. D'Alemberte's well intentioned followers will have us filling out forms and being disciplined for not documenting out empathy.

Very truly yours,

CHARLES RUSE, JR.

By:_____

CR/ka

xc: Ronald L. Bergwerk

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September 8, 1992

The Florida Bar News
Attn: "Letters"
650 Apalachee Parkway
Tallahassee, Florida 32399-2300

Dear Sirs:

I commend the five writers whose letters appeared in the 9/1/92 edition of the Bar News. The Florida Bar, the Florida Supreme Court and the D'Alemberte led ABA are all living in a fantasy world. The laughable gender handbook, the bias rule and the pro bono program are only three examples of the silk stocking mentality which is dominating our legal institutions today. Other examples include the Bar's mandatory I.O.T.A. system by which we are required to fund through our trust accounts liberal programs which we may disapprove, the ABA's effort to declare title insurance a non-lawyer function and thereby eliminate the life blood of the Florida real estate lawyer, the Florida Supreme Court's "privacy" and "child rights" crusade as represented by the ruling to allow 15 year old girls the right to make life terminating decisions without consulting their parents (although they can't consent to a school flu shot without parental consent), and the Bar's "access to the courts" crusade that has resulted in the flooding of the state with an over-supply of new lawyers every year for the purpose of providing every crackpot with a hungry lawyer to file frivolous lawsuits.

I hope that in the not too distant future our Bar and Supreme Court will be returned to the control of the working lawyer, rather than the control of those who have nothing better to do than sit around in their ivory towers and dream up programs to force on the rest of us.

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September 10, 1992

The Florida Bar News
650 Apalachee Parkway
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Re: *Letters Page* Subject: Pro Bono

Dear Sirs:

The letter of Talbot D'Alemberte (*Fl. Bar News*, 09/01/92), as the pronouncement of a top guru of Pro Bono legal service, demands rebuttal for it reflects the proclivity of those in high places to try to control decisions on important subjects by (1) deprecating opponents with charges of their confusion on the subject and (2) arguments teeming with pundit duplicity.

D'Alemberte in his first paragraph assumes the high ground by proclaiming to the world that anyone, who entertains the thought that "the unique Florida comprehensive pro bono plan" is a *mandatory* scheme, is under a *misconception*. More precisely, this eminent guru boldly states such misconception, if not their own invention, is certainly promoted as a instrument of the opposition to the grand objective which he preaches. He will give no ground; those who question are ALL *misconceivers*.

D'Alemberte having thus established with one bold stroke that all those who might have some doubt about this grand scheme are totally confused, including those like myself who have some sincere impression it is basically *mandatory*, then proceeds through numerous paragraphs of sham statements to attempt to support this introductory thesis.

The arguments that follow D'Alemberte's prologue reflect a confused mind. Thus, to him this pro bono matter is an "idea of a call to service" and this leads him to the thesis the matter was decided for all lawyers when they took the oath of admission to practice law in Florida.

The proposed pro bono plan is not an "idea of a call to service"; it is a program for the regulation of Florida lawyers. The first part of the plan leaves lawyers with no freedom of choice. This clearly *mandatory* part is the compulsory requirement to file annual reports. There appears to be no question about this mandate, but the penalty for not complying is not clear, at least to me. Would the result of non-compliance be loss of license to practice law in Florida? D'Alemberte is "careful in using terms like *mandatory*" in connection with this part of the plan; he simply ignores it.

It is unclear, at least to me, if the second part of the plan that allows payment of $300.00 in lieu of 20 approved hours of pro bono work is compulsory. Thus, what is the penalty if a lawyer does neither? If there is no penalty, then it would appear lawyers have a freedom of choice not to perform pro bono work nor make the $300.00 payment. If this be the case, then the second part of the plan is not *mandatory*, but the first part still is. D'Alemberte appears to believe if any part of a plan can be freely ignored, then the whole plan can be labeled as not *mandatory*, even though one part thereof is clearly compulsory.

