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IN THE SUPREME COURT OF FLORIDA

CONSOLIDATED
CASE NOS.: 80,419 & 80,432

IN RE AMENDMENT TO FLORIDA RULES
OF JUDICIAL ADMINISTRATION
PUBLIC ACCESS TO JUDICIAL RECORDS

CASE NO.: 80,419

and

IN RE THE FLORIDA BAR PETITION
TO AMEND RULES REGULATING THE
FLORIDA BAR

CASE NO.: 80,432

RESPONSE OF
SCOTT FOSTER
AN AFFECTED PRIVATE CITIZEN OF THE STATE OF FLORIDA

SCOTT FOSTER
IN PRO SE AND PRO PER
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INTRODUCTION

"The Florida Bar is an arm of the Supreme Court and is subject to control **and** discretion of the court **and** not to either of the other branches of government," 4 Fla. Jur 2nd @218 citing The Florida Bar v. Jackson, 398 So.2d 446 (Fla. 1981).

"A nonlawyer who **prepared** articles of incorporation for a client who was damaged (Emphasis added by Respondent) would be found in indirect criminal contempt of the Supreme Court for violation of the Court's Rule Against the unauthorized practice of law." The Florida Bar v. Mills, 398 So.2d 1368 (Fla. 1981), also see The Florida Bar v. Brumbaugh, 355 So.2d 1186 (Fla. 1978); The Florida Bar v. Peak, 364 So.2d 431 (Fla. 1978); The Florida Bar v. Furman, 376 So.2d 378 (Fla. 1979); The Florida Bar v. Moses, 380 So.2d 412 (Fla 1980); The Florida Bar v. Mills, supra; The Florida Bar v. Arango, 461 So. 2d 932 (Fla. 1984); cert den and appeal dismissed 86 L Ed 2d 712, 105 S. Ct 2695; The Florida Bar v. Valdes, 464 So. 2d 1183 (Fla. 1985); The Florida Bar v. Dale , 496 So.2d 813; The Florida Bar v. Dstoma, 501 So 2d 599 (Fla. 1987).

For more than two decades since **Furman**, the Florida Bar as the investigation and enforcement arm of this court has collected, investigated and prosecuted claims of a quasi criminal nature against private citizens of the State of Florida.

The cases cited above refute undeniably the position of the Bar today that they are not employees of the State of Florida, are not bringing any criminal action against the writer or any other

person, and should not be held to the **same** standard of openness required of governmental agencies.

This Court in Wills stated unequivocally that the Florida Bar **was** (and is) (emphasis added) an arm of this Court.

This Court is one of the three recognized branches of Florida government; the judicial branch. Ergo, the Florida Bar is a governmental agency by application of the Court's own ruling and is subject to the same Public Records Act which requires other branches of government to open its **records** to the public.

The Florida Bar today attempts to further clothe the secrecy and extent of its intrusion into the private and business lives of the citizens of Florida by changes in Rules 1-14; **7-5**; and 10-8 of the Rules Governing the Florida Bar.

While the term "Star Chamber" has been perhaps too loosely bandied about by litigants against the Bar in the very recent past, it is an appropriate appellation for the conduct of the Bar under the present **rules** and is exacerbated by the "new and more liberal rules" presently before this body for approval.

Our discussion for the Court shall be focused very narrowly on the confidentiality of records as it applies to a very limited and narrowly defined group. Those accused of **UPL**.

OVERVIEW OF REVELANT LAW AND POLICY

This Court and the Supreme Court of the United States have long and consistently held that in any criminal matter the right of the accused to know both the nature and substance of any charge made against him was absolute.

Florida Civil Rules of Procedure require that prior to any hearing the defendant in a case must be made aware of the nature and extent of the allegations **made** against him/

Both Civil and Criminal Rules of Procedure allow the accused to face his accuser and to discover the names of the accuser, the nature and extent of such accusations, and to present witnesses and testimony on his behalf.

Florida's Administrative agencies are required to notify a person being investigated for violations of administrative rule to be notified of possible infraction, the nature of such infraction and the person or persons making such charge.

