SUPREME COURT OF FLORIDA

THE FLORIDA BAR

RE: BECKER & POLIAKOFF, P.A. CASE NO. 97,130

BRIEF ON BEHALF OF KATHLEEN BURGENER, PAUL WEAN AND ROBERT TANKEL AS INTERESTED PERSONS

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JURISDICTION

Interested persons agree that this Court has jurisdiction over the subject matter of the Petition filed by BECKER & POLIAKOFF, P.A.

INVOLVEMENT OF THE INTERESTED PERSONS

Each of the interested persons was previously employed as an attorney by Becker & Poliakoff, P.A. (hereinafter B&P), though each held a different status during that employment. Each individual's history and involvement in this matter is as follows:

Ms. Kathleen Burgener: Ms. Burgener was an associate attorney employed by B&P at its main office in Fort Lauderdale from April 1988 to May 1995. She represented clients on an hourly rate basis, not on a contingent fee basis. After she had been with the firm for five years Ms. Burgener was asked to sign the subject employment agreement as part of a "promotion" from the position of associate to the position of "senior associate." Ms. Burgener determined that there were serious ethical concerns raised by the employment agreement and, accordingly, informed B&P that she would not execute the agreement without an official determination by The Florida Bar that paragraph 15 (now paragraph 16) of said agreement was considered to be ethical and not in violation of the Rules Regulating The Florida Bar. Ms. Burgener petitioned The Florida Bar for an advisory opinion and is identified in Advisory Opinion 93-4 as "the inquiring

attorney."

That paragraph of the employment contract, attached as Exhibit A to the Petition, purports to obligate ex-B&P employees who accept proffered employment from former firm clients for two years after termination of employment to thereafter remit to B&P "the greater of fifty (50%) percent of any fee received from said Client or the firm's *quantum meruit*" (Exhibit A to Petition of Becker & Poliakoff, P.A. at page 7).

She was presented with the employment agreement to sign four months after receiving the promotion and a related benefits package. Because of her position as a Grievance Committee member and her concentration in employment law, Ms. Burgener questioned the provision on ethical grounds. When she did not sign the agreement pending guidance from the Florida Bar, B&P stopped her benefits package.

Ms. Burgener subsequently left her employment with B&P (never having signed the subject employment agreement) and is presently employed as an Assistant Attorney General in the Fort Lauderdale office of the Florida Attorney General. Ms. Burgener has consistently maintained her interest in the issues she raised which led to Advisory Opinion 93-4

Mr. Paul Wean: Mr. Paul Wean was originally employed by B&P for two years in its office in Sarasota, and then for five years at its office in Maitland, Florida. Mr. Wean was initially an associate of the firm and subsequently became a "senior associate" in 1991, and a "non equity shareholder" in 1994. However he was required to sign the subject employment agreement while still an associate and as a condition of continued employment, after the firm transferred Mr. Wean to its Central Florida office and after he had completed his relocation. Upon his departure from employment by B&P, Mr. Wean founded his own firm in Orlando which has grown from a

sole practice to a small firm of three attorneys.

Mr. Wean worked at B&P from June, 1988 to September, 1995. All of his work was billed to clients on an hourly rate fee basis, not on a contingent fee basis.

After leaving B&P, B&P made a demand upon Mr. Wean for an accounting and payment of post-employment fees under the employment agreement. Mr. Wean informed the firm that, in light of Advisory Opinion 93-4, it would be unethical and improper for him to remit payment even though he had signed the contract. B&P has informed Mr. Wean that it will sue him for breach of contract immediately upon obtaining a ruling from this Court to the effect that Advisory Opinion 93-4 is wrong and that the provisions of Paragraph 16 are ethical, proper, and enforceable. In essence, the Petition filed herein by B&P seeks a declaratory judgment which would permit B&P to file suit against Mr. Wean.

Mr. Wean has actively participated in the post 93-4 attempts by B&P to have 93-4 nullified. B&P's request for an advisory ethics opinion allowing it to sue Mr. Wean under the agreement was denied by The Florida Bar Board of Governors in April, 1998, on the basis that the decision in Miller v. Jacobs & Goodman, P.A., 699 So. 2d 729 (5th DCA 1997) was not applicable to Mr. Wean because his fees were billed hourly, and were not contingent.

