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SID J. WHITE

FEB 5 1993

IN THE SUPREME COURT OF FLORIDA. CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Case No. 81-010

In Re:

Proposed Florida Bar Rules
4-8.4 and 4-8.7

NOTICE OF OPPOSITION TO ADOPTION AND IMPLEMENTATION OF RULE

The undersigned, in their personal capacity and as representatives of the class of lawyers of The Florida Bar similarly situated, hereby respectfully give notice of their opposition to the adoption and implementation of proposed changes to Rules 4-8.4 and 4-8.7 of The Florida Bar for the understated reasons.

I. LACK OF OPPOSITION DUE TO LACK OF ACCESS AND FEAR OF RETRIBUTION.

At the outset, it should be noted that there is a significant number of members of The Florida Bar who are opposed to the proposed Rule who are fearful of speaking out against it because of a fear of retribution against them. It is disturbing to see how and where the final meeting was held to adopt the proposed Rule. The meeting, as reported by The Florida Bar News, was held in Washington, D.C., at an extremely expensive hotel. It is difficult to imagine why such a controversial, radical rule which proposes to impose sanctions upon members of The Florida Bar was considered in Washington, D.C.. The impression given by the Florida Bar News was that the committee considering the Rule felt it necessary to travel to Washington, D.C. to consider the Rule in order to prevent members of The Florida Bar from attending or participating in the

meeting. Obviously, this impression is not healthy or desirable. A topic as controversial as this should be fully discussed, and should not be considered at an out-of-state meeting. In fact, the Rule should be discussed at an annual meeting of the Bar in a general session to give members an opportunity to discuss and understand the issues surrounding the proposed Rule.

II. THE PURPOSE OF THE FLORIDA BAR.

Rule 1-2 of the Rules Regulating The Florida Bar provides:

The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.

Nowhere does Rule 1-2 state that one of the purposes of The Florida Bar is to engage in social engineering or to serve as a vehicle to advance social changes which radically depart from existing law and which do not reflect the mores and values of the society which the members of The Florida Bar are supposed to serve. Nowhere does Rule 1-2 state that the purpose of The Florida Bar is to create protected classes of individuals which have not yet been recognized or even discussed as a possible class meriting protection by the U.S. Supreme Court.

III. THE PROPOSED RULE, BY GOING BEYOND THE PURPOSE OF THE FLORIDA BAR, ENDANGERS THE CONTINUED EXISTENCE OF THE FLORIDA BAR AS AN ENTITY.

By attempting to engage in social engineering, The Florida Bar places itself in the extremely precarious position of a lobbying

group or special interest group, not a professional regulatory organization. Other state bar associations have been found to have exceeded their charter and have been held to be simply voluntary bar associations, with the actual regulation of the professional practice being transferred to a Department of Professional Regulation. The same fate awaits The Florida Bar if it proceeds to adopt a Rule based on a concept of social engineering which is clearly controversial, not accepted by the vast majority of its constituents, and which will, once learned of, create a fire-storm of protest, not only by members of The Florida Bar, but by the press, media, and the public at large. The events occurring on a national basis concerning an attempt at rulemaking in the analogous case of homosexuals in the military should be more than sufficient evidence of the attitude which exists regarding any such attempts at social engineering.

IV. THE PROPOSED RULE VIOLATE RULE 1-2 OF THE RULES REGULATING THE FLORIDA BAR BY ATTEMPTING TO ADVANCE SOCIAL CHANGES WHICH ARE CONTRARY TO EXISTING CRIMINAL LAW.

The proposed Rule of The Florida Bar prohibits discrimination on the basis of "sexual orientation". Clearly, the major group intended to benefit from such a Rule are homosexuals. Homosexuals practice sodomy. Sodomy is a crime in Florida. Section 800.02, Fla. Stat., provides:

Whoever commits any unnatural and lascivious act with another person shall be guilty of a misdemeanor of the second degree...

Black's Law Dictionary defines "unnatural offense" as:

The infamous crime against nature, i.e., sodomy or buggery.

Sodomy is also a crime under the Uniform Code Of Military Justice, and in many states and other countries. It is also prohibited by the Bible and by every religion known to the undersigned. Are we "improving the administration of justice" by encouraging and protecting activity which is criminal and which goes against the very core of our beliefs as a nation? Clearly, the answer is NO.

Aside from homosexuality, there are other types of sexual preferences -- bestiality, transsexuality, pedophilia, and necrophilia, to name a few. Is The Florida Bar protecting these activities too, and does The Florida Bar propose to sanction its members who discriminate against people who engage in bestiality, transsexuality, pedophilia, and necrophilia? Is not The Florida Bar, by means of the proposed changes, providing special protection to those who engage in these acts?

The adoption of these Rule changes will, in fact, prohibit members of the bar and bench from speaking out against pederasty, child pornography, and other such forms of deviant, socially destructive sexual behavior.