If there is no penalty for non-payment of the $300.00 when 20 hours of pro bono work have not been performed, it seems most probable that many Florida lawyers will choose not

to make such payment. In this event, what is the need for the plan? Why not simply seek to induce more lawyers to voluntarily engage in pro bono work without adding a new bureaucratic feature to it?

D'Alemberte promotes the "Florida Comprehensive Pro Bono Plan" because he says he believes that it will "get us on the path to caring about whether citizens have access to justice". If by "us" he means lawyers, human experience attests to the invalidity of his belief. While gentle persuasion may be capable of "getting people to care", compulsory regulations have been consistently counter-productive of such purpose. On the other hand, if by "us" he means "the Bar", what he really intends is that it will provide the Florida Bar potentates with a public relations tool to proclaim that the Florida Bar "is on the path to caring about whether citizens have access to justice". This is in line with with his quotation from a petition that says while "lawyers are public spirited", "the Bar has a special mission to assure justice for all" which indicates that "lawyers" and "the Bar" are distinct entities.

Carroll Palmer,
Vero Beach

Carroll Palmer

S230

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SF4 PF-H

NEWS 5327

July 28, 1992

Letters
Florida Bar News
650 Apalachee Pkwy.
Tallahassee, FL 32399

Ever since the notion of mandatory pro bono was first conceived I have been trying to figure out how anyone could suggest such a idea much less support it.

Doctors and hospitals do not have to treat the dying poor for free; farmers and supermarkets do not have to feed the starving; landlords do not have to shelter the homeless. Why are lawyers different? Why should we be subject to involuntary servitude which supposedly was abolished by the Thirteenth Amendment?

That such a concept could be supported by Talbot D'Alemberte and other lawyers themselves is especially incomprehensible. Does Mr. D'Alemberte feel guilty that he charges more per hour for sitting in his lavish office than most people earn for a week of actual physical work out in the sun? If so, he should charge less. Does he feel guilty that our legal system has allowed him to amass more money than most people on the planet? If so, he should give it to charity and join the Peace Corps. Why does his guilt cause him to want to force others to give away part of their lives?

Yes, lawyers have a monopoly in the legal system, but doctors also have a monopoly in the medical system. What is the difference? Why doesn't the government set up a legal aid program like it did with Medicaid?

Can the answer be that it is lawyers themselves who have been allowed to create a legal system so complex that only we can understand or use it? Can it be that if society ever looked at the fact that we charge $150 or $300 and hour to accomplish simple tasks for people it would end much of our business? Is that what the pro bono people are afraid of?

Can it be that they feel guilty that the system allows them to take one-third to one-half of a victim's compensation just for representing the claimant? Is our "special position as officers of the court" one which allowed us to create a

monstrous system that only we can operate? Are we to give to the poor to pay for the continued right to rape the middle class?

Don't misunderstand, I admit that there are things which require and deserve the use of highly skilled professionals who charge $300 an hour. Mergers of multinational corporations for example. But why should someone who earns minimum wage, or even $10 an hour have to pay $150 an hour to someone to change the name on her deceased husband's stock certificate or to declare bankruptcy? Is this what our mandatory pro-bono advocates feel guilty about? Will some free time for the "poor" actually make them feel better about what they are doing to the middle class? Or will it just make it easier to continue to get away with it?

One of the problems with our legal system is that it is too complicated and takes too long. How popular will we lawyers be when we volunteer to help delinquent tenants and convicted murders use the system to delay the day of judgment?

And what of the judges who are demanding mandatory reporting of voluntary pro bono? Our legal system pays them more than the $70,000 reported to be the average lawyer's earnings. Shouldn't they give back as much as lawyers? The poor need mediation and arbitration even more than litigation. How about a system of voluntary pro bono mediation for all Florida judges (with mandatory reporting).

The answer is a simplified system together with truly voluntary pro bono, but not coerced or mandatory servitude.

Mark Warda

EE

MR. D'ALEMBERTE'S RESPONSE

~~THE FLORIDA PLAN IS NOT MANDATORY PRO BONO~~

Mr. Warda touches two subjects. In the first, he endorses a misconception perpetuated by opponents of the unique Florida comprehensive pro bono plan. In the second subject, he makes points which are very significant.