The Petition filed herein specifically discusses Mr. Wean (see Petition Section G, pages 7 through 9) and even attaches as an exhibit Mr. Wean's letter of resignation (see Exhibit J, Petition of B&P). Mr. Wean does not agree that the facts alleged in the Petition are true, but he believes the inaccurate statements are irrelevant to this Court's determination of the issues raised in the Petition.

Mr. Robert Tankel: Mr. Robert Tankel was employed by B&P and was an equity

shareholder in said firm for many years. He joined the firm as a law school graduate in 1982, became an equity shareholder in 1987 and left the firm in October 1995. As a shareholder he signed the employment agreement. Upon his departure from B&P, Mr. Tankel became a member of another law firm in Clearwater, Florida and in January, 1997 formed his own professional association in Dunedin Florida. Subsequent to his withdrawal as a shareholder, B&P made demand upon Mr. Tankel for payment and B&P has also acted to deprive Mr. Tankel of other property rights in related contracts to "punish" Mr. Tankel for leaving the firm and continuing to practice law in the same community as B&P. B&P maintains offices in nearly a dozen major metropolitan centers in Florida, as well as offices outside of Florida.

The Petition filed herein specifically discusses Mr. Tankel (see Petition of Becker & Poliakoff, P.A. at pages 8 and 9). Mr. Tankel does not agree that the facts alleged in the Petition are true but he believes that the inaccurate statements are irrelevant to this Court's determination of the issues raised in the Petition. At all relevant times Mr. Tankel has represented clients on an hourly fee basis and not on a contingent fee basis.

FINANCIAL DISINCENTIVES TO COMPETITION ARE FUNCTIONALLY THE SAME AS PROHIBITED COVENANTS NOT TO COMPETE

Numerous Courts in other jurisdictions have been called upon to determine whether financial disincentives to competition by attorneys are functionally the same as covenants not to compete, i.e. "functional equivalency." See, e.g. Pettigell v. Morrison, Mahoney & Miller, 687 N.E.2d 1237,1238 426 Mass. 253, 254 (Mass. Dec 10, 1997) ("Although we reject the adoption of a per se rule against forfeiture provisions, we agree that the judge properly entered judgment for the plaintiffs. The summary judgment record contains no evidence that the plaintiffs' withdrawal

harmed the firm in a way that this court should recognize, particularly because of the policy underlying DR 2-108(A)"); Schoonmaker III v. Cummings and Lockwood of Connecticut, P.C., 252 Conn. 416, 747 A.2d 1017) (Conn.Super. 2000); Zeldes, Needle & Cooper v. Shrader, 1997 WL 644908, (Conn.Super. Oct 10, 1997); Stevens v. Rooks Pitts and Poust, 682 N.E.2d 1125, 225 Ill. Dec.1997; Anderson v. Aspelmeier, Fisch, Power, Warner & Engberg, 461 N.W.2d 598, 601-602 (Iowa 1990); Cohen v. Lord, Day & Lord, 75 N.Y.2d 95, 551 N.Y.S.2d 157, 550 N.E.2d 410 (NY 1989); Spiegel v. Thomas, Mann & Smith, P.C., 811 S.W.2d 528, 531 (Tenn.1991); Whiteside v. Griffis & Griffis, P.C., 902 S.W.2d 739, 744 (Tex.Ct.App.1995).

There has been great reluctance to adopt the view expressed in Howard v. Babcock, 6 Cal.4th 409, 25 Cal.Rptr.2d 80, 863 P.2d 150 (1993). The Howard case held that a reasonable cost (forfeiture of a majority of accrued benefits) could be imposed on departing partners who choose to compete. The case also allowed reasonable geographic restrictions on future competition. Although B&P relies entirely on this case, its facts are readily distinguishable from the position asserted by B&P. The Petition argues for an unprecedented expansion of the application of Howard; to all attorney-employees, without regard to their equity position; to recovery from future earnings (from legal fees), not merely forfeiture of accrued benefits; to a penalty without regard to the geographic location of the departing attorney. No case, including Howard, has adopted such positions. In Pettigell, where the Massachusetts Supreme Judicial Court expressly declined to adopt a hard and fast per se rule, the Court indicated that economic loss to departing partners may not be based solely on an intent to compete:

> A law firm's legitimate interest in its survival and well-being might justify a limitation on payments to a withdrawing partner in particular circumstances .... but that limitation would be more

> difficult to justify if it applied to a withdrawing partner who competes but not to all departing partners.... Pettigell, at 687 N.E.2d 1239.