Even when the accuser, HRS "Hot Line Child Abuse Calls" being **the lone** exception, is not known, the accused is told of the investigation, is interviewed and allowed to present evidence in his defense.

Only the Florida Bar among all Florida's Administrative agencies attempts to stonewall both the general public and the accused from knowledge of a complaint and the name **of** the complainant.

The Respondent here does not argue that all information should **be public**. There are, in fact, instances where the possibility of

harm to an accuser, mental infirmity caused by advanced or immature age, or the possibility of emotional trauma would be counter to the pursuit of justice **and** fair resolution of a specific problem. UPL investigations of the Florida Bar do not meet any of those compelling public interest criteria.

Learned counsel who speak far more eloquently than I, for others **in** opposition to **the** broader issues at stake in these changes, will make the Court aware of the ramifications of the proposed changes of the right of the general public to know.

I attempt only to have this Court continue to uphold the proposition it has long **espoused**; an individual should not be held accountable to **any** public **or** private intrusion into his life without notice or the right to have access to any such intrusion.

1. THE BAR'S NEW APPROACH

Because of this Court's ruling in TEE FLORIDA BAR V. MARINA SECURITIES, INC. AND MARINA TRUST SERVICES, INC., CASE NO. 77,375 (Fla. 1991) **Denied**; **Reconsideration Denied** (Fla. 1991) **Clarification Denied** (Fla. 1991), and the promulgation of a quantity of forms for use by Pro Se litigants in domestic, landlord-tenant and other types of summary cases by this Court, the Florida Bar has all but abandoned its attempts to have UPL questions heard by this Court.

The Bar has **opted** instead for a newly developed two pronged attack upon those who assist or provide services to the Pro Se

litigant; (1) "The change will have the Bar prepare UPL cases, but Instead of seeking civil injunctions it will turn the cases over to the state attorneys for criminal prosecution" {The Florida Bar News/June 15, 1991 @ pg. 12. (2). ". . .vigorously investigate each instance of suspected UPL using the Bar's own investigators, whether under contract or full time employee to being pressure on clients or customers of such persons to file charges against persons suspected or accused of UPL." UPL counsel Mary Ellen Bateman for the Florida Bar in conversation at the Bar's Legal Technician Committee hearings in Orlando Florida in January, 1992.

2. THE BAR'S POSITION ON CONFIDENTIALITY IN CRIMINAL PROCEEDINGS

Mary Ellen Bateman, UPL Counsel for the Florida Bar says, "The present action is a criminal Action brought by the State of Florida against Scott E. Foster. As part of the discovery in this matter . . . a Subpoena Duces Tecum Without Deposition to the undersigned. The Subpoena requests confidential information from the files of the Unlicensed Practice of Law Department of the Florida Bar. The undersigned is not employed by the State of Florida, is not bringing this action on behalf of the State of Florida and is not the prosecutor in this case." From The Florida Bar's Motion to Quash Subpoena Duces Tecum Without Deposition in case no 92-566-CFA, Santa Rosa County, Florida.

While the official policy of the Florida Bar is to investigate and develop cases of possible UPL as in the past, they now intrude

into the criminal piosecutory realm of the executive departments of government.

At the same time they are developing and investigating UPL complaints with the intention of presenting evidence gathered to the States Attorneys for criminal prosecution, they steadfastly and doggedly maintain that they are not subject to subpoena of the information so published.

It is unbelievable that the Bar can sustain both its right to publish such information as the names, addresses, ages, occupations, and possible misconduct of individuals to its members (attorneys) and to law enforcement and other members of the executive branches of government without at the same time being held accountable to the abject of such accusations, investigations, and harassment.

The Bar cannot sustain any public interest reasons for holding confidential any information or complaint held in its files with bearing on a UPL investigation or complaint.

There is no possibility of any "chilling effect" on those who desire to complain andy more than there is any "chilling effect" upon the victim or the prosecutor in any criminal prosecution.

Confidential informants in sensitive criminal cases are allowed certain anomnonimity af identity, but only after hearing by the court in each case and ascertaing the reason for such extraordinary precautions.

