

IN THE STJPREME COURT OF FLORIDA
CASE NUMBER 88-646

THE FLORIDA BAR, RE)
AMENDMENTS TO RULES)
REGULATING THE FLORIDA)
BAR • 4-6.1 PRO BONO PUBLIC)
SERVICE)
_____)

RESPONSE TO **THE** REPLY BRIEF
OF THE FLORIDA BAR

Contrary to Petitioner's Reply Brief, the issue before the Court is not "Professionalism and Personal Responsibility."¹ No, indeed. The issue is access to justice for all Floridians. Reporting is a tool, albeit an absolutely vital tool, that lets not only the Court and The Bar, but also the public, measure how well we all live up to our professed professionalism and personal responsibility. The Bar's total focus on the narrow, parochial interests of some of its members, does a grave disservice to the Court and the rest of us who believe that meeting the needs of the public is the far more important goal.

Respondents' also take exception to the major premises of The Bar's argument. The Bar's argument that the 89% reporting rate, despite the moratorium on disciplinary action, demonstrates the lack of need for mandatory reporting, is total supposition, belied by the experience of other states. The Bar glosses over the fact that in Florida, despite the current absence of disciplinary consequences, reporting remains mandatory. The **annual** dues statement, which has not changed despite the moratorium, states: "Each member is required to report on the annual Florida Bar fee statement whether or not *pro bono* legal services were performed

1. Reply Brief, page 3.

during The Bar fiscal year which is (relevant year). Failure to report this information shall constitute a disciplinary offense under these rules.” (Emphasis in original). Thus, it is not surprising that the overwhelming majority of lawyers choose to comply.

In states where lawyers clearly understand that reporting is voluntary, the experience is far different. In Texas, which adopted a voluntary *pro bono* reporting provision in 1993, only 24% of the attorneys reported the first year. In its second year and third year, when reporting became part of the annual dues’ statement, the number of reporting attorneys increased to only 39%. Hawaii’s voluntary reporting rate is even more dismal, amounting to only 10% for the first year. While the percentage of Florida attorneys who would report on a voluntary basis is totally unknown, the Texas and Hawaii experience counsel against a voluntary system.

The Bar’s argument that the disciplinary process would be overwhelmed is truly disingenuous. First, The Bar’s argument that thousands of attorneys would need to be prosecuted for failure to report, is premised on the number of reporting forms returned without completion of the *pro bono* section. Left out is the fact that many dues statements undoubtedly come in incomplete for reasons totally unrelated to a conscious decision not to report *pro bono* activities.² The non-response rate is well within an expected range, particularly for a new rule that has yet to be institutionalized at many firms. A normal follow-up notice, much like that issued for late dues payments, would surely suffice to bring most attorneys into compliance.

Second, The Bar does not pursue those who fail to respond or respond improperly to the trust account questions on the dues statement. Instead, it simply keeps track of those lawyers

2. Most incomplete dues statements seem to be the result of law firm secretaries or bookkeepers being told to return the form with a check.

who improperly respond. If there is a subsequent Bar prosecution for some other Rule infraction, The Bar adds the failure to properly respond to the list of charges. Probably, The Bar would also adopt this approach for those who fail to meet the pro **bono** reporting requirement.

Third, assuming The Bar decided it needed to pursue non-responders, the time and expenses would be minimal. If a routine follow-up letter failed, The Bar's Legal Division could merely send out a boiler plate Order to Show Cause, which would realistically result in substantially total compliance. Assuming a few attorneys still failed to report and disciplinary hearings were required, those attorneys would be required to pay all costs if disciplined. As a result, The Bar's expenses would be minimal and the actual numbers of bar members requiring prosecution would be very small, if any. After all, the intent here is not to punish. The intent is to provide accurate reporting, and to motivate and remind attorneys of the need to provide pro *bono* services.

Despite The Bar's attachment of a variety of Bar News articles, The Bar is unable to point to any type of study, let alone an "extensive study" (Brief, p. 7), or any factual basis, which provides justification for its effort to eliminate mandatory reporting. Its contention that "voluntary reporting will encourage greater participation in *pro bono* activities" (Brief, p. 5) is totally unsupported. The fact is that some lawyers, and eventually the Board of Governors, by a majority of one, moved to repeal the mandatory reporting rule solely because some lawyers dislike having to report.

