

FILED

SID J. WHITE

FEB 5 1993

CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE:
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR
(ANTI-DISCRIMINATION)

CASE NO. 81,080 ~~80~~ Chief Deputy Clerk

RESPONSE TO JOINT PETITION TO AMEND
RULES REGULATING THE FLORIDA BAR

The Gay and Lesbian Lawyers Association, a voluntary bar association of the Florida Bar (hereinafter called "GALLA"), respectfully files this response to the Joint Petition to Amend the Rules Regulating the Florida Bar. As grounds therefore, Respondent states the following:

1. GALLA, a voluntary bar association of the Florida Bar, was organized to promote and protect the rights of hundreds of gay and lesbian lawyers in South Florida. GALLA is also an affiliate of the National Lesbian and Gay Law Association, an organization with a seat in the House of Delegates in the American Bar Association. Respondent is familiar with the customs, practices, sociological studies, regulations, and laws regarding discrimination based on sexual orientation in the legal system.

2. GALLA strongly supports the Joint Petition to Amend rule 4-8.4(d) and supports alternative 4-8.4(h).

3. GALLA is gravely concerned that the comment to the rule may provide a legal loophole that will permit discrimination based on sexual orientation in the area where this issue most commonly arises -- "fitness in custody or adoption proceedings." If the comment stands, it will have a grave and immediate impact

upon GALLA members, as well as the public in general.

4. Because the members of GALLA have a unique and personal knowledge of discriminatory practices in the legal system, based on sexual orientation, and are familiar with the laws and studies regarding these practices, GALLA's participation in this case will serve to clarify the issues in question and will assist the Court in reaching a more informed decision.

5. Under proposed rule 4-8.4(d), an attorney may not disparage, humiliate, or discriminate based on a person's status; i.e., race, religion, sexual orientation, etc. However, the Comment to the rule carves out an exception protecting attorneys who discriminate or humiliate or disparage a litigant if the legal issue involves "challenging fitness in custody or adoption proceedings."

6. The Comment gives carte blanche to lawyers to "gay bash" or vilify a parent based solely on their status; whether that status be, race, religion, or sexual orientation.

7. The alleged reasoning behind this portion of the Comment is that an attorney should not be subject to discipline for "discriminating" if he or she "raises" status, like homosexuality, in a custody or adoption proceeding.

8. However, status is not relevant in any legal proceeding. If a parent or potential parent has a criminal record, is a drug abuser, or is accused of marital misconduct, those issues are relevant and are properly raised in custody or adoption proceedings.

9. The mere fact that a litigant is "homosexual," or "black," or a "Jehovah's Witness," is not legally relevant to the question of fitness. Palmore v. Sidoti, 466 U.S. 429 (1984); Waites v. Waites, 567 S.W.2d 326 (Mo. 1978); Smith v. Smith, 90 Ariz. 190, 367 P.2d 230 (1961); Mendez v. Mendez, 527 So. 2d 820 (Fla. 3d DCA 1987), cert denied, 485 U.S. 942, rehearing denied, 485 U.S. 1030 (1988).

10. Therefore, there is no need for a Comment to rule 4-8.4(d) that permits attorneys to discriminate or humiliate a litigant to make their point that a litigant's behavior or practices may affect their fitness as a parent.

11. Two recent appellate court cases graphically illustrate the abuse that the Comment, as drafted, will sanction. This Court is now reviewing Mize v. Mize, 589 So. 2d 959 (Fla. 5th DCA 1991). The Record in Mize is filled with vitriolic pleadings and briefs, which disparage and humiliate the mother based on her status as a lesbian. The Fifth District was not distracted by this strategy, and confined its ruling to the relevant legal issue regarding a custodial parent's right to relocate out of state. Mize, 959.

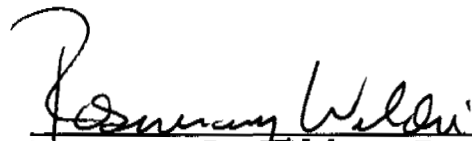
12. Similarly, in Heilman v. Heilman, 17 Fla. L. Weekly D2750 (Fla. 3d DCA December 8, 1992), the Third District held that an extra marital affair, even a homosexual one, was not relevant to the issue of alimony; reversing the trial judge, who had punished the wife financially for being a lesbian. The husband's pleadings viciously attacked a wife's status as a

lesbian, but once again, the appellate court properly confined its review to the relevant legal issues and standards to be applied to alimony and the distribution of marital assets.

13. If rule 4-8.4(d) is to have any real meaning and effect in Florida's legal community, it cannot contain a legal loophole like the one found in the Comment to the rule. It is respectfully submitted that the last portion of the Comment be struck. No lawyer has to disparage, humiliate, or discriminate against anyone in order to properly represent any client in any legal proceeding.

14. Appendixed to this Response are outlines of the latest cases around the United States addressing employment discrimination based on sexual orientation; granting custody and adoption to gay parents; the latest empirical study establishing that children of gay parents are not psychologically disadvantaged; amicus briefs outlining the latest caselaw and sociological studies establishing that the status of homosexuality is irrelevant to the fitness of a parent; and the Texas appellate court decision holding the Texas sodomy statute unconstitutional.

15. GALLA supports alternative rule 4-8.4(h) and its Comment, as there is no need for a prior adjudication before the Bar may review a member's practice to determine if he or she has engaged in a prohibited discriminatory practice. There should be direct public access to the Bar regarding discrimination in legal proceedings and in the legal work place.


Rosemary B. Wilder, Esq.
Florida Bar Number 442615
Gay and Lesbian Lawyers
Association
P.O. Box 431002
Miami, Florida 33243-10002
(305) 665-3886

v/argue

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by U.S. Mail to John F. Harkness, Jr., The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 3d day of February, 1993.