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Amendments to Rules Regulating The Florida Bar

CHIEF JUSTICE: ANOTHER RELATED CASE. AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR. COUNSEL MAY PROCEED.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS NATASHA PERMAUL, AND I AM HERE TO SPEAK ON THE AMENDMENTS. THE RULES OF REGULATION, EXCUSE ME, WERE PROTECTED BY REGULATION, FOR PARTICIPATING IN LEGAL SERVICES FOR THE POOR, IN A PLAN OF PARTICIPATION AT THAT TIME. IT HAS BEEN EIGHT YEARS SINCE THE IMPLEMENTATION OF THE PLAN, AND THE COMMITTEE HAS NOW RECOMMENDED ORDER TO THIS COURT THAT THE DEFERRAL BE REMOVED, BECAUSE WE HAVE SUBSTANTIAL EVIDENCE THAT GOVERNMENTAL LAWYERS WHO ARE PROHIBITED BY STATUTE, RULE OR REGULATION, ARE PROVIDING PRO BONO LEGAL SERVICES TO THE COURT. GOVERNMENT LAWYERS WITH LEGAL PROHIBITIONS HAVE DETERMINED THAT THERE ARE WAY TO SAY PROVIDE PRO BONO LEGAL SERVICES TO THE POOR AND NOT VIOLATE THE STATUTE, RULES OR REGULATIONS THAT APPLY TO THEM.

BUT AREN'T THERE SOME GOVERNMENT LAWYERS WHO ARE, IN FACT, NOT PROVIDING THESE KINDS OF SERVICES, BASED ON THE STATUTES AND RULES AND REGULATIONS?

YOUR HONOR, I BELIEVE THAT THERE IS CONFUSION AS TO WHAT THE DEFINITION OF LEGAL SERVICES TO THE POOR INCLUDE. THE CHOICE HAS BEEN MADE THAT, TO BE CAREFUL NOT TO STEP ACROSS THE LINE, BUT WHAT THE REGULATIONS ACTUALLY SAY IS THAT THE ATTORNEYS CANNOT ENGAGE IN THE PRIVATE PRACTICE OF LAW.

I GUESS I AM CONCERNED WITH THE TOTAL REMOVAL OF THAT PARTICULAR LANGUAGE, IF THERE IS, IN FACT, OUT THERE, ATTORNEYS, GOVERNMENT ATTORNEYS, WHO ARE PROHIBITED, BASED ON ANY KIND OF RULE OR REGULATION, SO WHY DO WE NEED TO ELIMINATE THE LANGUAGE TOTALLY?

ONE, BECAUSE THIS COURT HAS DETERMINED THAT THERE ARE MANY POOR PEOPLE WHO HAVE UNMET LEGAL NEEDS, AND WHEN, SINCE WE SEE THAT GOVERNMENT ATTORNEYS WHO HAVE THE RULE ARE DOING PRO BONO LEGAL SERVICE, THERE IS NO MADE FOR -- NO NEED FOR THE RULE ANY LONGER, IF THEY ARE PERFORMING THE SERVICE, BECAUSE THEY ARE NOT VIOLATING THE STATUTES OF THE RULES THAT REGULATE THEM.

BUT THEN IT GOES BACK TO OTHERS WHO ARE NOT PERFORMING THESE SERVICES, BASED ON THEIR UNDERSTANDING OF WHAT THE STATUTE AND RULES SAY.

I BELIEVE THEY ARE NOT PERFORMING IT, BECAUSE THEY ARE NOT CLEAR, NOT BECAUSE THEY BELIEVE THEY ARE PROTECTED. THEY WANT TO MAKE SURE THAT THEY ARE NOT ENGAGED IN THE PRACTICE OF PRIVATE LAW OR GIVING ADVICE TO SOMEONE OTHER THAN THEIR EMPLOYER. I BELIEVE THEY WOULD DO THAT, IF THE COURT REMOVALS -- REMOVES THE DEFERRAL.