Since Respondents filed their Response in Opposition to The Florida Bar's Petition, the Standing Committee on **Pro Bono** Services has issued its second Report (hereinafter referred to

as "Report") to the Court. Respondents filed the Report with the Court with a service date of December 13, 1996. The Report evidences the continuing success of the *pro bono* plan. Overall, special *pro bono* projects increased by 32%, with the Fourth, Sixth, Thirteenth, Fourteenth and Sixteenth Circuits reporting substantial increases in the number of projects as well as the number of clients being served.

Unlike The Bar's unsupported suppositions, the leadership of the Circuit Committees, and the Chief Judges and Judges of the various judicial districts, are in the best position to evaluate the reporting mandate as it impacts of the provision of *pro bono* services. Their support for mandatory reporting speaks volumes. For example, Dale Ross, Chief Judge and Chair for 17th Judicial Circuit, stated:

I appreciate that some members of the bar view the reporting requirement as an intrusion into their private affairs. I sympathize with these feelings.

Despite these views, I think reporting has a beneficial statistical purpose. It allows the local committee to track and account for participation levels. It helps us analyze areas of weakness in our local campaign, and affords us an opportunity to motivate participation, in an attempt to equalize the same. Additionally, it allows us an opportunity to identify persons who have made great sacrifices in providing their services, so that we can recognize them.

Report, Appendix I.

Similarly, Lucy Brown, Circuit Judge and Chair for 15th Judicial Circuit, stated:

I am generally opposed to the elimination of the Supreme Court-mandated reporting requirement, because in Palm Beach County (a jurisdiction in which the commitment of the Bar to voluntary *pro bono* service has always been strong) we have, nevertheless, found an increase in *pro bono* participation since the institution of mandatory reporting. We have found that the number of attorneys providing services and making contributions to the legal aid

organizations has increased and a significant number of attorneys have come forward to join the effort specifically motivated by the reporting requirement. Some of these attorneys have reported to me personally that they have found the experience rewarding, and that they had simply not been motivated to step forward and offer service in the past . . .

Report, Appendix J.

Patricia Seitz, a Past President of The Florida Bar, long involved in efforts to promote *pro bono* activities, stated:

I must disagree with the proposal to delete the reporting feature of the Supreme Court's *pro bono* rules for pragmatic, political, policy and leadership reasons. I am concerned it is a lose-lose proposition which will severely undermine (the Bar's) goal of member unification.

The purpose of the reporting feature was to give the judicial branch the most accurate, annual figures of Florida Bar members' commitments and efforts to address a societal, not just a legal, responsibility of providing equal access to the justice system. The revised reporting mechanism on Bar members' annual dues statement provides the simplest, least intrusive way of doing so. These numbers give the Supreme Court, on behalf of the justice system, and (The Bar), on behalf of all Bar members, concrete, reliable data, rather than a statistical sample number based on a member survey which less than 2,700 of our 53,000 members answer only every two years.

Based on my experience, it is a very vocal, and misunderstanding, minority which urged a change. The mechanism is very easy, and very helpful, personally, professionally and politically. I found that once lawyers had the opportunity to understand the purpose and benefits, they were very supportive of it.

Report, Appendix I.

Al Hadcced, County Attorney for Flagler County, and formerly Exccutive Director of Southern Legal Counsel, stated:

Reporting is a minor inconvenience compared to its benefits. It is an annual reminder of duty. It quantifies in one fell swoop our good will to the community at large. And, it stimulates our sense of stewardship for our system of justice that has no equal in the world.

I agree with Reece Smith's observation that a repeal of reporting would signal a broad retreat from providing legal assistance to the poor. This is not the time for retreat.

Report, Appendix L

Conclusion

The minimally intrusive impact of mandatory reporting is far outweighed by the benefit to the public. Lawyers, with their state-sanctioned monopoly, must be held accountable. This Court, the public, the media, the other branches of government, and yes, even The Florida Bar, deserve to know how well we meet our professional obligations. Your Respondents are at a loss to understand how The Bar can take the position that *pro bono* is part of a lawyer's responsibility and that reporting "plays an important role in encouraging and assessing the success of Florida's attorneys in fulfilling that responsibility," but then conclude that mandatory reporting "will not lead to a serious degradation of the significance of quality of data." (Brief, p. 6) The Bar's position defies common sense and logic.

Wherefore, respondents respectfully request that the petition submitted by The Florida Bar be dismissed with prejudice.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **the** foregoing document has **been**
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