IN THE SUPREME COURT OF FLORIDA

Case No. 03-105

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION

COMMENTS OF INTERESTED PARTY DAVID A. DEMERS CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT IN SUPPORT OF AMENDMENTS TO RULE OF JUDICIAL ADMINISTRATION 2.060 WITH RECOMMENDED AMENDMENTS

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STATEMENT OF THE CASE AND FACTS

The Rules of Judicial Administration Committee published notice of proposed amendments to the Rules of Judicial Administration in the December 15, 2002, edition of The Florida Bar News. The notice invited comments on the proposed amendments by January 15, 2003. A letter from Chief Judge Demers was forwarded to Judge Peter Webster on January 13, 2003, providing comments and suggested amendments to Rule 2.060(b). Notwithstanding the published notice, the Rules of Judicial Administration Committee was unable to consider the suggested amendments prior to its submission to this Court.

David A. Demers is the Chief Judge of the Sixth Judicial Circuit. Under Rule of Judicial Administration 2.050 he exercises administrative supervision in the circuit and is responsible for supervising members of The Florida Bar employed by the Sixth Judicial Circuit. The Sixth Judicial Circuit employs attorneys in many different capacities, including staff attorneys, court counsel, case managers, program attorneys and deputy court administrators.

SUMMARY OF ARGUMENT

The proposed amendments to Rule of Judicial Administration 2.060(b) are a welcome addition, however, several clarifications to the proposed amendments are recommended. The proposed amendments to Rule of Judicial Administration 2.060(b) address three issues.

The proposed amendment to Rule 2.060(b) includes specific authorization for attorneys employed and designated by the court to represent the court and to represent a judge in the judge's official capacity. This authorization should be expanded to include the authority to represent a court employee in the employee's official capacity.

The general prohibition on practicing law while employed as a research aide or secretary should be clarified. All persons employed by the court should be prohibited from practicing law while employed by the court, not just staff attorneys, law clerks, and judicial assistants.

The general prohibition on post employment representation of parties should include all persons employed by the court, not just staff attorneys, law clerks, and judicial assistants.

If the Court adopts these recommended changes, the catchline should be amended to conform.

ARGUMENT

I. When designated by the court, attorneys employed by the court, should be able to represent the court, a judge in the judge's official capacity and a court employee in the employee's official capacity.

Rule 2.060(b) proposes new language to make it clear that attorneys designated by the court may provide representation to the court or to any judge in the judge's official capacity. This is a welcome addition and conforms to the current practice. Attorneys employed by the court have been required to provide such representation. This may arise, for instance, in situations where there is insufficient time to obtain representation by the Attorney General or where the Attorney General has a conflict. This proposed amendment, however, does not go far enough because it overlooks the necessity to provide representation to court employees. Currently, the court counsel for the Sixth Judicial Circuit may provide representation for the Sixth Judicial Circuit, for judges in the circuit, and for court employees. For employees, this usually arises in the context of the employee being subpoenaed to testify and often involves a party seeking privileged testimony. To address this issue, the proposed language should be amended as follows:

> Any attorney designated by the court may represent the court, any court employee in the employee's official capacity, or any judge in the judge's official capacity, in any proceeding in which the court, the employee, or the judge is an interested party.

II. The prohibition on practicing law while employed as a research aide or secretary should be clarified.

The amendments to Rule of Judicial Administration 2.060(b) proposed by the Rules of Judicial Administration Committee replace the former terms "research aide or secretary" with the terms "staff attorney, law clerk, or judicial assistant." The language in the current rule needs to be updated, however, the phase "no one employed by the court" would more broadly address the types of attorneys who it appears this rule is intended to cover. For instance, an attorney employed as a deputy court administrator who supervises case managers would not be prohibited by the proposed rule from representing a client in court while employed by the court.[1]

To address this issue, the proposed language should be amended as follows:

> Except as otherwise provided, no one employed by the court ~~serving as a staff attorney, law clerk, or judicial assistant to a justice or judge of any court~~ shall practice as an attorney in any court or before any agency of government while continuing in that position.

III. The prohibition on post employment representation of parties should include all persons employed by the court.

The amendments to Rule of Judicial Administration 2.060(b) proposed by the Rules of Judicial Administration Committee add language to make it clear that attorneys cannot provide representation in connection with a matter in which the attorney participated personally and substantially as a judicial staff attorney, law clerk, or judicial assistant. This appears to conform to Rule Regulating the Florida Bar 4-1.11 regarding conflicting representation by government lawyers. Again, this is a welcome change, however, it should not be limited to staff attorneys, law clerks, or judicial assistants. The court employs lawyers in other capacities and if an attorney participated substantially in a matter before the court, the attorney should not be able to leave the employment of the court and represent a party in that matter.

To address this issue, the proposed language should be amended as follows:

> An attorney shall not represent anyone in connection with a matter in which the attorney participated personally and substantially ~~as~~ while employed by the court, ~~a judicial staff attorney, law clerk, or as a judicial assistant.~~

IV. The catchline should be amended to conform.

If the court adopts the recommendations to expand the application of this rule to all persons employed by the court, the catchline should be amended to read: **(b) Persons Employed by the Court ~~Clerks and Secretaries~~ Not to Practice.**

CONCLUSION

For the above stated reasons, this Court should adopt the amendments to Rule of Judicial 2.060(b) as proposed by the Rules of Judicial Administration Committee with the clarifications noted herein.

Respectfully submitted this _____ day of March, 2003.

____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of COMMENTS OF INTERESTED PARTY DAVID A. DEMERS CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT has been furnished to John F. Harkness, Executive Director, The Florida Bar, 650 Apalachee Pkwy., Tallahassee, FL 32399; The Honorable Peter D. Webster, Chair Rules of Judicial Admin. Comm., First District Court of Appeal, 301 S. Martin Luther King, Jr. Blvd., Tallahassee, FL 32399-1850 by U.S. Mail this ________day of March 2003.

____
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Times New Roman 14 point font, and complies with the requirements set forth in Rule of Appellate Procedure 9.210(a)(2).

____
B. Elaine New

[1] This proposal does not specifically include an exception for the attorneys providing representation in the Guardian ad Litem program in anticipation of the program being moved from the judicial branch.