I AM CONCERNED THAT REMOVING LANGUAGE DOESN'T SOLVE THE PROBLEM OF CLARIFYING. LET'S TAKE A COUNTY ATTORNEYS OFFICE. IS THERE, ARE THERE ANY STATUTES THAT WOULD GOVERN WHAT CAN OCCUR, COUNTY BY COUNTY, FOR COUNTY ATTORNEYS?

IT VARIES, DEPENDING UPON EACH COUNTY ATTORNEYS OFFICE.

AND YOU HAVE SOME, NOW, THAT HAVE MADE VERY CLEAR, THROUGH THEIR COUNTY ATTORNEYS OFFICE, WHAT THEY CAN DO, WHAT THEY CAN'T DO, AND THAT SEEMS TO BE WORKING OKAY. IT IS JUST I THINK THE PROBLEM I AM HAVING IS SOMEHOW IF WE REMOVE THIS LANGUAGE, WITHOUT THEN CLARIFYING, YOU KNOW, THE ATTORNEY GENERAL'S OFFICE MAY BE ONE SITUATION, THE STATE ATTORNEY IS ANOTHER. THE PUBLIC DEFENDER IS ANOTHER. ARE WE JUST IGNORING THAT THERE IS STILL GOING TO BE PROBLEMS FOR THOSE ATTORNEYS, IF WE DON'T, IF WE ARE NOT MORE SPECIFIC IN WHAT WE SAY?

I THINK THAT THE COURT HAS BEEN SPECIFIC. YOU HAVE GIVEN DIRECTION IN THE COMMENT, TO RULE 4.6-1. ALSO, IN THE ACTIVITIES LISTED IN 4-6.5. THE COURT HAS GIVEN A LOT OF DIRECTION ON ACTIVITIES THAT CAN BE PERFORMED BY THESE ATTORNEYS. IT WOULD NOT REQUIRE THEM TO VIOLATE THOSE STATUTES. THEY ARE DOING THE WORK.

LET'S TAKE, LIKE THE FIFTEENTH CIRCUIT STATE ATTORNEYS OFFICE. I KNOW THEY HAVE A PROGRAM WHERE THEY GO AND THEY GO INTO SCHOOLS AND THEY HELP TEACH, AGAIN, THE STUDENTS, AND THAT IS NOT PRO BONO LEGAL SERVICES, SO NOW WE ARE GETTING BACK TO IS THAT SOMETHING THAT YOU WOULD ENVISION WOULD BE PART OF WHAT AN ASSISTANT STATE ATTORNEY COULD DO BUT IT IS NOT REALLY WHAT WOULD QUALIFY AS PRO BONO LEGAL SERVICES FOR A PRIVATE PRACTICE ATTORNEY?

I THINK IT DOES QUALIFY, IF IT IS AT A PUBLIC SCHOOL, WHERE YOU ARE GOING TO WANT TO IMPROVE ACCESS TO JUSTICE AND, TWO, WHERE YOU ARE SPEAKING TO THE POOR OR WORKING POOR.

IS THAT THE SAME FOR ANY ATTORNEY COULD REPORT THAT? COULD IT HAVE THAT AND THAT WOULD BE INCLUDED?

CERTAINLY, YOUR HONOR.

SEE, I THOUGHT THAT WE WERE, REALLY HAD VERY NARROWLY DEFINED PRO BONO LEGAL SERVICES, SO THAT WE WOULD ENCOURAGE LAWYERS AROUND THE STATE TO ACTUALLY TAKE ON EITHER THE REPRESENTATION OF SOMEBODY THAT WAS UNREPRESENTED, AS OPPOSED TO THE SORT OF GENERIC COMMUNITY SERVICE TYPE OF THING THAT I SEE, LIKE MENTORING OR THAT TYPE OF ACTIVITY FALLING INTO.

