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March 15, 1996

FILED
SID J. WHITE
MAR 18 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

Clerk,
The Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

87,589

Re: Comments (Objections) to the Florida Bar, Board of Governor's Proposed Amendments to the Rules Regulating The Florida Bar
Proposed Rule 10-2.1 (Definitions) Unauthorized Practice of Law

To The Honorable Members of the Supreme Court of Florida:

w/not attend O.A.

The undersigned and his Firm represent, have represented and will in the future represent a myriad of non-lawyer qualified representatives whose professions and avocations will be destroyed if proposed Rule 10-2.1 (copy attached) is adopted in its present form. I respectfully submit these comments (objections) to the over- expansive proposed definitions of the unauthorized practice of law. The challenged amendments raise substantive questions regarding the constitutionality of the proposal. They will not serve the public's interest.

I question the need, wisdom, and authority to adopt proposed Rules 10-2.1(a)(1)(2)(9)(10) and 10-2.1(b). These proposals generally prohibit a non-lawyer from appearing on behalf of another at any quasi-judicial or governmental body or from preparing or drafting (including merely assisting in either) papers utilized in any quasi-judicial or governmental proceeding. Rule 10-2.1(b) provides specific exceptions from the rule.

If adopted, these rules will carve out groups of highly trained, non-lawyer, professionals and lay-persons who have traditionally represented others in quasi-judicial and governmental proceedings. In their places will be inserted lawyers who do not have the necessary knowledge, qualifications, experience and expertise required but which is possessed and traditionally provided by these non-lawyer professionals and lay persons. By adopting the amendments, lawyers will be unnecessarily inserted at additional unwarranted cost to the client and where the lawyers will provide no new or needed protection.

Some of the traditional, non-lawyer professionals and lay-persons who will be precluded from quasi-judicial and governmental proceedings are: engineers, architects, land planners, land use consultants, traffic consultants, appraisers, surveyors and lobbyists. Each is currently highly regulated by government. Each is responsible to the public. Each is subject to strict accountability to their clients by law. These examples are, of course, not all inclusive. There are literally scores of others who will be excluded from continuing their professions/occupations, unless they hire lawyers.

Land Use Development/zoning:

These proceedings have traditionally used non-lawyer professionals such as engineers, consultants, architects, land planners, builders and developers. These persons routinely prepare and process without the assistance of a lawyer land use amendments, rezoning petitions, plats, site plans, delegation requests, paving, drainage, water, sewer or roadway plans, and many other documents which require the approval of federal, state, county and municipal government or quasi-governmental entities. Lawyers do not typically do this work and in many instances are incapable of providing the technical information necessary to do it. State law requires a plat to be prepared and sealed solely by a registered engineer or surveyor. The rule would preclude an engineer from appearing before a governmental body in support of the approval of the very plat the engineer alone prepared.

Similarly, architects, land planners, traffic consultants, accountants, appraisers, surveyors all routinely appear before local and state government representing others. They provide their particular expertise - not possessed by lawyers - and essential to the client. Each is particularly suited to the requirements of these proceedings and there is no necessity for a lawyer to be added, where the client chooses not to hire one.

Our experience shows that the vast majority of the actions taken by government in these areas are conducted through non-lawyers.

Tax Assessments:

Non-lawyer, appraisers, property management experts, and similar specialists routinely appear on behalf of others to question, lower, and challenge property assessments. Employees of large developers, corporate landowners, and group land trusts routinely and effectively handle real property tax assessments every year. This rule will require them to get a lawyer.

Lobbying:

As the Court is aware, the legislature, counties and cities have enacted registration and disclosure laws recognizing and regulating the appearance of lobbyists before their bodies. These statutes and regulations do not require that the lobbyist be a lawyer. The proposed rule will emasculate those statutes and regulations.

Administrative Proceedings:

While the proposed Rule 10.2.1(b)(1) excepts from the definition of the unauthorized practice of law non-lawyers "authorized to engage in the activity by court rule, case law, administrative rule, or rules regulating the Florida Bar", the undersigned is unaware of any such specific authority encompassing the groups above mentioned. Moreover, the Bar has specifically included those non-lawyers now permitted by statute to represent others. Section 120.57(1)(b)4 and 5 already authorize non-lawyer "qualified representatives" to appear on behalf of another in administrative proceedings.

As written, not only are non-agency non-lawyers excluded but a multitude of in house agency non-lawyers who are essential to the operation of the present system itself. The proposed rule is, therefore, unclear as to whether the Bar is delegating to the legislature authority to authorize exceptions (assuming the bar through the court has exclusive jurisdiction over this subject matter). Or, whether the Bar by failing to do so has eliminated the common law, traditionally accepted, and statutorily authorized profession of a lobbyist by precluding their attendance at governmental proceedings, including those before the legislature itself.

The rule, as proposed, would also appear to prohibit non-lawyer corporate heads, condominium association heads, mobile home park presidents, heads of families, etc. from appearing on behalf of their respective corporations/groups/families to lobby the legislature.

CONCLUSION

Adoption of the proposed, challenged rules would not serve the public. It will eliminate non-lawyer qualified representatives in a multitude of areas in which they are particularly suited and needed. These areas have traditionally been reserved for non-lawyers and lawyers. No showing of harm has been made, if these areas remain open to lawyers and non-lawyer qualified representatives. If adopted, additional, unwarranted cost is occasioned to the public. Adoption of the rule as proposed raises serious, substantial constitutional questions.

The undersigned, as a member of the Florida Bar and as a lawyer who has, does or will represent the myriad of non-lawyer qualified representatives, either individually or in groups, respectfully requests that the members of the Florida Supreme Court reject proposed rules 10-2.1(a)(1)(2)(9)(10) and 10.2.1(b) or, in the alternative, remand the matter back to the Florida Board of Governors for further consideration.

Respectfully submitted,

CHARLES L. CURTIS
For the Firm

CLC:mgh

cc: John F. Harkness, Jr., Executive Director
The Florida Bar

Client List