Another case accepting the "functional equivalency" analysis is the unanimous opinion of the New Jersey Supreme Court in the case of Jacob v. Norris, McLaughlin & Marcus, 607 A.2d 142 (1992). This case also involved the departure of equity partners. The written agreement also drew a sharp distinction between competitive and non-competitive departures, and provided for a forfeiture of all accrued economic benefits except the right to purchase life insurance, but did not require future repayments to the firm from those who departed.

The New Jersey Supreme Court recognized that direct prohibitions on the practice of law are not permitted, i.e. "a lawyer's clients are neither chattels nor merchandise…" While reasonable restrictive covenants in a commercial setting are permissible,

> [c]ommercial standards may not be used to evaluate the reasonableness of lawyer restrictive covenants. Strong public policy considerations preclude their applicability. In that sense lawyer restrictions are injurious to the public interest. A client is always entitled to be represented by counsel of his own choosing… 607 A. 2d at page 147, citing with approval from Dwyer v. Jung, 133 N.J. Super. 343, 336 A. 2d 498 (Ch. Div.), aff'd, 137 N.J. Super. 135, 348 A. 2d 208 (App. Div. 1975)

Indirect, or financial disincentive provisions, also violate the public policy of client choice. The provision in Jacob barred termination compensation to withdrawing partners who represented firm clients within one year. In declaring this provision void as against public policy, the unanimous New Jersey Supreme Court stated:

> [b]y forcing lawyers to choose between compensation and continued service to their clients, financial disincentive provisions may encourage lawyers to give up their clients, thereby interfering

> with the lawyer-client relationship and, more importantly, with clients' free choice of counsel. Those provisions thus cause indirectly the same objectionable restraints on the free practice of law as more direct restrictive covenants… Because the client's freedom of choice is the paramount interest to be served… a disincentive provision is as detrimental to the public interest as an outright prohibition. Moreover, if we were to prohibit direct restraints on practice but permit indirect restraints, law firms would quickly move to undermine RPC 5.6 through indirect means. 607 A. 2d at pages 148-149.

The Florida Bar Board of Governors considered the issue of whether economic disincentives are equivalent to restrictive employment covenants in Ms. Burgener's case, which resulted in Advisory Opinion 93-4. The Bar determined that a post-employment obligation to pay an ex-employer fifty (50%) percent (or more) of hourly fees constitutes "an impermissible restriction on an attorney's right to practice in violation of Rule 4-5.6(a)...." (Florida Bar Board of Governors Advisory Opinion 93-4 at page 4).

Petitioner has presented no relevant authority for overturning that decision and approving its employment agreement. B&P goes far beyond any agreement considered by the Courts in other jurisdictions, including California's Howard ruling. That ruling was based in part upon California's existing legislative position on partnerships, and is further limited by a rule of reason. Indeed, at footnote 4 of the opinion, the Court noted, "We are not called upon to discuss non-competition agreements affecting employees, as opposed to partners." Howard at 863 P.2d 154.

To a far greater extent than any other case, B&P's agreement seeks to create a substantial financial disincentive to competition from its ex-employees by drawing from their future income without regard to reasonable geographic limitations. The financial disincentive is calculated to discourage the attorney from accepting client representation, since he or she may only receive

payment of not more than one half of the value of the attorney's work for a period of up to two years following departure from employment at B&P. Given B&P's pervasive statewide presence, such a disincentive would present formidable time and place restrictions on the practice of community association law by its many ex-employee attorneys, including the interested persons, should B&P's position be accepted. B&P's contract is, in reality, a restrictive covenant, one that is barred by Rule 4-5.6, Rules Regulating The Florida Bar (which is identical to American Bar Association Model Rule 5.6).