WELL, WHAT WE HAVE DONE IN ORANGE COUNTY, IS PREFERENCE IS GIVEN TO GOVERNMENT ATTORNEYS AND JUDGES, TO PERFORM IN THOSE ACTIVITIES FIRST, BECAUSE WE HAVE TO SIGN UP ANNUALLY, SO THEY DO HAVE PREFERENCE FOR THOSE ACTIVITY THE -- THOSE ACTIVITIES THAT ARE NOT GOING TO REQUIRE THEM TO TAKE CASES. THEN IT IS OPENED OPENED UP BROADER, AFTER THOSE -- THEN IT IS OPENED UP BROADER, AND THOSE PERSONS HAVE SELECTED THEIR ACTIVITY FOR THE YEAR.

YOU HAVE IN ORANGE COUNTY, BECAUSE IT IS A REQUIREMENT FOR THE BAR ASSOCIATION AS WELL AS SOMETHING THAT ORGANIZED, WHERE PEOPLE THERE, IS ONE CLEARINGHOUSE WHERE EVERYBODY SELECTS ACTIVITIES?

YES. THERE IS. IT IS THAT ORGANIZED. THE ATTORNEYS, THEY CAN STILL DO INDIVIDUAL SERVICE. HOWEVER, THERE IS A CLEARINGHOUSE FOR ACTIVITIES, IF YOU SO CHOOSE TO USE IT.

THIS IS SOMETHING THAT IS DONE BY THE VOLUNTARY BAR ASSOCIATION.

YES, SIR.

ORANGE COUNTY BAR.

YES, SIR. THE LEGAL AID SOCIETY HAS A PRO BONO COORDINATOR, AND THAT IS WHAT THEY DO. BUT IT IS DONE, BUT THE, BUT THE WAY THAT IT WORKS IS THAT, IN ORDER TO BE A MEMBER OF THE VOLUNTARY BAR ASSOCIATION, THE PERSON COMMITS TO DOING TWO PRO BONO CASES A YEAR OR MAKING THE CONTRIBUTION.

ACTUALLY, WHAT YOU COMMIT TO, IS PERFORMING SOME SERVICE AS IDENTIFIED BY THE PRO BONO COORDINATOR. WE HAVE PROGRAMS, SUCH AS TEEN COURT. WE HAVE PUBLIC BENEFITS ASSISTANCE, WHERE YOU GO EVEN TO LIKE A NURSING HOME, WHERE AN ELDERLY PERSON NEEDS OTHER ASSISTANCE, AND YOU JUST HELP THEM FILL OUT THE PAPERWORK, AND YOU FILE IT, AND THAT PERSON IS, YOU KNOW, RECEIVES A LETTER. WE HAVE THE GUARDIAN AD LITEM PARALLEL. WE HAVE THE EARNED INCOME CLINIC AND EARNED INCOME CREDIT CLINIC, EXCUSE ME, WHERE POOR PEOPLE CAN COME AND FIND OUT HOW TO APPLY FOR THOSE TAX BENEFITS.

WE NEED TO COME BACK, THOUGH, TO THE ISSUE THAT YOU ARE PRESENTING TO THE COURT NOW.

YES.

THIS EXEMPTION HERE. ONE OF THE QUESTIONS WOULD BE, SINCE WE ARE TALKING ABOUT ORANGE COUNTY, HAS THIS EXEMPTION OR DEFERRAL, HAS OUR PRO BONO RULE IN ANY WAY INTERFERED -- PRO BONO RULE IN ANY WAY INTERFERED WITH GOVERNMENT ATTORNEYS IN ORANGE COUNTY MEETING THE VOLUNTARY REQUIREMENTS?

IT HAS NOT INTERFERED WITH THE MEETING IT. I BELIEVE THE COURT WANTED TO ENCOURAGE MORE ATTORNEYS TO PARTICIPATE, THERE FOR BY HE COURAGING ACCESS TO JUSTICE FOR THOSE WHO ARE POOR AND THE WORKING POOR, BY REMOVING THE DEFERRAL FOR GOVERNMENT ATTORNEYS, THOSE WHO ARE SOMEWHAT HESITANT ABOUT PARTICIPATING NOW KNOW THAT THE COURT IS ENCOURAGING THEM TO PARTICIPATE IN THE PROGRAM.

