IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE
AMENDMENT TO RULES
REGULATING THE FLORIDA
BAR - 4-6.1 Pro Bono
Public Service

Case No. _____

_____/

COMMENTS DIRECTED TO SUBJECT OF
PROPOSED AMENDMENT

The undersigned Florida Bar member and plaintiff in Case Number TCA 94-40422-WS presently pending in the United States District Court for the Northern District of Florida, THOMAS ROWE SCHWARZ, hereby makes the following comments with respect to the proposed amendment to Rule 4-6.1 of The Rules Regulating The Florida Bar, as provided by the official notice published in the July 1, 1996 edition of The Florida Bar News:

"I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Florida;"

By eliminating mandatory reporting and concomitant discipline, the proposed amendment creates an avoidance of federal court review. Redress of federal constitutional injury to individuals is prevented by the doctrine of "damnum absque injuria". At the federal constitutional level, the amendment proponents can say "It is legal."

The Rule is a legislative undertaking by this Court, which has the full burden of responsibility to "uphold, protect, and defend" the Florida Constitution, both pragmatically and philosophically. What is threatened is the constitutional governmental limitation

of delegated power and the constitutional separation of the exercise of the powers delegated, as a mechanism for maintaining limitations.

The question is: Does the Florida Constitution provide the Judicial Department with the power to operate a bully pulpit for public relations and the solicitation and encouragement of charitable activity? Canons of judicial conduct prohibit judges from solicitation for charity.

The aforementioned avoidance technique to prevent federal review is being utilized to permit blatant political activity by the Court through its agent. The Court does so on subjects of interest to the numberless income-producing sections of its agent. Significantly, there is no Bar section dedicated to constitutional limitations or philosophy.

In restricting the legislature's ability to provide competent licensees for the public use in solving its myriad commercial problems, this Court has been persuaded by its agent attorney (Bar management) to resort to use of so-called 'inherent power" - the doctrine of "le roi est le droit". Alien to the concept of constitutional limitations, this doctrine exempts the Court from challenge to its powers in the state court system by its application of Rule 1-12.

The expansion of the use of Court power denigrates the rights of the body politic to security in the limitation of governmental power from unauthorized invasion. The attorney-proponents of continued expansion of this Court's activity, outside and beyond those

activities directly involving the courts, ought heed the advice of Sol Linowitz quoted in the Florida Bar News of July 15, 1996. As Linowitz suggests, Bar management, acting as this Court's attorneys, can advise it: "The law lets you do it, but don't. It's a rotten thing to do." Honor to principle requires it.

It is indeed frightening when the legal profession fails to remember the philosophical underpinnings of what it has sworn to uphold and protect, and instead adopts the Andre Agassi advertising catchword phrase as its modus operandi: "Image is everything", or the shibboleth of business conduct: "What does the bottom line say".

The entire pro bono Rule should be scrapped.

I HEREBY CERTIFY that a copy of the foregoing was served by mail, on July 29, 1996, on: John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300.

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By: _____
Thomas Rowe Schwarz