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SID J. WHITE
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CLERK, SUPREME COURT
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In The Supreme Court of Florida

Amendment to Rules Regulating
The Florida Bar -- 1-3.1(a)
and Rules of Judicial Administration
- 2.065 (Legal Aid)

Case No. 74,538

RESPONSE OF JOSEPH W. LITTLE TO PROPOSED PRO BONO RULES FILED BY THE FLORIDA BAR/ FLORIDA BAR FOUNDATION JOINT COMMISSION

> "Experience should teach us to be most on our guard when the government's purposes are beneficent. ... The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."[1]

As demonstrated fully in Respondent's prior filings in this matter, Respondent would applaud a genuine broadly supported voluntary effort within the legal profession to provide free legal services to poor people. In light of the history and tenor of these proceedings, however, Respondent regrettably submits that if the Joint Commission truly believes, as it says it does, that a condition precedent of the desire to "expand the access to the legal system of poor people" is that "that the Proposed Rules not be viewed as imposed by an outside force, but rather adopted as a collegial effort within the profession," [2] then this effort is stillborn. This Court must be more aware than most that the process and the perceived character of the proposed plan are deemed

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[1] Brandies, J. (dissenting), Olmstead v. United States, 48 S.Ct. 564, 573 (1928).

[2] Notice of Filing of 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, Case No. 74,538, p.p. 3,4. (Hereinafter referred to as "Notice.")

to be in terrorem expressions of sanctioning authority, by many if not most lawyers, with the threat of worse waiting in the wings if the wielders of power are not satisfied with what is begotten.

Having said that, Respondent wishes to propose three amendments to the proposed rules to help ameliorate the in terrorem character and otherwise improve the program.

Proposed Rule 4-6.2(b). Collective Discharge.

The collective discharge provision should be eliminated. If the obligation is an aspirational professional obligation, it should be applied universally and uniformly. The great bulk of the practitioners within the profession will not have available this "keeping the hands clean" method of buying out of the perceived obligation of conscription. If the obligation is to work in terrorem against some individuals, it should operate in terrorem against all.

Proposed Rule 4-6.2 (d) Reporting Requirement

This entire measure should be eliminated, or, if retained, made optional at the discretion of each lawyer. If the legal service obligation is truly voluntary and, thus, aspirational, to require a lawyer to report these details (particularly (1) and (2)) plainly intrudes upon privacy interests protected by Article I §23 Florida Constitution. No one could in conscience assert at this stage of the matter that whatever interest the State may seek to advance by imposing those reporting conditions upon the right to earn a living in the practice of law in Florida can be served only

by these measures and by no less intrusive ones. The State may develop numerous schemes for assessing the true efficacy of the plans that do not require intrusive self-reporting of this nature.

Proposed Rule 17-1.5(a) Creation

Respondent respectively urges the Court to revise this section to read:

> There shall be one circuit pro bono committee in each of the judicial circuits of Florida. ~~In each judicial circuit the chief judge of the circuit court shall appoint and convene the circuit pro bono committee and the committee shall appoint its chair.~~ The President of the Florida Bar shall appoint a member of the Board of Governors from each circuit to appoint and convene the circuit pro bono committee and the committee shall appoint its chair. (--, eliminated; underlined material added.)

Proposed Rule 17-1.5(b)(1)Composition of Circuit Pro Bono Committee

Respondent respectfully urges the Court to revise portions of this proposal as follows.

> (1) ~~The chief judge of the circuit court, or designee;~~ One or more members of the Board of Governors from the circuit; (--, eliminated; underlined material added.)

Respondent further urges the Court to revise the last sentence in this subsection as follows.

> Replacement and succession members shall be appointed by ~~the chief judge of the circuit court~~ the member of the Board of Governors from the circuit designated by the President of the Florida Bar, upon nomination ... etc. (--, struck; underlined material added.)

Discussion of Proposed Revisions to Rule 17-1.5

In previous filings, Respondent has exposed the fallacy and

dangers of involving the judiciary in the direct formulation and operation of any plan that imposes or has the appearance of imposing direct judicial pressure upon the members of the Bar. Involving chief judges in the manner proposed by the Joint Commission reinforces the in terrorem threat of the program. No lawyer and no client should ever be confronted with even the fear or perception that the client's cause might be affected in any degree by the chief judge's view of how well the lawyer adheres to the goals of an operational program under the oversight of the judge.

Plainly, if this plan is to have any hope of being perceived by the profession as a collegially self-imposed aspirational obligation of the profession, then the threat of local oversight by the chief judges must be removed. Nor can it now be argued that to impose the obligation of leadership on the elected leaders of the profession, as Respondent's proposed revision would do, would in any measure attenuate or otherwise minimize achieving the intended purposes of the plan.

Respectfully submitted,

Joseph W. Little
Florida Bar No. 196749
3731 N.W. 13th Place
Gainesville, FL 32605
904-392-2211

Certificate of Service

Respondent certifies that a copy of the foregoing was mailed on September 18, 1992 to the persons on the attached list.

Joseph W. Little

Mr. Talbot D'Alemberte
4000 Southeast Financial Center
200 Biscayne Boulevard
Miami, Florida 33131

Mrs. Patricia A. Seitz, President
-elect
4000 Southeast Financial Center
200 Biscayne Boulevard
Miami, Florida 33131

Mr. John F. Harkness, Jr.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300

Mr. Anthony C. Musto
999 Ponce de Leon Boulevard
Suite 510
Coral Gables, Florida 33234

Henry P. Trawick, Jr.
P. O. Box 4019
Sarasota, Florida 34230
813 366-0660
Fla. Bar 0082069

1

Mr. James E. Tribble
2400 First Federal Building
One S.E. Third Avenue
Miami, Florida 33131

Mr. Michael H. Davidson
2400 East Commercial Boulevard
Suite 815
Ft. Lauderdale, Florida 33308

Mr. Bertram Shapiro
339 Royal Poinciana Plaza
Suite H
Palm Beach, Florida 33480

Mr. Paul C. Doyle
Staff Director, Joint Commission
The Florida Bar Foundation
109 East Church Street
Suite 405
Orlando, Florida 32801

Mr. Alan T. Dimond,
President
1221 Brickell Avenue
Miami, Florida 33131

Mr. James A. Baxter
918 Drew Street, Suite A
Clearwater, Florida 34615

Mrs. Mary Ellen Bateman
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300

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

Mr. Harvey M. Alper
112 West Citrus Street
Altamonte Springs, Florida 32714

Mr. Jerry A. Devane
P. O. Box 1028
Lakeland, Florida 33802

Mr. John Beranek
P. O. Drawer 11307
Tallahassee, Florida 32302

Mr. William A. VanNortwick,
Jr.
Chair, Joint Commission
Martin, Ade, Birchfield &
Mickler
3000 Independent Square
One Independent Drive
Jacksonville, Florida 32202