DOES ORANGE COUNTY BAR GIVE GOVERNMENT LAWYERS ANY KIND OF DEFERMENT AS IT WERE, IF A GOVERNMENT LAWYER WANTS TO JOIN THE ORANGE COUNTY BAR, AND SAYS, LOOK, I AM PROHIBITED BY STATUTE FROM DOING THESE ACTIVITIES THAT YOU HAVE LISTED HERE. WILL THEY BE, THEN, NOT BECOME A MEMBER OF THE ORANGE COUNTY BAR ASSOCIATION?

NO, YOUR HONOR. WE ARE ALL REQUIRED TO PERFORM THE SERVICE. THERE IS NO EXEMPTION FOR ANYBODY. IF YOU BECOME A MEMBER, YOU HAVE TO PERFORM SERVICE.

BUT THERE IS THIS WIDE ARRAY OF SERVICES THAT ARE OPTIONS.

SIR, IN 1993, IT WASN'T AS WIDE AS IT IS NOW, BUT WHAT HAS HAPPENED IS GOVERNMENT LAWYERS HAVE JUST FOUND WAY TO SAY WORK WITH THE PRO BONO COORDINATORS, WITH THE CIRCUIT PRO BONO COMMITTEES, TO DO ACTIVITIES, BUT THEY HAVE, WE HAVE INCREASED THE AMOUNT OF ACTIVITIES IN THE LAST EIGHT YEARS. SO THAT --

THERE ARE SOMEWHAT INCONSISTENT ANSWERS HERE, IF I UNDERSTAND IT, BECAUSE YOU ARE SAYING THAT, AT LEAST IN THE ORANGE COUNTY'S CASE, THIS IS NOT, HAS NOT BEEN A PROBLEM, THE FACT THAT THERE IS A DEFERRAL OR EXEMPTION IN THE RULE, HASN'T BEEN A PROBLEM IN ORANGE COUNTY FOR GOVERNMENT LAWYERS SERVING, AND YET YOU ARE SAYING YOU WANT TO GET THE EXEMPTION OUT AND REMOVE THE PROBLEM, AND SO AT LEAST IN THE ORANGE COUNTY, I AM HAVING DIFFICULTY WITH YOUR RESPONSES TO OUR QUESTION.

IN ORANGE COUNTY WE KNOW THAT GOVERNMENT ATTORNEYS WHO HAVE THE PROHIBITIONS, THEY ARE PERFORMING SERVICES THROUGH OUR ORGANIZED BAR, WHICH MEANS WE DON'T NEED THE DEFERRAL.

BUT MAYBE, LET ME GO BACK, MY CONCERN IS THAT, AND I HAVE TO GO BACK TO THE 1993 OPINION, JUSTICE OVERTON'S MAJORITY OPINION WAS VERY SPECIFIC THAT THEY DIDN'T WANT TO DEFINE PRO BONO SERVICES BROADLY, SO THAT PEOPLE WOULD BE JUST DOING THIS OTHER KIND OF THING. NOW, IF WE NEED TO CHANGE THAT FOR ALL THE MEMBERS OF THE BAR, THEN THAT IS SOMETHING THAT IS NOT BEFORE US, BUT I AM CONCERNED THAT WHAT YOU ARE SAYING IS, IF IS THAT, FOR GOVERNMENT LAWYERS TO DO PRO BONO LEGAL SERVICES, WE WOULD HAVE TO DEFINE PRO BONO LEGAL SERVICES IN A VERY BROADWAY.

I THINK THE COURT, WHEN -- IN A VERY BROAD WAY.

I THINK THE COURT, WHEN JUSTICE OVERTON SAID THEY WERE GOING TO NARROW THE SCOPE, THAT WAS A NARROWING TO DISTINGUISH LEGAL SERVICES TO THE POOR FROM GENERAL COMMUNITY SERVICE. BY GOING TO A GENERAL ROTARY CLUB MEETING, ONE MAY NOT ENSURE OR IMPROVE THE ACCESS TO JUSTICE, OR SOMEHOW HELP A POOR PERSON OR A WORKING POOR PERSON, BUT YOU KNOW THAT YOU ARE DOING THAT, WHEN YOU GO AND PARTICIPATE IN THE GUARDIAN AD LITEM PROGRAM.

