

097

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

FEB 3 1993

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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

BAR CASE NO. 81,010

**AMENDED RESPONSE OF RANDALL C. MUMPER**

RANDALL C. MUMPER, a non-lawyer and an interested person, files this Amended Response to the Joint Petition To Amend Rules Regulating the Florida Bar.

I once argued the old adage that "if it ain't broke, don't fix it" to dissuade this Court from adopting a position taken by the Florida Bar which appeared to have no rational basis. This time I am compelled to support the Bar's position with one reservation; the Bar's proposed Rule Amendment and new Rule as written will do little to stop discrimination by lawyers and their staff. One cannot fix a broken arm with a Band-Aid.

The Rules Regulating the Florida Bar have for too long been too lacking in substance when it comes to the conduct of an "officer of the court", whether in professional and/or private life. What difference in impact would there be upon the public's perception of lawyers or it's respect for the justice system if an attorney discriminated in the workplace/courts or if he did it to his neighbor across his backyard fence on a Saturday morning? Lawyers are the safe keepers

of a clients funds, confidences, and legal well being, and they have the responsibility of safeguarding the public's perception of the legal profession and image of the courts. Those lawyers, however, are not bound by any meaningful rules and/or regulations which proscribe conduct that can only be described as patently offensive, unethical, morally reprehensible and in some instances, illegal. Egregious conduct that demeans public confidence in the legal profession, adversely affects the public's trust and confidence in the legal system, and falls far short of the implicit requirement that a lawyer have and maintain good moral character at all times, whether it is in his/her's professional or private lives. That requirement comes hand in hand with a license to practice law. The law is not a business; it is a noble profession, with standards in certain respects different from those applicable to a business. The right to practice law is a privilege, and is limited to those whose moral character and special qualifications have been ascertained and certified. Standards which must be adhered to throughout the lawyers career. This court has adopted a definition of "lack of good moral character" as it applies to lawyers:

"In our view, a finding of lack of 'good moral character' should not be restricted to those acts that reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation."

1/

---

1/ Florida Board of Bar Examiners, Re: G.W.L., 364 So.2d 455 (Fla. 1978) at 458, citation omitted.

When lawyers themselves discriminate or knowingly permit discrimination to go unchecked then that is surely demonstrative of a "lack of good moral character" and the public's perception of and respect for the legal profession and legal system takes a beating. There is no room in the courts and/or legal profession for any type of discrimination and an effective bright line proscription is needed. Despite what several of the Respondents herein have argued, the promulgation of a rule to deal specifically with conduct that by it's very nature is, offensive, insidious, cruel, immoral, draconian and in most instances, illegal, is not an infringement upon constitutionally protected speech and/or conduct. In a vast majority of such cases it is criminally and/or civilly actionable. To pretend it doesn't exist is absurd; to duck behind an argument of "infringement of constitutional rights", is certainly unconscionable. The leadership of The Florida Bar recognizes that it takes place and that something must be done. This writer was himself subjected to unethical, embarrassing and discriminating conduct by a member of the Bar in Escambia Circuit Court in 1991. Attached to this Response as Appendix -A-, is a certified copy of the Order of the Circuit Court finding that materials filed by the lawyer in that instance to be "scandalous and embarrassing" to this writer. The order further admonishes them "not to file similar scandalous and embarrassing materials with the Clerk of the Court. . ."2/

What happens to the next unfortunate litigant who doesn't have the funds with

---

2/ This writer would respectfully request this Court take judicial notice of the Records of the Escambia Circuit Court and the ruling of the Court as stated herein-above in Escambia Circuit Court Case No. 88- 4054-CA-01, Barnett Bank of West Florida v. Nova Law Publications, Inc.

which to hire an attorney to argue his case and protect him from an opposing lawyer who uses disparaging and humiliating tactics? It is a sure bet that he most certainly would come away from the courthouse with a great appreciation and respect for lawyers in general and for our justice system. Especially after having become the victim of an unscrupulous lawyer who was not subject to any Bar rules prohibiting conduct that in many cases is condemned by Federal and State laws.

