Lisa B. Vessels, CP
11710 S.W. 119TH PLACE ROAD
MIAMI, FL 33186

November 24, 2006

VIA EMAIL AND FEDERAL EXPRESS

Mr. Thomas Hall
Clerk of Court
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1927

RE: Case No.: SC06-1622
The Florida Bar for Proposed Rule 20 – Florida Registered Paralegal Program

Dear Mr. Hall:

Please accept this letter as public comment or *pro se* reply to the Response filed by The Florida Bar on November 2, 2006 (the "Response") in the above-referenced matter now pending before the Florida Supreme Court.

REPLY

While The Florida Bar (the "Bar") stated the "comments of Linda Vessels [sic] ... echo the comments of Mr. Workman or the South Florida Paralegal Association," (*Response* at p. 6) there are several issues raised in the Bar's Response to which I believe a reply is appropriate.

The Bar also indicated that "[a]ll comments filed by members of The Florida Bar ... support passage of the rule." (*Response* at p. 1) The Bar neglects to recognize those members of the Bar who testified at the Public Hearing held on October 28, 2005 that supported a mandatory, paralegal regulation, as well as a judge (*See Appendix D, Part 2 to Petition* at p. 131 - Barry Puet; at p. 143 - Judge Ellen Lorenzen: in favor of guidance from the Bar as to what is considered appropriate to charge as recoverable paralegal fees; at p. 167 - Jim Dickson; beginning at p. 173 - Barbara Entwistle; beginning at p. 178 - Dr. George Salis) and have not filed a public comment to the petition to reverse their position. The efforts of those persons who attended the Public Hearing should not be discarded, as their personal appearance to speak should carry as much weight, if not more than those submitting a short letter via email and U.S. Mail.

Even among those attorneys appearing at the public hearing who stated opposition to regulation, there are contradictory statements made within their own testimony. (*See Appendix D, Part 2 to Petition* at pp. 85-90 and pp. 206-223.)

Sandra Diamond states, "...support for efforts to regulate persons who call themselves paralegals that are often engaged in unsupervised and unlicensed practice of law," but in the next sentence states support for, "voluntary regulation," but opposition of "...mandatory programs and legislation or rules which would restrict who an attorney might hire by limiting how an attorney

might bill for that service." (*See Appendix D, Part 2 to Petition* at p. 89.) With all due respect to Ms. Diamond and the group she represented, mandatory regulation would engage those persons not already voluntarily submitting themselves to the standards proposed in the Rule through state-wide paralegal professional organizations. In essence, she advocated the reverse of what the Bar is proposing: mandatory compliance for those who may commit the unlicensed practice of law and a voluntary program for everyone else. As the proposed Rule distinctly outlines in the first paragraph, it is not intended to limit how an attorney might bill for a service which would alleviate the concern with regard to restriction for billable tasks for paralegals. If the proposed Rule is mandatory for all, there would be no question as to whom it is applicable. The Chair of the Committee, Mr. Goodman, points out the oxymoron of a "voluntary, mandatory" program, and draws an analogy to the Bar's pro bono program, as an example. (*See Appendix D, Part 2 to Petition* at p. 92.)

Meredith Brasca affirms, "...support for those who are opposing the need for regulation," but later in her comments proposes, "...regulation of persons who provide assistance within the legal industry." (*See Appendix D, Part 2 to Petition* at p. 209.) Ms. Brasca goes on to outline a a proposed distinct title hierarchy defined by education and training. (*See Appendix D, Part 2 to Petition* at p. 210-211.) Ms. Brasca also highlights that the lack of standards or requirements for those calling themselves paralegals is "disturbing." (*See Appendix D, Part 2 to Petition* at p. 210.) Again, with all due respect to Ms. Brasca and her counterpart, Dean Graver, who is also recognized as an attorney and which she was speaking on behalf of, their proposal sounds like support for mandatory regulation to my ears.

