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SID J. WHITE

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: RULES REGULATING THE
FLORIDA BAR -- WILLFUL NONPAYMENT
OF CHILD SUPPORT

CASE NO. 84,390

COMMENTS OF THE FLORIDA BAR

By order dated Thursday, November 3, 1994, this court adopted and published an amendment to Rules Regulating The Florida Bar 4-8.4, creating a new subdivision (h), thereof. Said order authorized interested persons or parties to file responses to the amendment and set December 15, 1994, as the deadline for same.

The Florida Bar hereby comments as follows:

1. The court's amendment and relative commentary states:

RULE 4-8.4 MISCONDUCT. A lawyer shall not:

...

(h) willfully refuse to pay a child support obligation as determined by a court of competent jurisdiction.

Comment

...

Subsection (h) of this rule was added to make consistent the treatment of attorneys who fail to pay child support with the treatment of other professionals who fail to pay child support, in accordance with the provisions of section 61.13015, Florida Statutes (1993). That section provides for the suspension or denial of a professional license due to delinquent child support payments after all other available remedies for the collection of child support have been exhausted. Likewise, subsection (h) of this rule should not be used as the primary means for collecting child support, but should be used only after all other available remedies for the collection of child support have been exhausted.

2. This court and its prosecutorial arm, The Florida Bar, have long recognized the fact

that contempt by a member of the bar, irrespective of the type of contemptuous conduct, is improper and been at the forefront of professional discipline for such conduct. This recognition is evidenced by provisions of the Rules Regulating The Florida Bar and the prior Code of Professional Responsibility. See, R. Regulating Fla. Bar 4-3.4(c) and 4-8.4(d)(1987); and Code of Professional Responsibility DR 1-102(A)(5) and 7-106(A).

These rules long predated the legislative enactment of section 61.13015, Florida Statutes (1993).

3. Following the enactment of Fla. Stat. §61.13015 (1993), The Florida Bar undertook a review of the Rules Regulating The Florida Bar to determine if there was a need to propose a specific rule labeling willful failure to pay court ordered child support a violation of professional conduct. Base upon its review the board of governors determined that the existing regulations adequately dealt with such conduct. Accordingly, no additional rule was proposed.

4. The Florida Bar continues to prosecute willful failure to pay court ordered child support. In this respect, the bar requests the court to notice the matter of The Florida Bar v. Phillip Harding Taylor, Fla. Sup. Ct. No. 81,903, currently on appeal before this court.

5. Should the court determine that an additional rule is needed the bar requests consideration of:

(A) alternative language to clarify the application of modifier language so that the amended subdivision will read:

RULE 4-8.4 MISCONDUCT. A lawyer shall not:

....
(h) willfully refuse, as determined by a court of competent jurisdiction, to pay a child support obligation.

(B) amendment of the comment so that language consistent with that of other portions of the Rules Regulating The Florida Bar is employed, as shown:

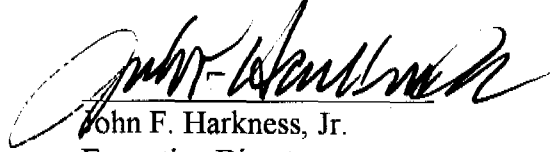
Comment

....
Subsection Subdivision (h) of this rule was added to make consistent the treatment of attorneys who fail to pay child support with the treatment of other professionals who fail to pay child support, in accordance with the provisions of section 61.13015, Florida Statutes (1993). That section provides for the suspension or denial of a professional license due to delinquent child support payments after all other available remedies for the collection of child support have been exhausted. Likewise, subsection subdivision (h) of this rule should not be used as the primary means for collecting child support, but should be used only after all other available remedies for the collection of child support have been exhausted.

(C) consideration of adding language to the court's order clarifying that comment is provided as guidance for application of the rule and is not adopted as is the rule itself. In other rule amendment cases the court has stated:

Committee comments are included for explanation and guidance only and are not adopted as an official part of the rules.

Respectfully submitted,



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