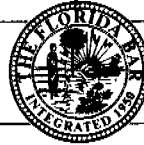


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Reply to:

October 14, 1992

Florida Supreme Court
c/o Honorable Sid J. White, Clerk

**Re: Comments to Rule Amendments 1-3.(a),
2.065 (legal aid) regarding Pro Bono
Service in Case No. 74,538**

May it Please the Court:

The purpose of this letter is to provide the Court with comments describing the unique circumstances of government lawyers and to propose a solution while, at the same time, reaffirming the continuing commitment of government lawyers to discharge our professional responsibility to pro bono publico. In a very real sense, government lawyers have generally made a special commitment to work for the good of the public by virtue of their very practice. It is in this spirit of total commitment to our professional responsibility to serve the public that we respectfully urge this Court to consider the following.

As you may know, a recent survey by the Florida Bar revealed that more than 10% (some five to six thousand lawyers) of the total Bar membership consists of lawyers employed full time by the government. (This is in addition to the many lawyers in private practice who also represent government entities from time to time.) Most government lawyers in the course of their employment have frequent contact with the public and are keenly aware of the problems and needs of the economically disadvantaged segment of their community. Often many employees who work for the government are themselves working poor. For all of these reasons and others, the Government Lawyers Section has devoted time at every meeting, even before attaining Section status, to discussing ways in which lawyers who are employed by the government can fulfill the ethical obligations to assist the poor in gaining access to the legal system.

FILED

SID J. WHITE

OCT 15 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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We are willing and eager to continue doing our part in rendering pro bono services, but have found nearly all of our members to be in an unique and frustrating position not shared by the 80% or more of the Bar that is in private practice. As this Court has clearly pronounced over the years in a number of decisions, the government or state cannot commit resources or spend public money, or act, for that matter, unless the law says it can. The reality is that we are either prevented or substantially restricted by our government employment from providing the 20 hours in the usual manner of pro bono service.

Whereas the attorney in private practice has direct and easy access to all of the tools necessary to provide representation to a pro bono client (a telephone with unrestricted use by which a client can contact the attorney, paper for pleadings, typewriter to type them on, secretary to do the typing, time during the day in which to make court appearances within the official government work day), the government lawyer usually possesses none of these. Since these items are all supplied and paid for by the government with tax dollars, they can be used by the attorney only for the business of government, and not to represent a pro bono or any other client.

There are other obstacles as well. Some government lawyers are prohibited by the terms of their government employment contract and some by statute from providing any representation or legal advice to anyone other than the government agency for which they work. Under our state system of Governor and Cabinet sitting as head of various agencies, it may be that many of the pro bono clients will be seeking to challenge or litigate against the government which the attorney ultimately represents. And the option of paying \$350.00 to a legal service agency is the solution for a few, but not the overwhelming majority of government lawyers, who continue to be paid substantially less than lawyers in private practice and who have no business that can use the tax benefits of a \$350.00 donation.

The government lawyer likewise has no malpractice insurance coverage except for work directly within the scope of his or her government duties. A government lawyer, thus, would be personally exposed to liability.

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But we believe it is not sufficient to simply raise issues. We believe alternatives can be found and we would like to help find them.

The Government Lawyer Section of the Florida Bar has had a special committee on pro bono since obtaining Section status and that committee has been active and has worked hard in trying to find acceptable ways of dealing with these unique circumstances. The Section hereby offers its expertise, effort and services to the Court to be a resource to assist the Court in reviewing the range of service opportunities and in expanding them to the extent feasible to enable government lawyers to appropriately meet this professional responsibility as contemplated by Rule 4-6.2 and its comment. We would urge the Court to request or suggest the appointment of a designee of the Government Lawyer Section to the appropriate committee of the various circuits and any other governing entity responsible for implementing this program so as to make use of this experience and expertise. We would also urge the Court to consider and adopt the following recommendations as well.

A major obstacle appears to be the limited definition of "poor." While that particular segment of our society especially needs legal assistance, the definition of "poor" should be expanded to accommodate inclusion of the working poor, such as many state or government employees. Thus, lectures, conferences and clinics can be provided by the government lawyer directly to employees of his or her client, the government-employer.

We would urge the court to fully authorize the expansion of acceptable pro bono service to include activities that require the commitment of only the government lawyer's time and knowledge and not the staff, supplies and resources of the government client. The time spent by Government Lawyers in section activities related to the pro bono program and its development should be recognized as acceptable time spent by the government lawyer to qualify within the 20 hour requirement. Likewise, the Section can provide CLE conferences to lawyers and administrators on substantive legal matters connected to the work of organizations which are engaged in charitable, religious, civic and educational matters. Those

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Section lawyers participating should be permitted to attribute the time spent as qualifying for the 20 hour requirement.

In summary the government lawyer Section of the Florida Bar reaffirms its commitment to professional responsibility in this matter and offers not only these recommendations but also its continuing effort and assistance to this Court and the circuit courts to aid the Court in realizing the purposes of this program to the fullest extent.

Respectfully submitted



Gerald B. Jaski, Chair
Government Lawyer Section