V. THE PROPOSED RULE IS VOID FOR VAGUENESS, INDEFINITENESS, AND ILLEGALITY.

The term "sexual orientation" is vague and indefinite. It is not defined, and is therefore unenforceable. Even if defined, the Rule is unenforceable, as it would simply be a Rule for the fostering

and protection by The Florida Bar of persons engaged in antisocial and criminal activity. (Sodomy, buggery, bestiality, transsexuality, pedophilia, necrophilia, etc.).

VI. THE RULE IS IN CONFLICT WITH RELIGIOUS BELIEFS OF THE VAST MAJORITY OF THE MEMBERS OF THE FLORIDA BAR AND INFRINGES UPON THE RELIGIOUS RIGHTS OF SAID GROUP.

The undersigned are Christians, as are the vast majority of the members of The Florida Bar. Aside from Christians, there are a great number of Jewish members, and members who are Moslems. All three religions strongly prohibit homosexuality, bestiality, transsexuality, buggery, pedophilia, and the other assorted forms of deviant sexual activity which The Florida Bar attempts to protect by its proposed Rule. By prohibiting discrimination on the basis of sexual orientation, The Florida Bar is infringing upon the absolute religious right of a persons to object to such activity, to publicly speak out against it, and to present a contrary, biblically based perspective. Getting right down to the bottom line, if we believe that homosexuality, bestiality, transsexuality, buggery, pedophilia, and other such sexual behavoir is morally wrong and due to our religious beliefs we cannot condone it, does The Florida Bar intend to deny us the right to speak out against these lifestyles? Will we be guilty of "disparaging, humiliating, or discriminating against" persons who engage in these acts? I certainly hope The Florida Bar does not place itself in such an abhorrent position, which will not and cannot prevail. We believe

that we must have the right to our religious freedom, and that The Florida Bar should not infringe on that constitutionally guaranteed freedom in an attempt to create protections for deviant, immoral behavior.

VII. THE RULE IS INCONSISTENT WITH EXISTING MILITARY LAW, WHICH PROVIDES FOR EXCLUSION OF HOMOSEXUALS FROM THE MILITARY.

One of the undersigned, Enrique Arroyo, is an Air Force Reserve Judge Advocate (JAG). Many members of the Bar, as Reserve and active duty JAGs, are bound to uphold and enforce the Uniform Code of Military Justice and all rules and regulations of the Department of Defense. One such rule requires JAGs to participate in administrative separation of homosexuals from military service. An Air Force officer has a duty to report any known homosexual to appropriate authorities for administrative separation. By doing so, would such an officer be violating the proposed Rule? It is possible that somebody might argue that military members who are lawyers and who either report homosexual activity or who participate in the administrative separation of homosexuals are in violation of the proposed Rule. The Rule places military lawyers in a position of being in violation of a state bar rule for doing their Federal military job. It should be noted that military lawyers and officers in general can be sanctioned for not reporting the homosexual activity or for refusing to participate in the administrative separation of such persons. The Rule would be unfair to a self-sacrificing, patriotic segment of the Bar and of society

which is in service to its nation. Is this what The Florida Bar intends?

VIII. SUMMARY.

The proposed Rule changes are ill-conceived, do not reflect the desires of the majority of the members of The Florida Bar, are violative of fundamental, long-standing constitutional rights, and are unenforceable. The issue at stake is a social engineering issue, not an issue related to the regulation of the Bar. The Rule constitutes a threat to the very existence of The Florida Bar as an independent professional regulatory entity. The Rule is violative of the religious rights of the majority of its members. The Rule places The Florida Bar in a position of being the champion of sexual practices which are not acceptable to the society which The Florida Bar is supposed to serve. The Rule places The Florida Bar in the position of promoter of radical social changes and of social engineer, which is contrary to the desires of the public, the majority of The Florida Bar's membership, and the stated purposes of The Florida Bar. The Rule and the entire approach behind the Rule are wrong, problematical, and work a disservice to the public at large and to the members of The Florida Bar.

IX. ATTACHMENTS

Attached is a copy of a very timely article involving a transsexual who murdered his uncle for money for a sex change operation. This person is wrong in what he did (murder) and the reason for which he murdered (because of his sexual orientation and desire to "become

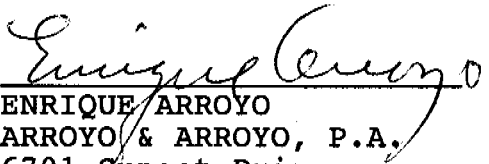
a woman"). Can this person's behavior be criticised, or would such conduct amount to "knowingly or through callous indifference, disparaging, humiliating, or discriminating against a litigant (criminal defendant) on the basis of sexual orientation"? Clearly such behavior is subject to criticism, particularly as a lesson for the younger generation which is in the process of forming concepts of right and wrong.


X. REQUEST FOR OPPORTUNITY TO PRESENT ORAL ARGUMENT.

The undersigned request the opportunity for oral argument in the present matter at an open hearing at which the press and media may be present to report and record the proceedings in their entirety.

