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CLERK, SUPREME COURT
By _____
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IN THE SUPREME COURT OF FLORIDA
CASE NUMBER 88-646

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THE FLORIDA BAR, RE)
AMENDMENTS TO RULES REGULATING)
THE FLORIDA BAR -4-6.1 pro bono Public)
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_____)

**RESPONDENT FLORIDA CHAPTER OF THE
NATIONAL BAR ASSOCIATION'S RESPONSE
TO FLORIDA BAR PETITION**

Your Respondent, the Florida Chapter of the National Bar Association, consisting of African American members of The Florida Bar strongly believe that Florida Bar Rule 4-6.1 ("the Rule") maintains the integrity of our legal profession by providing public accountability and is an effective mechanism for the indigents in our state to have access to the Florida courts. Respondent vehemently opposes the Petition of The Florida Bar to amend the Rule by eliminating the mandatory reporting requirement. Furthermore, Respondent supports the Motion to Strike the Petition filed by Talbot D'Alemberte and Alan C. Sundberg.

INTRODUCTION

The continued success and effectiveness of Florida's pro bono plan is more critical today than it was six years ago when this Court re-emphasized the professional pro bono responsibility of Florida lawyers set forth in the oath taken by members of The Florida Bar. See In Re Amendments to Rules Regulating The Florida Bar, 573 So.2d 800,806 (Fla. 1990) (Every lawyer has an obligation to represent the poor and "each lawyer has agreed to that commitment when admitted to practice in this state."). Today, access to the courts for the indigent has been hampered dramatically by the budget cuts imposed on the Legal Services Corporation and the new grant impositions created by Congress. As a result, within the past eight months Legal Services Programs for the indigent in Florida, most of which are federally funded, have laid off many of their attorneys and paralegals, withdrawn from the representation of countless clients and redesigned their priorities to address the new restrictions imposed by Congress. Not only has the Legal Services Corporation provided less money to Florida's Legal Services programs, but it has also limited the types of cases and the kind of representation that Florida Legal Services Programs can provide. Our state has not yet experienced the full impact that the Legal Services Corporation's cuts and restrictions will have on the poor. But clearly, the impact will be traumatic and it will severely limit the access that Florida's poor have to justice.

In this dark hour, it is imperative that members of The Florida Bar rise to the occasion and fill the void created by Congress and the Legal Services Corporation. As members of The Florida Bar this is our season to evaluate the pro bono services we are providing to ensure that the legal needs of the poor in Florida are being met. Instead, The Florida Bar has responded by petitioning

this Court to remove the only vehicle this Court and The Florida Bar has for evaluating the effectiveness of Florida's ~~pro bono~~ pro bono program. The Court has determined that:

[A]ccurate reporting is essential for evaluating this pro bono program and for determining what services are being provided under the program. This in turn will allow us to determine the areas in which legal needs of the poor are or are not being met. Because we **find** that reporting is essential, failure to report will constitute an offense subject to discipline.

Amendments to Rules Reg. The Florida Bar, 630 So.2d 501,502-03 (1993) (emphasis added).

Mandatory reporting was essential in 1993 and is even more essential in 1996 as poor people in Florida are faced with the most compelling roadblocks to the court system to be constructed in the last two decades

In addition to attacking the core provision of the Rule, The Florida Bar's Petition contains no factual or legal support. To the contrary, the Petition fails to address: (a) why mandatory reporting is no longer "essential"; (b) what facts, as they are related to the indigent in Florida and their access to the courts, compel an amendment to the Rule; or (c) any injury mandatory reporting has caused to members of The Florida Bar. In fact, the Petition promotes a negative perception of Florida's lawyers, a perception undeserved by a state bar association that has, with this Court's support, been a leader in establishing legal programs that address the needs of the poor.

FLORIDA'S PRO BONO PROGRAM IS EFFECTIVE

The Standing Committee on Pro Bono Services in its 1995 report recorded the success of Florida's Pro Bono Program. Nineteen judicial circuits in Florida reported a total of ninety-seven (97) pro bono projects that were either created or expanded since the implementation of the Program. More importantly, "[t]he adoption of the new Public Service Rule, Rule 4-6, Rules Regulating The Florida Bar has brought unprecedented focus and attention on and expansion of pro bono legal assistance to the poor." The Standing Committee on Pro Bono Services, Report to the Supreme Court of Florida, The Florida Bar and The Florida Bar Association, page 13 (1995) ("the Report").

The Report details a variety of pro bono projects established throughout the state of Florida and acknowledges that the voluntary pro bono program works. The Florida Bar have responded when they were presented with the real and priority needs of the poor in their communities. In speaking with personnel at Legal Services Programs in our state, the response to the needs of the poor is at its highest level during that time of year when members of The Florida Bar are paying their dues and reporting their pro bono activities. Reporting requirement serves as the conscience of some members of The Florida Bar who for some reason were unable to perform pro bono services during the year. Mark up their checkbooks or call a pro bono coordinator so that they are in a position to report some pro bono participation.