The Bar also touts the support of passage of this proposed Rule by the Paralegal Association of Florida, Inc. ("PAF") As a member of the South Florida Paralegal Association, Inc., ("SFPA") I attended a special meeting to specifically address the issue of reversing our association's position with regard to the Bar's proposal and our historical position on paralegal regulation, and our organization overwhelmingly voted against compromising on key elements of any proposed paralegal regulation – voluntary or mandatory. As you will note in the Public Hearing transcript, Penny Bell spoke on behalf of PAF, and noted the organization's polling of members and the two-thirds to three-quarters of their membership were in favor of paralegal regulation. (*See Appendix D, Part 2 to Petition* at p. 116.) Ms. Johnna Phillips, President of PAF, filed a public comment letter which directly contradicted PAF's position in support of the proposed Rule which is materially different from the mandatory paralegal regulation which PAF has advocated in the past. Just last week I spoke with a member of PAF's West Palm Beach Chapter who stated there was no poll taken of the membership with regard to their support for this reversal before PAF advocated its support. While I realize this conversation is hearsay, I believe there is a genuine issue to be addressed as to whether or not the administration of PAF elected to support this compromise on their own volition or by a mandate of their membership.

The Bar has given itself wide latitude with the interpretation of what falls under its purview as officers of this Honorable Court. If it is determined that the Bar is within its boundaries to regulate another profession, the impact of the Bar putting forth a defined standard should not be casually regarded as if it were another professional association with which one might associate themselves. There should not be two standards issued by an "arm of this Court," but one defined standard which is mandatory for all.

It is not a stretch of the imagination to recognize that five district committees reporting to one designated reviewer all appointed by The Florida Bar's Board of Governors (*Petition* at p. 8) could potentially be problematic for anyone who is not a member of The Florida Bar. The Bar fully intended in its proposal to be the beginning and the end of the oversight, but the *fait accompli* was the last sentence of the paragraph describing the disciplinary review process: "The board is the last level of review." (*Petition* at pg. 9.) However, in its Response the Bar contradicts itself by attempting to now say that since the Bar is under this Court's oversight, that its proposal *would* have this Court's oversight, but the Bar fails to address the lack of direct involvement of those who qualify under this proposal to interact with this Court, or even the administrative process with the Bar for even the most basic functions as participating in the process for appointments to the proposed District Committees. The Bar's proposal refers to the amendment process "in accordance with the procedures set forth elsewhere in these rules." (*See Appendix A to Petition, Rule 20-10.1* at p. 16). Rule 1-12.1(a) and (b) defines The Florida Bar Board of Governors (the "Board") as having discretionary authority to amend certain rules and the Supreme Court of Florida having authority to change all others, then it would be this Court that would have the authority to change this proposed Rule, but upon who's proposal if not their own? Rule 1-12.1(b) defines only members of the Bar may propose Rule changes to the Board. Rule 1.12-1(g) provides the opportunity for 50 members in good standing to petition the Supreme Court of Florida for a rule amendment, but there is still no provision for non-members, and that is an insurmountable obstacle to governing another profession, whether it is voluntary regulation or not. There must be some mechanism to include those that qualify under this proposed Rule to participate in the administration governing their own profession.

Again, the Bar contradicts itself by mentioning in its Response that it has formed a "Florida Registered Paralegal Program Committee" which is very similar in makeup to the "Paralegal Regulation Board" suggested by myself among others. (*Comments of SFPA*, p. 11.) The presentation of the "FRP Program Committee" in the Bar's Response (*Response* at p. 9) leads the reader to believe that this will be a permanent fixture of the administrative review and implementation for this program. Is the proposal in the Petition being amended, or just is this just a "[t]ransitional panel" as reported in *The Florida Bar News* on October 15, 2006? Mark D. Killian, Transitional panel created in anticipation of paralegal rule at http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/67d04ccd77063c128525720200590b69?OpenDocument. If this committee is intended to be a permanent replacement for the "designated reviewer" as defined in the proposed Rule, it would be an improvement, and kudos to the Bar for recognizing a change was needed in this portion of their proposal. But although the Bar's Response goes into great detail about this committee, it fell short of identifying it as a permanent replacement of the designated reviewer in their Petition, and further highlights the changes which could be made by the Bar in this program at its whim, and reinforces the need for the participation of those who will be governed by the proposal, as well as independent review by the Florida Supreme Court.