WHEREFORE, the undersigned move that the proposed Rule changes not be approved by this honorable Court, and that if any such changes are to be considered in the future, that they be completely discussed in an open forum such as a general session at an annual meeting of The Florida Bar.

Respectfully submitted,


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LOCAL

The Miami Herald

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Transsexual jailed in murder

He sought cash for sex change; state won't foot bill

By **DON VAN NATTA Jr.**
Herald Staff Writer

A self-described "she-man," Hugh Mack Johnson has always wanted a sex-change operation. But he couldn't pay for it.

So he's tried some unusual ways to raise the money. First, he stabbed his uncle to death and stole his Stradivarius violin to pay for the operation. One problem: The violin was a fake, something Johnson learned after painstakingly dismantling it and shipping it off to be appraised in Wisconsin.

Then on Wednesday, Johnson pleaded guilty to second-degree murder

— but he wanted something back from the state: A taxpayer-financed sex-change operation.

"This man is a genuine transsexual — a female locked up in a male's body," his defense attorney, David Russell, told the judge.

"It's not my business," said Dade Circuit Judge Thomas Carney. He turned down the request for an operation and then sentenced Johnson to 15 years in an all-male state prison.

The hearing capped a 16-month odyssey for Johnson, a slight, gray-haired 51-year-old man who has tried for years to become his true self: a

woman named Connie Anne Knight.

Johnson called 911 on Oct. 6, 1991 and reported that someone had repeatedly stabbed his 73-year-old uncle Harry Reed, of North Miami, in the chest, back, head, hands, arm and leg.

Uton Reed found her husband dead on the floor. They had been married 50 years.

"I knelt down and kissed him and told him I loved him and I didn't know who done it or who would want to," Uton Reed said in a deposition. "And I rubbed where he was hurt and I didn't



AL DIAZ / Miami Herald Staff

PLEADS GUILTY: Hugh Mack Johnson was sentenced to 15 years in an all-male state prison.

PLEASE SEE TRANSSEXUAL, 4B

State refuses to finance man's sex change

TRANSSEXUAL, FROM 1B

know whether he was shot or stabbed because I had never seen anything like that."

Johnson, a freelance writer, was arrested the next day. Police found Johnson's clothes, cigarettes and his buck knife coated with his uncle's blood.

When confronted with the evidence, he quickly changed into Connie Anne before police detectives' eyes.

"Can I get the electric chair?" Johnson asked, still in a deep voice.

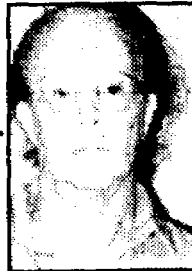
The detectives told him they could not discuss potential sentences.

Johnson told them his name was Connie Anne Knight, and he shaved 10 years off his age.

"He became a woman," North Miami Police detective Stephen Johnson said. "His voice, the gestures, everything changed. It was nothing like I had ever seen before and probably will never see again."

In the interview, Connie Anne Knight explained that Hugh, his "alter-ego," sometimes acts violently and irrationally. "I would never do anything like that," he said softly.

He told detectives that he was taking female hormones, the first



The hearing capped a 16-month odyssey for Hugh Mack Johnson, a slight, gray-haired 51-year-old man who has tried for years to become his true self: a woman named Connie Anne Knight.



step before a sex-change operation. However, he was having trouble paying for the medication. If he skipped some of the medicine, Connie Anne would sometimes revert back to Hugh, he said.

He said he had no memory of the stabbing. When asked who had stuffed his blood-stained clothes into the shrubs behind the Reeds' two-bedroom house, Johnson said, "If it was done by me, Hugh did it."

A detective asked, "Connie wouldn't hurt anybody, would she?"

"No, no," Johnson said.

"Would Hugh?"

"Probably."

"Is Connie angry with Hugh for what he's done tonight?" the detective asked.

"No, I'm hurt," Johnson said. "If he has done this, then I have no idea what to do."

He warned detectives that if he didn't become a woman, "these things will continue."

Johnson continued to take female hormones while awaiting trial in the Dade County Jail. Doctors deemed the hormones "medically necessary," records show. His medication cost an estimated \$300 a week.

Johnson's trial was scheduled to begin Wednesday. But Johnson began seriously considering pleading guilty after he figured the state would pay for his sex-change operation, his defense lawyer said.

"That would allow him to go where he wants to go, a female prison," Russell said. "He's been sentenced to male prisons before. He knows what it's like. They're tough places."

Johnson has spent much of his life behind bars. He wrote bad checks and ripped off money in

in Arizona, Mississippi and Texas.

His request for a state-financed sex-change operation is not unprecedented. Some states have paid for the operations on inmates, but never in Florida.

In court on Wednesday, Johnson was dressed in a yellow sweater and white jeans. His shoulder-length, gray-speckled hair was askew. With his arms folded, he sounded defiant as he spoke in a soft, nearly inaudible whisper.

Assistant State Attorney Marilyn Milian was outraged by the request for a state-paid operation.

"This is not a medical necessity," she said. "I don't think he should be in any better position because he killed his uncle. I certainly don't want to have to pay for it."