

097



CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF FLORIDA

CRIMINAL DIVISION "I"  
CRIMINAL COURTS BUILDING  
5100 - 144TH AVENUE, NORTH  
CLEARWATER, FLORIDA 33520  
(813) 530-6480

CIRCUIT JUDGE

CLAIRE K. LUTEN

**FILED**

SID J. WHITE

OCT 5 1992

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

October 1, 1992

The Honorable Sid White  
Clerk of the Supreme Court  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399-1925

Re: Case No. 74,538  
Amendment to Rules Regulating  
The Florida Bar - 1-3.(a)

Dear Mr. White:

In response to the notice contained in The Florida Bar News of September 15, 1992, I am responding to the above-proposed rule.

The need for pro bono services to be available to indigents is clearly one of the most critical problems facing The Florida Bar. However, The Bar should not resolve one problem by the creation of another.

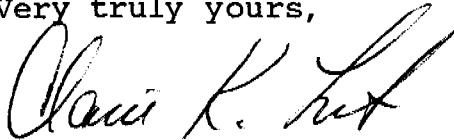
It is unreasonable to require governmental lawyers and judges to comply with this proposed rule as written. Such compliance by judges would create ethical problems as well as problems with the Judicial Qualifications Commission. Nor is it fair to tax these Bar members who cannot, through no fault of their own, comply with the pro bono requirements.

Until such time as rules and canons are changed or the definition of "pro bono" service is expanded to include matters

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which governmental lawyers and judges can properly perform, I would strongly urge the Court to delay acceptance and/or implementation of the proposed rule.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Claire K. Luten".

Claire K. Luten  
Circuit Judge

/cdc

attachment  
enclosure (7 copies)

## Specific Concerns

### 1. Memorandum

Implementation and Review, pg. 31:

In the list of tasks to be accomplished by the implementation date of July 1, 1993, no provision is made for making the necessary constitutional, statutory or administrative rule changes necessary to permit a governmental lawyer or judge to comply with the requirement to provide pro bono services, nor is there a provision made to permit amendments to the Code of Judicial Conduct, which canons preclude the type of services required by the proposed rule. I question whether these changes can be effected by July 1, 1993.

### 2. 4-6.2 Pro Bono Service to the Poor

(a)(1) specifies the exact type of services which qualify as "pro bono". Each section requires a judge to practice law. There is no provision which would merely indicate that this responsibility may be discharged by a judge through means not inconsistent with statute rules or canons.

It appears that no matter how the statutes, rules or canons are amended, a judge will have to provide "legal services" to the poor. This flies in the face of an independent judiciary, and would require not a few changes, but a complete rejection and rewrite of Canon 1, Canon 3A(1)(6), and Canon 5B(2), and some redrafting of others

### 3. 4-6.2 Pro Bono Service

(e) comment, pg. 10, line 258 - This indicates that the "range of service opportunities will be expanded to the extent feasible". Such expansion will, of necessity, require an amendment to the rule. Until that occurs, judges are bound by the rule as now written, while being equally bound by the canons and other statutory or administrative rules.

Until such time as such necessary changes have been made to the proposed rule, judges will be in violation of either the canons (if they comply) or the Bar rules (if they do not comply). This places the judges of this state in a quandary not of their making, and which they do not deserve.