The Bar's proposed amendment to Rule 4-8.4(d) doesn't go far enough to proscribe discriminatory conduct, which in some instances is perpetrated with total subtlety and anonymity. Rule 4-8.4 (d) should be amended to include two additional subparts as follows:

#### **RULE 4-8.4 MISCONDUCT**

A lawyer shall not:

(d) engage in conduct that is prejudicial to the administration of justice at any time, whether in his capacity as a lawyer or in his day to day private life, including

(1) to knowingly, or through callous indifference, disparage, humiliate, embarrass, harass, discriminate against anyone on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, social or financial standing, age or ability to obtain representation;

(2) to knowingly, or through callous indifference permit a member of his staff while under his day to day employment supervision to disparage, humiliate, embarrass, harass, discriminate against anyone on account of race, gender, religion, national origin,

disability, marital status, sexual orientation, social or financial standing, age or ability to obtain representation;

\* \* \*

### **Comment**

\* \* \*

Subdivision (d)(1) & (2) of this rule proscribes conduct or attempted conduct that in many cases is not only prejudicial to the administration of justice but, in many instances proscribed by various Federal and/or State criminal statutes. Accordingly, should a lawyer be found to have committed a violation of this Rule, the lawyer may also be in violation of subsection (b) of this rule. The proscription includes, without limitation, the prohibition against certain discriminatory conduct committed or attempted to be committed by a lawyer and/or members of his staff while those staff members are under his day to day employment supervision. Because a violation of this subdivision may in some instances involve violation of a Federal and/or State criminal statute(s), a lawyer must abide by the same proscriptions while in his private life to maintain good moral character as required of lawyers and in order to avoid possibly violating subsection (b). Such conduct, when directed towards anyone whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, social or financial standing, age or ability to obtain representation, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as traditional notions of equality.

Subdivision (d) of this rule does not prohibit a lawyer from representing a client as may be permitted by applicable law, such as, by way of example, representing a client accused of committing discriminatory conduct or impeaching the credibility of witnesses or challenging fitness in custody or adoption. A lawyer should be on

guard that appeals to a court or jury based on prejudice, social status, or class is not permitted under Florida law. While it is the unquestionable privilege of a lawyer to indulge in all fair argument in favor of the contentions of his client, he may not in argument use language calculated to disparage, humiliate, embarrass, harass, discriminate or otherwise prejudice them against the adverse party.

The Board of Governors of The Florida Bar and the supporting members could not reach a consensus as to the wording of the proposed new rule, Rule 4-8.7. None of the suggested drafts make a lawyer responsible and accountable for discriminatory conduct outside of the lawyer's practice (professional career). I would sincerely hope that any responsible member of the Bar would have problems endorsing a rule prohibiting lawyers from discriminatory conduct that ceased to have force and effect when the lawyer left his office at the end of the day. It must be reiterated that all citizens have a moral obligation to see that the discriminatory attitude of a few is not practiced with impunity and that this sort of dehumanizing attitude is not passed on to our next generation. What better a place to begin then with those whose' job and goal it is to enforce compliance with and promote respect for the laws of our State and Country. I am sure that this Court is satisfied that the ruling issued by the Circuit Judge in the case of Barnett Bank of West Florida v. Nova Law Publications, Inc., would be sufficient to begin and sustain disciplinary proceedings by the Bar against the offending lawyer in that case. Surely, a separate determination which has been solidified by either agency and/or judicial appellate review is not a necessary requisite

before the Bar can take the necessary disciplinary action against a lawyer who is obviously in violation of his obligation to maintain a good moral character.

Proposed Rule 4-8.7, DISCRIMINATION, should be adopted as follows

#### **RULE 4-8.7 DISCRIMINATION**

If a lawyer has knowingly committed, been adjudicated to have knowingly committed or has knowingly permitted any member of his law office staff to commit at any time, a prohibited discriminatory violation, such conduct shall be subject to discipline under these Rules Regulating the Florida Bar.

The finding of such a violation by a court of competent jurisdiction and/or any agency of the State and/or Federal Government, shall be filed by the lawyer within 30 days of the entry thereof, and shall be admissible as prima facie evidence of a violation of these rules.

\* \* \*

#### **COMMENT**

\* \* \*

If a lawyer has been found, adjudicated or held to have committed, at any time, a prohibited discriminatory practice, by a court of competent jurisdiction and/or by an order of a State and/or Federal Agency, such conduct shall be subject to discipline under these Rules Regulating The Florida Bar.

Lawyers as officers of the court enjoy certain privileges and accept corresponding responsibilities. It is especially abhorrent whenever lawyers conducts themselves in a manner that denigrates the public

respect and confidence in the legal systems. Lawyers must set the example for others to follow in their personal and professional lives.

A lawyers's conduct, at any time, which constitutes a prohibited discriminatory practice on account of, without limitation, race ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, social or financial standing, ability to retain counsel or age is intolerable.

The lawyer who has been adjudicated by a court of competent jurisdiction and/or State/Federal agency to have committed a discriminatory violation must file a copy of the final order/adjudication with The Florida Bar within 30 days of the entry thereof. Such an adjudication and/or order shall be prima facie evidence of a violation of this rule. Failure of a lawyer to do so shall be an offense itself within the scope of rule 4-8.4(a) of the Rules Regulating the Florida Bar.