The Bar also states that the North Carolina program is similar to the one proposed by this Rule which gives the authority to attorneys in that unified bar to regulate paralegals. What they neglect to mention is that authority was granted by enabling legislation which specifically amended Chapter 84, §23 of the General Statutes of North Carolina to provide for this oversight,

and Chapter 84 §37 of the General Statutes of North Carolina to provide for the disciplinary action which specifically outlines the venue for relevant actions under this section shall be the, "...superior court of any county in which the relevant acts are alleged to have been committed or in which there appear there appear reasonable grounds that they will be committed in the county where the defendants in the action reside, or in Wake County." The Bar correctly points out that the Wisconsin proposal is pending, but fails to note the long-term study which the paralegals and attorneys engaged in before presenting its proposal to the superior court for approval.

As an adjunct instructor for an introductory paralegal studies course offered as part of a paralegal studies certificate program, part of my students regular curriculum requires the study paralegal regulation. The resulting discussion provided some unique insight and easy solutions to some of the issues raised in the Bar's Response.

After reading the Bar's proposal, the initial reaction of the students was bewilderment when I explained that the filing was publicized in *The Florida Bar News.* Many wondered why the Bar did not engage the public more directly. The consensus was although the Bar followed the procedure in place to publicize this proposal to their own members, because the proposal impacted a group outside its own membership which does not have a uniform method of contact, publicizing the proposal only in *The Florida Bar News* did not meet a standard that reaches outside its own membership, and a more universal publication should have supplemented the notification of the Bar's proposal.

The students were puzzled as to why the Bar excluded certificate programs like theirs. I pointed out in the Bar's Petition, where the committee drafting the proposal felt it was too difficult to "quantify the quality" of the paralegal certificate programs, and therefore excluded them all. (*Petition* at p. 6.) The students questioned this logic, and one inquired as to the acceptance of the certificate they would earn by the National Association of Legal Assistants ("NALA") or the National Federation of Paralegal Associations ("NFPA") as a qualification to sit for their exams, and I acknowledged their certificate program met these organization's nationally-recognized standards. She wondered how the Bar's proposal could accept the NALA or NFPA certification, but exclude the same certificates which qualify the candidates for those exams from their proposal. An easy solution to a hotly contested issue in this debate – adopt NALA and NFPA's definition for certificate programs, and accept those certificate programs approved by the U.S. Department of Education and the American Bar Association. There is already an accepted, national standard for paralegal certificate programs, and it should be included in the Bar's proposal.

The students asked what was necessary to qualify as a Tier 1 paralegal and we reviewed the definition found at Rule 10-2.1(b) of the Rules Regulating the Florida Bar. It was noted the definition is subject to the interpretation and application of each individual member of the Bar, which is precisely why paralegal associations in Florida had sought a defined, mandatory standard which would be applied to all paralegals (*See Appendix D, Part 2 to Petition* at pp.19-43 – testimony of Vera Long on behalf of the Florida Alliance of Paralegal Associations). Eventually, I had to clarify that the term Tier 1 Paralegal is a bit of a misnomer. The concept was somewhat confusing because under the Bar's proposal a Tier 2 paralegal would be required to register, and be subject to disciplinary actions, but their Tier 1 counterparts would not, so

naturally the students wondered how this could be a standard at all. When one student finally exclaimed: "This means nothing!" I asked the students to think about the effect of the Bar's voluntary proposal should it be approved.

What would this proposal mean in the long-term if approved as it stands now? If someone is looking for a standard to apply for the definition of a paralegal in Florida, which would they be likely to apply - the Tier 1 standard, or the Tier 2 standard? All agreed the Tier 2 standard would be the one that law firms would boast about, and anyone looking for a standard to apply would use Tier 2 because the Tier 1 definition did nothing to clarify the vague standard which currently exists. Perhaps some law firms may even require Tier 2 registration as a condition of employment, thereby making the intended voluntary program a *de facto* mandatory regulation.

Sincerely,

/s/ Lisa B. Vessels
Lisa B. Vessels, CP
Certified Paralegal

cc: All persons on attached Service List