CHIEF JUSTICE: WE HAVE GOT TO WATCH YOUR TIME.

I AM SORRY. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: ALL RIGHT.

MAY IT PLEASE THE COURT. JOHN HAMILTON ON BEHALF OF THE LEGAL AID SOCIETY OF THE ORANGE COUNTY BAR ASSOCIATION. PART OF WHAT I WAS GOING TO SAY HAS ALREADY BEEN ALLUDED TO BY THE COURT SO I WON'T DWELL ON THAT, BUT I DID WANT TO MAKE THE POINT THAT WE HAVE OVER 40 YEARS OF EXPERIENCE HERE AS AN EXAMPLE. GOVERNMENT LAWYERS HAVE NEVER BEEN DEFERRED FROM THE MANDATORY REQUIREMENT OF THE ORANGE COUNTY BAR ASSOCIATION REGARDING PRO BONO AND AS FAR AS I KNOW THERE IS NO INDICATION THAT ORANGE COUNTY ORANGE COUNTY LAWYERS ARE MEETING UNETHICAL BEHAVIOR IN PROVIDING THESE SERVICES.

ARE SOME ARGUABLY IN YOUR OPINION DEFINED?

SOME ARE AND SOME ARE NOT. WHEN WE HAVE LAWYERS ENGAUGING IN THE EARNED INCOME CLINIC, WHERE THEY ARE COUNSELING ONE TO ONE WITH INDIGENT CLIENTS TAX QUESTION. I THINK THAT REALLY DOES SQUARELY FALL WITHIN THE COURT'S DEFINITION IN 1993. OTHERS MAY NOT. OTHERS ARE CLOSER TO THE EDGE.

BOTTOM LINE, YOU ARE SAYING THAT IT IS WORKING VERY WELL IN ORANGE COUNTY, BECAUSE OF THE MANDATORY REQUIREMENT IN THE ORANGE COUNTY BAR ASSOCIATION, REQUIREMENTS.

AND WE HAVE A LARGE CHUNK OF OUR BAR MEMBERSHIP BEING GOVERNMENT LAWYERS, SO THERE IS AN EXAMPLE TO LOOK AT OUT THERE.

BUT DO YOU KNOW WHAT THAT GROUP IS, IN COMPARISON TO THE TOTAL NUMBER OF GOVERNMENT LAWYERS THAT MIGHT BE IN ORANGE COUNTY? I MEAN, YOU COULD HAVE 2 PERCENT OF THE LAWYERS, AND THAT, GOVERNMENT LAWYERS BEING MEMBERS OF YOUR ASSOCIATION, AND THAT MAY SEEM LIKE A LARGE NUMBER, BUT IN ACTUALITY IT MAY AND SMALL NUMBER, COMPARED TO THE TOTAL NUMBER OF GOVERNMENT LAWYERS IN THE AREA.

I DON'T KNOW THE PRECISE NUMBERS. I DO KNOW THAT HE THE PERCENTAGE OF LAWYERS IN ORANGE COUNTY WHO ARE BAR, OCBA, ORANGE COUNTY BAR ASSOCIATION MEMBERS, PRETTY HIGH. IT IS A RARE LAWYER IN ORANGE COUNTY WHO IS NOT AN OCBA MEMBER, AND THEREFORE

IT IS A RARE LAWYER IN ORANGE COUNTY WHO IS NOT OBLIGATED TO HIMSELF OR HERSELF, TO THIS MANDATORY PRO BONO REQUIREMENT.

CHIEF JUSTICE: OKAY. YOU WANT TO SAVE SOME TIME FOR REBUTTAL.

THANK YOU, YOUR HONOR.