PETITIONER ACTUALLY SEEKS REVOCATION OF RULE 4-5.6 OF THE RULES REGULATING THE FLORIDA BAR

Although the Petitioner has couched the Petition as a belated appeal to reconsider the holding of The Florida Bar in 93-4, that economic disincentives are functionally equivalent to restrictive covenants, the Petitioner actually seeks to have the Court revoke Rule 4-5.6 of the Rules Regulating The Florida Bar. In its Petition B&P reveals its real motive and abandons the argument that a post-employment demand for payment of unearned fees does not implicate Rule 4-5.6. Petitioner argues:

> "In the reality of the modern age the rationale of the California Supreme Court in Howard simply makes sense and this Court should similarly hold that there exists no rational basis for essentially disallowing B&P from entering into non-competition agreements with its attorney-employees, and shareholders as all other professions are permitted to do under Florida Statute §542.33" (Petition of Becker & Poliakoff, P.A. at page 16)

In essence, the Petition suggests that times have changed and requests that this Court exercise its rule making authority and eliminate Rule 4-5.6(a) from the Rules Regulating The Florida Bar. Such a request is far different from the purported purpose of the Petition, in which

the statement of jurisdiction requests this Court "to rescind Florida Bar Advisory Opinion 93-4..." (Petition of Becker & Poliakoff, P.A. at page 1). At best, the Petition is erratic and inconsistent in its approach to the question of what relief the Petitioner is seeking. At worst, it asks this Court to disregard the public's right to be represented by counsel of its choice. Such a provision is unethical because the lawyer is penalized for the client's response to his withdrawal when the client wants the attorney to continue representation of the client. Anderson v. Aspelmeier, Fisch, Power, Warner & Engberg, 461 N.W.2d 598 (Iowa, 1990).

THE MILLER CASE DOES NOT CONTROL THE BECKER & POLIAKOFF CONTRACT

Assuming that the Petition challenges the decision in Advisory Opinion 93-4, it did not do so until publication of the opinion of the Fifth District Court of Appeals in the case of Miller v. Jacobs & Goodman, P.A., 699 So. 2d 729 (5th DCA 1997) in August, 1997. B&P petitioned The Florida Bar on October 17, 1997 (see Exhibit H attached to the Petition of Becker & Poliakoff, P.A.). It argued that the decision in Miller v. Jacobs & Goodman, P.A. obviated or overruled Advisory Opinion 93-4. Its arguments were based upon dicta from the panel which actually vacated enforcement of the employment contract of Jacobs & Goodman, P.A. (see discussion of Miller v. Jacobs & Goodman, P.A. infra). B&P's efforts were rebuffed when the Board of Governors became aware of the significance of the factual distinction between Miller and the facts at issue. Specifically, the clients and cases that were the subject of the Miller case consisted entirely of personal injury claimants represented on a contingent fee basis, while all of the "clients and matters" which were the subject of the B&P contract were miscellaneous corporate

matters represented on an hourly fee basis.[1] The determination by the Board of Governors was clear:

> The Board declined to recede from Florida Ethics Opinion 93-4 (Approved by the Board of Governors February 1995) not withstanding the case of Miller v. Jacobs & Goodman No. 96-480(5th DCA 1997), as the inquiry related to a contract regarding hourly fees. (Letter of Bar Staff Counsel to Petitioner, Appendix Exhibit I attached to the Petition of Becker & Poliakoff, P.A.). [emphasis added]

In reaching this determination the Board of Governors recognized the controlling difference between representation of clients on an hourly fee basis and representation of clients on a contingent fee basis. The interested persons, while employed by B&P, billed for legal services on an hourly fee basis. Pursuant to written fee agreements between B&P and its clients, the clients received invoices for services rendered on a regular (usually monthly) basis and the clients paid the fees to the law firm which rendered the services. As such, prior to any of the interested persons leaving B&P, all services were rendered by that firm, were billed by that firm, and were paid to that firm. When an interested person left the firm and subsequently did work for a client previously represented while employed by B&P, the work was not done by B&P, was not billed by B&P, and in fact the client had no attorney/client relationship with B&P. B&P's claim, originating under its contract, to entitlement to fifty (50%) percent (or more) of the fees for legal services billed to clients for work not performed by B&P constitutes a windfall which is impermissible under the fee splitting rules adopted by this Court that govern Florida lawyers.

In its April 8, 1998 determination that the Miller v. Jacobs & Goodman case has no precedential value overruling Florida Board Ethics Opinion 93-4 because of the difference

[1] "J & G is a plaintiff's personal injury law firm representing clients for a contingency fee." 699 So. 2d at 730.

between hourly rate representation and contingent fee representation, the Board of Governors rejected the same arguments based on Miller that are now advanced in the Petition before this Court. The circumstances of hourly fee representation versus contingent fee representation are so different as to make it impossible to extrapolate from what might be ethically permissible in the contingent fee context to what might be ethically permissible in the hourly rate context. The distinction can be further highlighted by comparing the position of B&P, the involved clients and the interested persons, to the position of the firm, clients and attorneys in the Miller case.