If mandatory reporting gets fifty (50) additional attorneys in this state to make a donation or pick up a case, it is well worth the inconvenience. Actually, that's all pro bono reporting is -- a

five minute inconvenience to members of The Florida Bar to report on one of the commitments made when the oath of admission was taken. Clearly, one of the reasons why Florida's pro bono plan is successful is the mandatory reporting requirement and a mere inconvenience does not justify its deletion.

**MANDATORY REPORTING IS ESSENTIAL IN DETERMINING
THE NEEDS OF THE POOR IN FLORIDA**

The mandatory reporting requirement is essential in assisting members of The Florida Bar and the Court in determining whether the pro bono plan is making justice accessible to the poor. For any goal oriented program to be successful, there must be an effective reporting mechanism. This Court in endorsing the mandatory reporting requirement recognized its importance and stated:

[W]e agree with the [Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal Services to the Indigent in Florida] that in order to evaluate the effectiveness of local government plans for pro bono services, a reporting scheme is necessary., [W]e find that some basic information is necessary in order to properly evaluate the effectiveness of pro bono services and this information should be furnished to the Court with the aid of The Florida Bar.

Amendments to Rules Regulating The Florida Bar, 598 So.2d 4 1 (1992)

The federally funded Legal Services Programs in our state have cut their staffs, are no longer providing legal services to a segment of our poor population that they previously serviced and are no longer permitted to handle a wide range of cases. The implementation of these cuts and restrictions will create a tremendous blockade to the courts and legal representation for hundreds of poor people in Florida. In light of the blockade created by the Legal Services Corporation, members of The Florida Bar must re-evaluate the needs of the poor in Florida and respond to those needs in an effective manner. How can this be accomplished without what this Court has characterized as the most essential element in the evaluation process: the mandatory reporting requirement. See Amendments to Rules Ren. The Florida Bar, 630 So.2d 501,502 (Fla. 1993) (This Court held that reporting is essential for the evaluation of Florida's pro bono program.).

The Standing Committee on Pro Bono Services in its Report to this Court and The Florida Bar concluded:

Even as the required reporting continues to generate debate within the Bar, individual attorneys overwhelmingly responded to the need for accurate information on the lawyers' efforts to address the access needs of the poor and produced over \$121,000,000 worth of reported pro bono service in only its first year. The vision of what can be accomplished through the Voluntary pro bono Attorney Plan is true. With continued commitment and creativity, especially through the circuit committees, the lawyers of Florida can move even closer to a reality of equal access through the fulfillment of a lawyer's pro bono public service responsibility.

Report, supra . 13-14.

This is not the time to eliminate mandatory reporting. This is the time for members of The Florida Bar to be creative in order to respond to the crisis facing poor people in Florida as they are denied access to justice. The members of The Florida Bar must be able to evaluate our pro bono plan to determine whether it is meeting the needs of the indigent. This is an ongoing process and mandatory reporting provides this Court and The Florida Bar with accurate information needed to assess the available resources and implement effective pro bono projects designed to provide equal access to justice for all.

CONCLUSION

The benefits of the mandatory reporting requirement substantially outweigh the inconvenience it creates for individual members of The Florida Bar. The Florida Bar's attempt to eliminate this essential component of Florida's pro bono plan in the wake of the staff cuts and representation restrictions being experienced by Florida's Legal Services Programs is irresponsible. For two decades this Court and The Florida Bar have been national trailblazers in establishing avenues like the IOTA and The Florida pro bono programs, to address the legal needs of the poor. With the information provided through the mandatory reporting, the members of The Florida Bar can not only design effective pro bono projects but also provide compelling statistics which can improve the public image of Florida's lawyers. ✓

Members of The Florida Bar should not limit their concerns to their individual pro bono activities but as a body we need to be accountable to the public. We need to know how well The Florida Bar as an entity is living up to its ethical obligation to serve the poor. With this

knowledge, we can restructure our activities to increase participation and in return make equal justice under the law a reality for the indigent in our state. The importance of mandatory reporting can not be denied, for as this Court has acknowledged, it is essential.

Therefore, Respondent respectfully requests that this Court dismiss with prejudice The Florida Bar's Petition.


Respectfully Submitted,

**THE FLORIDA CHAPTER OF
THE NATIONAL BAR ASSOCIATION**

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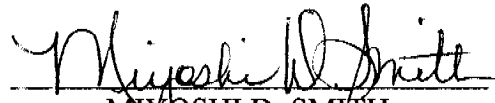
Attorneys for Respondent


By: Miyoshi D. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been mailed this 30th

day of August, 1996 to: JOHN HARKNESS, JR., and JOHN ANTHONY BOGGS, The Florida
Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300


MYOSHI D. SMITH