GOOD MORNING. GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. INITIALLY, I HAD A CHANCE DURING THE BREAK TO EXTEND MY CONGRATULATIONS TO JUSTICE WELLS ON HIS RETENTION. LET ME EXTEND THAT TO YOU AS WELL, MR. CHIEF JUSTICE.

THANK YOU VERY MUCH.

I AM ANTHONY MUSTO, HERE ON BEHALF OF THE LAWYERS OF THE FLORIDA BAR, AND I THINK THAT PERHAPS SOME OF COMMENTS WERE REFLECTED BY JUSTICE PARIENTE, AND IF I CAN PARAPHRASE THAT A BIT, THIS IS ESSENTIALLY A CHANGE TO CHANGE THE PRO BONO REQUIREMENT TO A PUBLIC SERVICE REQUIREMENT. IT IS A MATTER TO EXPAND IT IN A MANNER THAT IS A DEFINITION THAT THE ORANGE COUNTY BAR ASSOCIATION HAS ADOPTED. THAT IS NOT WHAT THIS COURT'S PRO BONO REQUIREMENT IS ABOUT, AND IT GOES BACK TO, AS WAS NOTED BY JUSTICE PAR YEMENT, THE VERY DEFINITION THAT -- PARIENTE, THE VERY DEFINITION THAT WAS ADOPTED IN JUSTICE OVERTON'S OPINION, WHERE HE SAID THAT THIS COURT IS SPECIFICALLY ADOPTING A NARROW PROVISION. AND THAT GOES BACK TO CASES, IT GOES BACK AS FAR AS THE DB CASE THAT I CITED IN 1980, WHICH TALKS ABOUT THE WHOLE UNDERLYING PURPOSE OF THAT, AND THAT IS BECAUSE WE, AS LAWYERS, ARE IN A UNIQUE POSITION. WE ARE THE ONLY PEOPLE WHO CAN WALK PAST THAT BAR AND COME INTO A COURTROOM AND REPRESENT PEOPLE, AND THEREFORE WE HAVE A UNIQUE OBLIGATION. MANY OF THE ACTIVITIES, AND IF YOU LOOK AT PAGE, I BELIEVE, 12 AND 13 OF THE REPORT, THEY TALK ABOUT THE TYPE OF ACTIVITIES GOVERNMENT LAWYERS HAVE DONE AND THE REASONS FOR THIS RATIONALE. THE MOST PREVALENT ONE IS TEEN COURT. TEEN COURT, I AM SURE SOME OF THE TEENAGERS THAT ARE INVOLVED IN IT ARE POOR BUT THAT IS NOT WHAT THIS COURT'S PROPOSAL IS B IT IS NOT WHAT PRO BONO IS ABOUT. THEY TALK ABOUT GUN SAFETY EDUCATION. THEY TALK ABOUT SCHOOL OUTREACH PROGRAMS, YOUTH EDUCATION, SEVERELY-ILL CHILDREN PROJECTS. THESE ARE ALL WONDERFUL THINGS. WEER FIRMLY BEHIND THOSE SORTS OF THINGS. WE ENCOURAGE LAWYERS OF ALL SORTS TO DO THEM, BUT IT IS NOT WHAT THE PURPOSE OF THE PRO BONO RULE IS ALL ABOUT. AND IF YOU START ALLOWING THAT, YOU GO DOWN A SLIPPERY SLOPE, BECAUSE HOW DO YOU SAY NO TO THE LAWYER THAT COACHES THE LITTLE LEAGUE TEAM AND SAYS, HEY, I TALK TO THEM, I KEEP THEM OFF THE STREETS, I TELL THEM NOT TO TAKE DRUGS. HOW DO YOU SAY --

I GUESS THE THING IS ALLOWING IS SORT OF A STRANGE WORD. WE HAVE MANDATORY REPORTING, BUT TO MY KNOWLEDGE, NOBODY IS REALLY GOING BACK AND SAYING, WELL, YOU REPORTED 20 HOURS, BUT WE ARE STRIKING TWO OF THEM, BECAUSE THEY DON'T QUALIFY. IT IS JUST WE HAVE GOT THE HONOR SYSTEM HERE, AS TO WHAT IS GOING ON, AND THE, FROM THE POINT OF VIEW OF THE GOVERNMENT LAWYERS, IF THE STANDING COMMITTEE IS RECOGNIZING THAT THERE CAN BE A BROADER DEFINITION FOR GOVERNMENT LAWYERS, TO ALLOW THIS TO BE ACTIVITIES THAT DO IMPROVE THE ACCESS TO JUSTICE --' RIGHT.

