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**FILED**  
SID J. WHITE  
FEB 1 1993  
CLERK, SUPREME COURT.  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

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

CASE NO: 81,010

OBJECTION TO  
JOINT PETITION TO AMEND RULES REGULATING THE FLORIDA BAR  
ON GROUNDS OF CONSTITUTIONALITY  
AND  
REQUEST FOR ORAL ARGUMENT

The undersigned member of The Florida Bar (Number 008308) respectfully objects to the inclusion of the categories of "marital status" and "sexual orientation" in the Proposed Rules on the grounds that the inclusion of said categories in an anti-discrimination rule would violate the Constitutional rights of Florida Bar members to Freedom of Speech, Freedom of the Press, Free Exercise of Religion, and Freedom of Assembly, as found in Sections 3, 4 and 5 of the Declaration of Rights to the Florida Constitution and the First Amendment to the Constitution of the United States, and the Right of Privacy found in Section 23 of the Declaration of Rights to the Florida Constitution and in the penumbra of the 9th and 10th Amendments to the Constitution of the United States, and all of which are subsumed by the Liberty Clause of the 14th Amendment to the Constitution of the United States, as shown by the following:

1. All but one (ie, religion) of the other categories to be protected are based on conduct-neutral physical characteristics which cannot be changed or hidden.

2. On the contrary, the two categories of "marital status"

and "sexual orientation" are descriptions of conduct which can vary widely. At one end of the spectrum is conduct regarded as the ideal of human relationships. At the other end is conduct which is regarded as immoral by the majority of persons in Florida and is made illegal by our Statutes. For example:

a. "Marital Status" means not only single celibacy and marital fidelity but, at the other extreme, means the conduct of an unmarried heterosexual couple in living together and exercising conjugal privileges in violation of Florida Statutes Section 798.01 and 798.02.

b. "Sexual orientation" (connoting teaching/learning) and its now-fading synonym, "sexual preference" (connoting choice) describe not only heterosexuality, but are the currently popular, "politically correct" euphemisms for (the conduct of persons of the same sex who engage in sexual acts with each other, such as sodomy, fellatio, cunnilingus, etc) pedophilia and bestiality, in violation of Florida Statutes Chapter 800.

c. There is no constitutional right to engage in such conduct (*Dronenburg v Zeck*, 1984, App DC, 741 F 2d 3388).

3. In addition to being illegal, such conduct is also regarded as immoral both by persons who base said belief on the teachings of their religion, and by persons who have no formal religious affiliation. Those persons include members of The Florida Bar.

4. Any conduct can be changed or hidden. The purpose of social ostracism against those who engage in conduct the ostra-

cisers regard as illegal or immoral is to use the non-violent sanction of social ostracism to persuade the perpetrators of said conduct to desist therefrom.

5. Those who believe sexual conduct between unmarried persons or persons of the same sex is immoral have a Constitutional right under the clauses cited above:

a. To believe that such conduct is immoral;

b. To speak and write statements attempting to persuade others to share those beliefs;

c. To try to persuade those who engage in such conduct to desist therefrom through the use of social ostracism (under whatever synonym, e.g. boycott, shunning, excommunication, etc).

6. The use of the spoken and written word as a means of persuasion is obviously Constitutional. The use of social ostracism as a non-violent means of persuasion is also Constitutional (NAACP v Claiborne Hardware Co, 1982, 458 U.S. 886, 73 L Ed 1215, 102 S Ct 3409).

7. The Rules as proposed would have a chilling effect on the exercise of these Constitutional rights by members of The Florida Bar who consider such sexual conduct to be wrong.