First, the misconception, and that is the characterization of the Florida plan as a "mandatory" plan. The label mandatory describes a proposal under which lawyers are required to provide pro bono services. Such a plan was put before the Florida Supreme Court and rejected in ~~1963~~ 1983?. I have always opposed that plan.

If Mr. Warda had looked at the petition I filed on behalf of a group of very thoughtful lawyers, he would find that it did not argue for mandatory pro bono. Here is the language from the first page of the petition:

> This Petition is built on the assumption that lawyers are public spirited, that law is a public profession and that the Bar has a special mission to assure justice for all.

8/9

x 13 p

> However, this Petition does not propose compulsory public service. The proposed rules recognize the traditional power of court appointment, but they do not contemplate that the appointment power need ever be used to coerce lawyers who have principled objections to particular representation. The rules already protect lawyers against the representation of clients repugnant to them, and common sense dictates that the unwilling lawyer should not be appointed.

If Mr. Warda had studied the case, he would know that a similar position was taken during oral argument. Mr. Warda and others should be careful in using terms like "mandatory."

The idea behind the Florida Plan is that the provision of legal services to the poor has always been the job of both judges and lawyers. Common lawyers have always been willing to accept appointments when called on by judges to serve.

Indeed, this idea of a call to service is embodied in the oath that Mr. Warda and I took when we were sworn into the Bar. We pledged then to never "reject" the cause of the defenseless or oppressed. That oath contemplated that, when called to serve, we would respond. All that has happened is that the Florida Supreme

Court has now called on us to serve and those who take their oath seriously will not reject this call to service.

It could be argued that a failure to respond to such a call is a violation of the lawyer's oath, and, therefore, lawyers who do not serve should be disciplined. I do not make that argument and I do not agree with it.

The point I make is simply that the Florida Comprehensive Pro Bono Plan is not a mandatory plan and it was never proposed to be mandatory.

The one feature of the plan which requires anything of lawyers is that they report, but that feature could not bring anyone who was attempting to communicate honestly about this matter to label it a "mandatory pro bono" plan, since there is no mandate to do pro bono, no discipline for failure to do pro bono work.

If Mr. Warda will look at the Florida Plan with an open mind, and look at the needs that poor people have for legal services, I hope he will see it for what it is -- a court call to service.

The second point of Mr. Warda's letter strikes me as very thoughtful. Mr. Warda says about the nature of the legal system -- its expense and complications -- is correct. He is correct when he

identifies the problem of service to middle class Americans as one of our greatest problems and he is right to urge expansion of mediation. He is obviously concerned with the large issues of service to middle-class Americans and I hope he does not see the solution in some intricate calculus of poor people's rights netted against the rights of middle-class Americans. Our goal ought to be justice for all.

Finally, Mr. Warda mentions guilt. I must admit to some sense of guilt, but it is that guilt which all Americans ought to feel when they recite the pledge of allegiance and its concluding words, knowing that we have not fulfilled that pledge. Except for a few places, we are not even working at it very hard. I believe lawyers care about that pledge and their own oaths. I believe that the Florida Comprehensive Pro Bono Plan will get us on the path to caring about whether citizens have access to justice. I hope Mr. Warda will see that this path also leads the Bar to address the access issues he so thoughtfully raises.

Talbot D'Alemberte

Miami

Exhibit B

PROPOSED BAR RULE

Unless specifically waived by the affected attorney with appropriate notice to The Florida Bar, the information that is reported by each lawyer under this plan and under the reporting requirements of these rules shall be confidential to the extent such information relates to the actions or activities of the reporting lawyer and such individual information shall be maintained in a confidential manner; provided, however, that such confidential treatment shall not impede or be inconsistent with the effective administration of this plan or prohibit disclosure of individual information to the circuit pro bono committee and (and their designees) for use in the functioning of the circuit pro bono plan in the circuit from which the lawyer reports.