-- WHAT IS, WHERE IS THE DOWN SIDE OF IT?

LET ME GIVE YOU THREE EXAMPLES I JUST TALKED ABOUT. FIRST OF ALL, IT IS INCONSISTENT WITH THE PURPOSES OF THE PRO BONO LUL -- RULE, BECAUSE THE PRO BONO RULE IS REGARDING ACCESS TO THE POOR, ONLY ONE THING. THAT SERVES GOOD PURPOSES BUT IT DOESN'T SERVE THAT PURPOSE, AND SPECIFICALLY WHEN IT WAS ADOPTED, NOT WHEN THE RULE WAS ADOPTED BUT IN THE PRIOR OPINION THAT ADOPTED THE CONCEPT AND DRAFTING OF THE RULE, THE COURT NOTE THE SPECIFICALLY IT WAS REJECTING A PROPOSAL BY THE BOARD OF

GOVERNORS TO ADOPT AN EXPANDED VERSION THAT WOULD INCLUDE OTHER SERVICES PROVIDED BY LAWYERS THAT AID THE POOR. SO YOU HAVE ALREADY REJECTED THIS CONCEPT IN THE FIRST PLACE, AND AS I SAID, THAT WHOLE THEORY IS UNDERLYING AND GOES ALL THE WAY BACK TO DB IN 1980.

WHAT IS IT, REALLY, THAT THE GOVERNMENT LAWYERS WANT THE COURT TO DO?

OKAY. BASICALLY WE WOULD LIKE YOU TO DENY THE REQUEST TO ELIMINATE THE DEFERRAL FOR PRO BONO, FOR GOVERNMENT LAWYERS. THAT IS THE SHORT ANSWER. ON A BROADER SCALE, I WOULD LIKE TO SEE YOU WRITE AN OPINION THAT ENCOURAGES THE BAR TO GO FORWARD WITH LOBBYING EFFORTS TO AT LEAST AT THE STATEWIDE LEVEL, CHANGE THE PROHIBITIONS.

BUT WHAT, LET'S JUST, WHAT PROHIBITION -- GO AHEAD. FINISH WITH THAT.

ACTUALLY I WANT TO GO BACK TO YOUR QUESTION, BECAUSE I GAVE YOU ONE OF THE THREE RESPONSES THAT I WANTED TO GIVE YOU. NUMBER TWO, WAS THAT IN THE OPINION ADOPTING THE PRO BONO RULES, THIS COURT, ALSO RESPECT DISCUSSED THE PUBLIC RECEIVES REQUIREMENTS, AND YOU SAID SPECIFICALLY, ALTHOUGH OTHER PUBLIC SERVICE BY THE LEGAL PROFESSION IS IMPORTANT, NO AUTHORITY EXISTS FOR THIS COURT TO ADDRESS UNCOMPENSATE THE PUBLIC -- UNCOMPENSATED PUBLIC SERVICE NOT DIRECTLY RELATED TO THE NEEDS OF THE POOR, SO YOU DON'T HAVE THE AUTHORITY TO DO IT, AND THE THIRD AND I THINK THE PRACTICAL ONE AND I THINK PERHAPS THE MOST IMPORTANT ONE IS THIS IS A TWO-EDGED SWORD. AS JUSTICE PARIENTE SAID BEFORE, IF YOU EXPAND THIS, IT APPLIES TO ALL LAWYERS, AND WHAT YOU MAY GET IS A INCREASE IN THE NUMBER OF PUBLIC SERVICE HOURS PERFORMED BY GOVERNMENT LAWYERS, BUT YOU ARE ALSO GOING TO HAVE ALL OF THOSE NONGOVERNMENT LAWYERS, THE 50,000 OR 60,000 OUT THERE WHO SAY OH, I CAN MAKE THIS REQUIREMENT IN THIS MANNER OR THAT MANNER, INSTEAD OF ACTUALLY HANDLING CASES, AND I SUBMIT TO YOU THAT, IF YOU EXPAND IT THAT WAY, THE BOTTOM LINE WILL BE AN OVERALL REDUCTION IN THE NUMBER OF HOURS SPENT ACTUALLY HANDLING CASES FOR THE POOR, BECAUSE ALTHOUGH THERE IS NOT A SYSTEM WHERE WE GO BACK AND SAY WE ARE STRIKING TWO HOURS AND SO ON, THE FACT IS THAT LAWYERS IN GOOD FAITH WILL, THEN, SAY, WELL, YES, MY WORK FOR THE CHURCH COUNTS. MY WORK FOR THE LITTLE LEAGUE COUNTS. I SERVE ON THE BOARD OF DIRECTORS OF OUR COMMUNITY REDEVELOPMENT AGENCY. THAT IS GOING TO COUNT. GOVERNMENT LAWYERS ARE GOING TO SAY I AM MEETING THIS, AND YOU ARE GOING TO END UP WITH LESS ACTUAL REPRESENTATION FOR THE POOR, BY EXPANDING THIS.