In the case of each and every client representation which was the subject of the Fifth District's decision in Miller, at the time the client terminated the services of Jacobs & Goodman, P.A. and retained the services of Miller & Rand, P.A. no fee whatsoever had been earned or received by reason of that representation. Because each and every case was contingent, there would be no fee due and payable until and unless the contingency occurred. Jacobs & Goodman, P.A. had, at least in theory, a vested contractual interest in the fees when and if the contingencies occurred. Jacobs & Goodman, P.A. required that written contingent fee representation contracts be signed by each client at the commencement of the representation. Such contracts, in conformity with the Rules Regulating The Florida Bar, provided that the client had the right to terminate the contract at will, and also provided that Jacobs & Goodman, P.A. was entitled to a share of fees earned, in the event fees were subsequently earned. In addition, Jacobs & Goodman, P.A. also had a protected common law vested interest in a portion of any fees, as this Court explained in Rosenberg v. Levin, 409 So. 2d 1016 (Fla. 1982). The common law right set forth in Rosenberg allows any Florida attorney representing a client on a contingent fee basis who is terminated without cause prior to the occurrence of the contingency, to claim entitlement as a matter of law to share in the fee on a *quantum meruit* basis. Id. at 1021.

Before the subject provision of the B&P employment agreement even comes into effect B&P has been paid, or has tendered a bill and is awaiting payment, for all of the services which it has performed for that particular client. The departing employee, including the interested persons, has no right whatsoever to bill the client, nor to collect any portion of the fees due from the client for the services performed by him or her while at B&P. B&P's claim to legal fees earned after the client has terminated that firm's representation, for legal work not performed by B&P, must mean that B&P seeks to create a financial disincentive to the employee's representation of clients after departing the firm and/or to claim a continuing interest in the client sufficient to create a commercial entitlement to fees without the concomitant obligation to render legal services. B&P is seeking to be compensated for having once represented the client. To accept the Petitioner's position is to go beyond holding that B& P may seek to claim a goodwill interest in its overall practice, rather, it is to hold that B&P also may claim a continuing interest in its individual clients, and that this alone entitles it to share future fees without rendering legal services. In short, B&P asks this Court to consider clients to be property.

THE MILLER V. JACOBS & GOODMAN DECISION IS INCORRECT

Given the significant difference in contractual fee arrangements between B&P and its clients and Jacobs & Goodman, P.A. and its clients, the Fifth District's decision in Miller has little or no relevance to this Petition. However, aside from the significant contractual distinctions, there are other reasons why Miller should be given no weight whatsoever on the central questions which this Court must address.

First and most obvious, the portion of the opinion cited by the Petitioner is merely dicta in which the panel rejected but one of several arguments put forth by the Appellants to overturn the

Trial Court's Final Judgment for Jacobs & Goodman, P.A. In fact, the Fifth District panel did completely vacate the award of all damages and attorneys fees which had been granted, and remanded the case to the trial court.

Second and more significantly, the portion of the opinion relied upon by the Petitioner is fatally flawed by the Court's reliance upon District Court decisions which had already been overruled or criticized by this Court in Chandris S. A. v. Yanakakis, 668 So. 2d 180 (Fla. 1995). In that case this Court refused to enforce a contingent fee agreement that did not comply with 4-1.5(f)(2) of The Rules Regulating the Florida Bar, holding that agreements which do not comply with the Rules are void as against public policy.[2] Yet the Fifth District did not mention the Yanakakis decision in its opinion and so made no effort to distinguish it from the cases cited. Each case cited in the dicta by the Fifth District Court of Appeals panel had held that "Rule 4-5.6 may not be used to invalidate, or as a defense to, a private contract action." Miller, (699 So. 2d at

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[2] The opinion cites Hessen v. Kaplan, 564 So. 2d 184 (Fla. 3rd DCA 1990), Harvard Farms, Inc. v. National Casualty Co., 617 So. 2d 400 (Fla. 3rd DCA 1993), Lee v. Florida Department of Insurance and Treasury, 586 So. 2d 1185 (Fla. 1st DCA 1991) and Kaufman v. Davis & Meadows, P.A., 600 So. 2d 1208 (Fla. 1st DCA 1992), all of which were decided prior to this Court's opinion in Yanakakis. In Yanakakis, this Court states

