

047

IN THE SUPREME COURT OF FLORIDA

AMENDMENT OF RULES REGULATING
THE FLORIDA BAR - 1-3.1(a) AND
RULES OF JUDICIAL ADMINISTRATION
- 2.065 (LEGAL AID)

CASE NO.: 74,538

FILED

SID J. WHITE

OCT 14 1992

RESPONSE OF GARY E. MASSEY 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

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

I am enclosing a letter with comments I mailed to you in February, 1992. I do not intend to repeat the arguments set forth therein.

Although you did not adopt a mandatory Pro Bono Plan you are now considering requiring an individual to report how many hours of Pro Bono work he or she performs. First, under Article V, Section 15 of the Florida Constitution your powers are limited to regulation of the admission of persons to practice law and the discipline of persons admitted. Your powers do not extend to how many hours an attorney should perform free services or to reporting whether he has served any hours performing free service. Requiring a lawyer to report his Pro Bono service, if any, is beyond the powers conferred on you by the people of the State of Florida.

In addition, as a citizen of Florida I have a right to privacy as guaranteed to me under Article I, Section 33 of the Florida Constitution. This right of privacy extends to both my personal

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2/14/92*

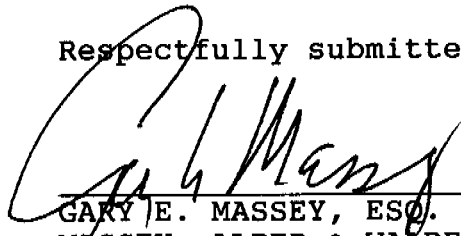
and professional life except as limited by the Constitution. There is no provision which provides that I must report what I am doing in my professional life.

The first proposed Rule 4 - 6 provides that a lawyer should render Pro Bono legal service to the poor. I agree that lawyers should render such services. However, it can be constitutional only on a voluntary basis. The comment to said Rule is fallacious when it states that Pro Bono legal service to the poor is an integral part of a lawyers Pro Bono Publico responsibility. Neither I nor any other persons have a legal responsibility to perform such services. I may have a moral responsibility, but that does not elevate it to a legal responsibility. The comments go on to escalate said responsibility to a professional responsibility. I can not believe intelligent lawyers can with a straight face put forth such fallacious and circuitous reasoning. Under Rule 4 - 6.2, the committee then proposes to require each attorney to report whether he has satisfied his professional responsibility and under Rule 4 - 6.3, the committee goes on to suggest that an attorney has a duty to render other Pro Bono public interest legal service.

As I stated in my letter to you in February, if this is legal where does it end? Can we be required to provide 500 hours or pay \$30,000.00? Can we be required to report who our clients are and what business we transact for them?

Madam Chief Justice and Gentlemen you are all educated individuals. You must not ignore the constitutional rights provided by the United States and Florida Constitution to promote a social program which burden is the public's at large. I for one will continue to represent the poor for free or at a reduced rate. However, I do not have a legal responsibility to perform these services or any other services and I do not intend to give up my constitutional right of privacy in my office and report any hours I spend to the Florida Bar or this distinguished Court.

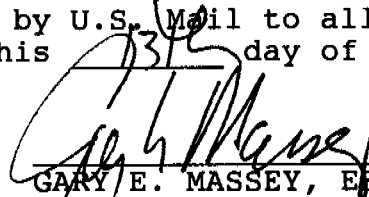
Respectfully submitted,



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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 13th day of October, 1992.



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February 28, 1992

TO: The Honorable Justices of the
Supreme Court of Florida

Your Honors:

I am a partner in a three (3) member firm in the State of Florida. I wanted to write you this letter to express my feelings concerning your recent adoption of the trial Mandatory Pro Bono Plan.

Let me first state that I am aware that there are poor or unfortunate individuals in our society and that they do not receive the legal services they need. Some of these same individuals also need medical help, clothing and shelter. It is a sad state of affairs that a Country as wealthy as ours does not take better care of its citizens.

I am also a voluntary member of the Seminole County Bar Association and, as such, I have a choice to donate my services for Pro Bono work or pay \$350.00 per year. I choose to donate my services and give something back to my community in the way of myself. I also devote some time each year to representing clients at less than my normal fee so that they can receive needed legal help. All of these are the choices of a citizen in a free society.

The Florida Bar Association, of which you are the head, is not a voluntary body and is one to which I must belong. Quite frankly, if it were my choice, I would not be a member of the Florida Bar. It does not represent my interests or my beliefs. Because it is an involuntary association, I must comply with its requirements to practice a profession for which I spent seven (7) years in study and for which my parents paid considerable money. I know that this body has stated that it is a privilege to practice law, however, as an American citizen, I have a right to pursue whatever occupation or job I so desire, provided I meet certain minimum standards. To do otherwise deprives the individual of life, liberty and the pursuit of happiness as guaranteed both in the United States Constitution and the Florida Constitution.

To coerce someone to either give up time or money strikes at the very heart of our freedom in this Country. We have taken a step back to the time of George III and the impositions of the tea tax and invidious slavery. If it is legal for you to command someone to belong to a membership and then command them to give up either some of their time or money there is nothing to prevent you from increasing the amount of time or the amount of money that individual must contribute. Why not say a person must contribute 500 hours a year or pay \$30,000.00?

Another problem with this approach is that you are forcing a small segment of society to pay for what is all society's problem. I do not see doctors being forced to treat patients or hospitals being forced to accept patients without pay. What about the homeless? Can you force builders to build homes for the homeless or food stores to give away food to the hungry? I think the answer to this is obvious. No, you can not legally coerce a person to do what is society's responsibility. Government can impose a tax on all citizens and provide these programs through Federal Housing Programs and Food Programs. To impose it upon a small segment of society breaches the most basic constitutional guarantees.

Your adoption of a mandatory Pro Bono Program would be unconstitutional in several respects:

1. It denies to certain citizens life, liberty or property without due process of law and without just compensation and to them the pursuit of happiness, all in violation of the Fourteenth Amendment to the Constitution of the United States.

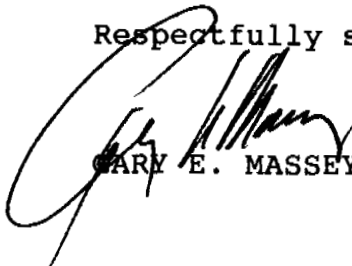
2. The imposition of ordering someone to expend time or pay money is a tax imposed in an indirect manner when the same can not be imposed in direct manner. The same violates the due process requirements of both the Federal and State Constitution. In addition, it is imposed by a judicial body when it is clearly a legislative function and violates the separation of Powers of the State Constitution.

3. It forces a citizen, in order to pursue his occupation, to succumb to involuntary servitude and violates the Thirteenth Amendment to the Federal Constitution.

4. It abridges the right to be rewarded for industry and to acquire, possess and protect property as guaranteed by Article I of the Florida Constitution.

You have the exclusive power under the Constitution to regulate the admission and discipline of persons practicing law in the State of Florida. You can not do that in contravention of both the Federal and State Constitutions. I have the utmost respect for the law in which I have been practicing for twenty (20) years. I will continue to voluntarily devote my time and energy to helping those who need my services. However, I will not be forced or coerced to give up my constitutional privileges and freedoms. I intend to not abide by a Mandatory Pro Bono Program if adopted. If you feel that discipline is in order, please commence the process as soon as possible so that this whole ugly affair may be over with.

Respectfully submitted,



GARY E. MASSEY

GEM:std

cc: Benjamin H. Hill, III, President
of the Florida Bar
Board of Governors of
the Florida Bar
The Florida Bar News