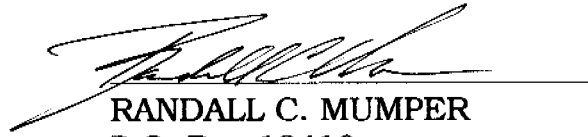
Our society has come a long way in the past twenty five years in an attempt to eradicate centuries old prejudices and resulting discriminatory conduct. It is every Floridian's responsibility to help put an end to any form of discrimination.

It is the responsibility of The Florida Bar and of this court to take the necessary decisive measures that will stop discrimination by members of the Bar, whether in the work-place or in their private lives. The public needs to be protected from lawyers who would succumb to personal prejudices and injuriously discriminate against any member of the public.

This writer respectfully requests oral argument concerning these proposed amendments to the Rules Regulating The Florida Bar.



Respectfully submitted,



RANDALL C. MUMPER  
P.O. Box 13410  
Pensacola, FL 32591  
904/457-6372

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Response of Randall C. Mumper, was served upon the below-listed addressees by U.S. Mail, this 2nd day of February, 1993:



RANDALL C. MUMPER

JOHN F. HARKNESS, JR., ESQ.  
Executive Director  
ALAN R. DIMOND, ESQ.  
President  
PATRICIA A. SEITZ, ESQ.  
President-elect  
JOHN A. BOGGS, ESQ.  
Director of Lawyer Regulation  
THE FLORIDA BAR  
650 Apalachee Parkway  
Tallahassee, FL 32399-2300

BERTRAM SHAPERO, ESQ.  
Suite H  
339 Royal Poinciana Plaza  
Palm Beach, FL 33480-4019

JOSEPH W. LITTLE, ESQ.  
3731 N.W. 13th Place  
Gainesville, FL 34236

JOSEPH C. FERREL, ESQ.  
608 15th Street West  
Bradenton, FL 34205

JOHN R. WOOD, ESQ.  
Suite 460  
240 N. Washington Blvd.  
Sarasota, FL 34236

HENRY P. TRAWICK, JR., ESQ.  
Suite 102  
2051 Main Street  
Sarasota, FL 34230

IN THE SUPREME COURT OF FLORIDA

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

BAR CASE NO. 81,010

**APPENDIX**

- A- Order, Escambia Circuit Court, Barnett Bank of West Florida v. Nova Law Publications, Inc., Case No. 88-4054-CA-01, February 12, 1991.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY FLORIDA  
BARNETT BANK OF WEST FLORIDA,

Plaintiff,

vs.

CASE NO. 88-4054-CA-01

NOVA LAW PUBLICATIONS, INC.,  
et al.,

Defendants.

---

RANDALL C. MUMPER,

Defendant/Cross-Claimant,

vs.

PATRICK C. SOLER, et al.,

Defendants.

---

EMILY LEE MAGARA CLERK  
CIRCUIT COURT AND COUNTY COURT  
IN ESCAMBIA COUNTY FLORIDA  
FILED & RECORDED  
FEB 12 4 12 PM '91

ORDER

THIS MATTER having come before the Court upon Cross-Claimant's, RANDALL C. MUMPER, Emergency Motion To Strike Cross-Claim Defendants' Motion To Strike Sham Pleading, this Court having heard argument of counsel and parties and being otherwise fully advised in the premises, the Court finds that the arguments raised by Cross-Claim Defendants in their Motion To Strike Sham Pleading are not cognizable under Rule 1.150, Fla.R.Civ.P., and that the materials attached to the Motion To Strike Sham Pleading are scandalous in nature and could prove embarrassing to Cross-Claimant. Therefore, it is

ORDERED AND ADJUDGED, that Cross-Claimant's Emergency Motion To Strike is hereby granted and those portions of Cross-Claim Defendants' Response To Cross-claim entitled "Motion To Strike Sham Pleading", the attachments thereto and the affidavit of LARRY W. VALLIA, in support thereof, are hereby Ordered Stricken from the record and Sealed under directions of this Court. Cross-Claim Defendants are hereby admonished not to file similar scandalous and embarrassing materials with the Clerk of the Court in this case.

DONE AND ORDERED in Chambers, at Pensacola, Florida, this 12<sup>th</sup> day of February, 1991.

  
KIM A. SKIEVASKI, Circuit Judge

Conformed Copies To:

✓ BARNE MORAIN, ESQ.  
✓ RALPH H. ATWELL, ESQ.  
✓ RANDALL C. MUMPER

✓

Certified to be a true copy of the  
original on file in this office  
Witness my hand and official seal  
ERNIE LEE MAGAHA  
Clerk Circuit Court and County Court  
Escambia County, Florida  
By: Forrest J. Cameron D.C.  
Date: February 1, 1993