> In support of his position, Yanakakis cites a number of cases where the District Courts have found contingent fee agreements to be **enforceable** despite some violation of the Rules Regulating the Florida Bar that govern such agreements. *See e.g., Harvard Farms, Inc. v. National Casualty Co., 617 So. 2d 400 (Fla. 3rd DCA 1993)* (fact that oral contingent fee violated R. Reg. Fla. Bar 4-1.5(f)(1), (2) did not make it void under Florida law) .... We do not agree with and thus expressly disapprove, this line of cases to the extent they may be read to hold that a contingent fee contract which does not comply with the Code of Professional Responsibility or the Rules Regulating The Florida Bar is enforceable by an attorney who claims fees based upon a non-complying agreement. 668 So. 2d 185.

732). In light of this Court's opinion in Chandris v. Yanakakis, published some three years after the date of the publication of the last of the opinions cited by the panel, it seems clear that the cases relied on in Miller have no remaining precedential value. In fact, this Court's opinion in Yanakakis very clearly holds that a lawyer may not enforce a contract which is not in conformance with, or which violates, the Rules Regulating The Florida Bar. A contrary holding on this Petition would overrule Yanakakis and would emasculate the Rules Regulating The Florida Bar by telling Florida's attorneys, with little more than a wink and a nod, that it is permissible to enforce unethical contracts in court. By failing to recognize the effect of this Court's opinion in the Yanakakis case on the case of Harvard Farms and the other opinions it cited, the Fifth District's opinion is fatally flawed.[3]

PUBLIC POLICY CONSIDERATIONS REQUIRE A REJECTION OF A CLAIM OF IMPAIRMENT OF CONTRACT

As to the Impairment of Contract argument, the interested persons support and adopt the position of the Florida Bar and add this additional comment: the case relied upon by B&P in its Petition actually supports the position of the Florida Bar.

Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979) arises from the legislative regulation of recreational leases in condominiums. In that case only one contractual relationship was involved, between the developer and condominium buyers. In this instance, however, two separate contracts are involved, one of which has been the subject of longstanding judicial regulation. The primary contractual relationship, which B&P ignores, and

[3] Chandris v. Yanakakis was cited in the Appellants' initial brief to the Fifth District Court of Appeal in Miller v. Jacobs & Goodman, P.A. as well as in the Appellants' reply brief. Counsel is unaware of any reason or explanation for the Panel's failure to note this Court's express disapproval of that line of cases.

to which the employer-employee contract is distinctly subservient, is the attorney-client contractual relationship. Under the analytical framework used by the United States Supreme Court in Allied Structural Steel Co, v. Spannus, 438 U.S. 234, and adopted by this Court in Pomponio, one of the three key factors to be examined in evaluating the degree of contractual impairment is:

> Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state? Pomponio, Id. at 778.

Historically, the attorney-client contractual relationship and the practice of law in general have been the subject of broad governmental regulation, regulation which is expressly written into the Florida Constitution and embodied in the Rules Regulating the Florida Bar.

A second analytical factor is, " [w]as the law enacted to deal with a broad, generalized economic or social problem?" Id. In this regard the Court stated that an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. Id. The important policy rationale behind the Rules Regulating the Florida Bar is nothing less than the protection of the public in its dealings with our justice system.

B&P would have this Court abandon two of the three prongs of the impairment test - both prongs sounding in considerations of public policy - in favor of a single test that measures only the private impact of the regulation. To the extent that B&P chooses to argue that "times have changed" and directs the Court's focus only to aspects of the practice of law that relate to commerce, they ask this Court to overturn important and historical policies underpinning the Rules themselves; underpinnings relating to the administration of justice. The Court, therefore, needs to ask itself, whether times have changed so much that protection of clients in their

dealings with lawyers and due regard for our system of justice are no longer of greater concern than the private economic interests of a large law firm.

REMAINING POINTS RAISED IN THE PETITION

The interested persons adopt herein as their own the portions of the Florida Bar's response sections on Equal Protection, Due Process, and Estoppel.

CONCLUSION

The interested persons respectfully submit that the Petition of Becker & Poliakoff, P.A. should be denied. If the Court grants relief, however, the interested persons request that the Court determine that given the long-established public policies that are being altered, it would be manifestly unjust that such relief operate retroactively.

Respectfully submitted this 25th day of September, 2000

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by courier to the following this 25th day of September, 2000:

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