Most insidious of the Bar's tactics is their ongoing investigation of alleged violators of UPL rules. The bar's

investigator contacts (at least in the writer's case) every identifiable customer and in interviews which resemble the McCarthy hearings of the late 1940's and early 1950's, attempts to elicit admission or accusations against the accused of the Unlicensed Practice of Law.

No admonition to keep confidential the interview is made, nor would one be proper. Therefore within a very brief period of time the friends, neighbors, business associates, customers and detractors or the accused are put on notice that the target of the investigation is "being investigated for something illegal."

This powerful tool **used** both without restraint and without legal basis makes of the accused a high profile target for any allegation of wrongdoing in any field of his or her life.

Those with an **axe** to grind find particularly attractive the "wounded animal" already **being** gored by the majesty of the **Bar**.

Although this forum is proper for the redress of this writer's grievances against the Bar's unwarranted and illegal intrusion into his life, this is not the time.

3. The Rational of the Bar's Confidentiality Rule

Rule 14-1 as seen by the proponents of the present rule and the proposed rule is to prevent public access to private records of a private organization,

Heaven forbid that private individuals shod be accorded to same rights of access provided to members of this high powered,

lavishly financed, quasi-governmental lobby for lawyers.

Advocates for the Bar wave furiously their **rules** of confidentiality when the citizen approaches the portals and says "let me **see** what you are saying about me among yourselves?".

However, **make** a complaint against the member of the fraternity and both the total substance of the complaint and a letter from the **bar** immediately follow to give the accused member a **chance** to defend and rebut their **lack** of attention or violation of the rules,

Who, I then ask are the rules of confidentiality protecting?

Certainly they are not protecting the general public from the members of the Bar. Neither are they protecting members of the public from themselves. It appears only that the rules of confidentiality are protecting members of the Bar from the Public.

A travesty!

Equal justice and Equal access does not mean that lawyers are more, or less equal, than any other member of society.

CONCLUSION

The confidentiality Rule of the Florida Bar both as currently drawn and as praposed is not only illegal, it is reprehensible. This proposed rule which the Bar has attempted to have approved by this Court on an "emergency" basis without proper Notice or Publication, without complying with the Rules of this Court allowing for the considered and orderly response and objection by those affected by **the** proposed changes is but another attempt to obfuscate, confuse and confound those who **seek** access to what shour rightly be public records.

There should be no rule limiting the right of access to records, memoranda, investigation, hearing, ruling or other information contained in the files of any agency from the person who is the target of such investigation or records.

To allow the Bar to continue to abuse the Public of the State of Florida by conducting clandestine investigations, witch hunts, and flies in the very face of those who framed the United States and Florida Constitutions.

There is no compelling need to **keep** such records confidential.

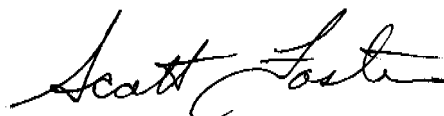
If the Bar sees a need to investigate a non member they should be under compunction to both notify the target of any such investigation and to provide the opportunity to review such accusations and present defenses if defenses there are.

This Court today is presented with a unique opportunity to correct a gross inequity in this state by striking in its entirety Rule 14-1 et al of the Rules regulating the Florida Bar.

Todays climate in this state, in fact in the nation, is a growing distrust of and disdain for attorneys and Courts.

This Court has been notable for its courage to open the formerly closed doors of government to those governed. Because of your predecessors on this Court the public can look into the cloakrooms, archives, and records of the Legislative and Executive branches of Government and in so looking have disinterred numerous abuses of power.

I ask today only that this Court formally recognize the Florida Bar as a instrument of this Court; this Court as a fully participatory third estate of government which is neither special or privileged and should be subject to the same interpretations of existing law.



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In Pro Se and Pro Per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of Scott Foster was served by hand delivery upon the following at the Supreme Court of the State of Florida on the 5th day of October, 1992, by hand delivery to the Clerk of the Supreme Court, and to unknown parties in the same manner as prescribed by law.

John A. Boggs
Director of Lawyer Regulation
John F. Harkness, Jr.
Executive Director
Alan T. Diamond
President
The Florida Bar

cott Foster