8. The Rules as proposed would also deprive of their Constitutional rights members of the general public who consider such sexual conduct to be wrong. For example,

a. If a church whose doctrine condemned such sexual conduct wished to employ a law firm whose members shared their beliefs and which did not employ persons engaging in such sexual

conduct (so that church funds would not be used indirectly to support such conduct), they would be unable to find such a firm under the Rules, because all firms would be required to employ persons engaging in such sexual conduct, and fees paid by the church would help fund the salaries of those who engage in such sexual conduct.

b. If members of a church whose doctrine condemned such sexual conduct wished to employ a law firm to assist it in opposing the adoption of a homosexual anti-boycott ordinance or statute, such as the proposed Rules, they would be unable to find such a firm, because any such representation could be construed as "engaging in conduct that is prejudicial to the administration of justice under the Rule" in the eyes of the homosexual community (who seek legal sanctions to criminalize a boycott of themselves by others, but advocate a boycott of their opponents by themselves and their friends, as shown by their present actions in Colorado). Thus the lawyers would be deterred from such representation by fear of disbarment.

9. The passage of the Rules would lead to requests for similar protection by other persons who engage in conduct that many citizens consider to be wrong or immoral. For example, in 1978 Dade County's homosexual community sponsored an initiative and referendum on an Ordinance that included, among a multitude of protected conduct:

a. Membership in an organization. Since the Ku Klux Klan is an organization, the Ordinance would have prevented

Jewish, black, Catholic or other persons or organizations reviled by the Klan from refusing to rent their meeting halls to the Klan for a Klan rally. (While the Klan may be entitled to hold a rally in Davie, as a local Federal Court has recently ruled, the citizens of Davie have a Constitutional right not to attend the rally or rent their private property for such use).

b. Membership in a political party. Since the American Nazi Party was, at the time, a political party, the Ordinance would have prevented Jewish, black, Catholic or other persons or organizations reviled by the Nazis from refusing to employ or rent apartments to the Nazis. (While the Nazis may be entitled to march in Skokie, Illinois, as a Federal Court there ruled, the citizens of Skokie have a Constitutional right not to attend the parade).

c. (It should be noted further that, if any conduct is to be included in the proposed Rules, then failure to include other categories of conduct in the Rules is a discriminatory violation of the equal protection of the laws clauses of Article 1, Section 8 of the Florida Constitution and the 14th Amendment to the United States Constitution unless such omission serves a compelling State interest.)

10. The proposed Rules appear to be aimed solely at relieving those who engage in such sexual conduct from the pressures of social ostracism, particularly in the area of employment. This aim becomes apparent when one considers that:

a. The judge presiding over any case has wide control over

the conduct of litigants and lawyers alike, both inside and outside the courtroom, in areas pertaining to the case; and thus can give the protection afforded by the Rules in court cases without need for the Rules; and

b. The other categories in the Rules (which deal with physical condition and not conduct) are adequately protected now in employment areas by existing State and Federal laws, and thus do not need the Rules for such protection.

c. There is, therefore, no need for the Rules except as an unConstitutional shield for sexual misconduct.

11. While any Constitutional right, including those asserted herein, is subject to regulation because of a compelling State interest, there is no such interest which can be found in the ability to commit sexual acts without being subject to the social ostracism of those who believe such acts to be immoral. This is particularly true where such sexual acts have been declared to be illegal by the people of Florida acting through their Legislature.

#### CONCLUSION

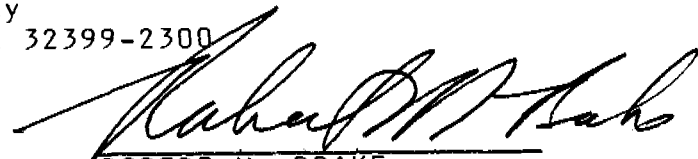
The members of this Court, like the members of The Florida Bar, have taken an Oath to support, uphold and defend the Constitutions of the United States and the State of Florida. The inclusion in the proposed Rule of a ban on boycotts of those who engage in conduct which others consider antisocial, is a violation of those Constitutions. This Court should strike said terms from the proposed Rule.

REQUEST FOR ORAL ARGUMENT

The undersigned requests the Court for permission to participate in oral argument on the above rule.

I hereby certify mailing a copy of the above and foregoing this        day of January, 1993, to

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