DO WE NEED TO ADDRESS AT ALL, THE FACT THAT THERE ARE GOVERNMENT LAWYERS WHO ARE, IN FACT, PROVIDING PRO BONO SERVICES? OR DO WE JUST LEAVE IT TO EACH INDIVIDUAL GOVERNMENTAL OFFICE, TO DECIDE WHAT SHOULD BE DONE?

WELL, I THINK THIS COMES BACK TO I THINK THE FIRST COMMENTS THAT YOU MADE DURING THE PETITIONER'S PRESENTATION STHARX I THINK THERE ARE ALWAYS GOING TO --, IS THAT I THINK THERE ARE ALWAYS GOING TO BE SOME RESTRICTION INS PLACE SOMEWHERE. THE PETITIONERS HAVE TALKED ABOUT, INDIRECTLY, 27.015, WHICH IS THE STATUTE DEALING WITH ATTORNEYS, WHICH SAYS THAT THE FULL-TIME PRACTICE OF LAW AND OUTSIDE PRACTICE IS PROTECTED, BUT THERE ARE ALSO REGULATIONS BY VARIOUS AGENCIES. THERE ARE ALSO LOCAL GOVERNMENT RULES AND SO ON. WHEN THE PETITION OR WHEN THE RULE WAS ORIGINALLY ADOPTED, THIS COURT URGED THE BAR TO GO FORWARD AND TO TRY TO CHANGE THESE RULES. WE HAVE HAD LIMITED SUCCESS. WE HAVE DONE SO AT THE LOCAL LEVEL TO SOME EXTENT. IT HAS NOT BEEN DONE ON THE STATEWIDE LEVEL. THE SECTION'S POSITION IS IT SHOULD BE DONE, BUT IT HAS GOT TO BE DONE BY THE LEGISLATURE. THE LEGISLATURE NEEDS TO PASS A STATUTE THAT SAYS, NOTWITHSTANDING OTHER STATUTES AND RULES TO THE CONTRARY, GOVERNMENT LAWYERS SHALL NOT BE PRECLUDED FROM ENGAGING IN PRO BONO LEGAL SERVICES AS

DEFINED BY THE COURT, AND WHAT I WOULD LIKE TO SEE YOU DO IS WRITE AN OPINION THAT DENIES THE PETITION AT THIS TIME BUT ENCOURAGES THE BAR TO GO OUT AND LOBBY IT. WE, AS A SECTION, HAVE ASKED THE BAR TO DO THIS. THE BAR HAS DECLINED SO FAR. THEY HAVEN'T OPPOSED IT. THEY SAID GO OUT AND DO IT. WE ARE THE GOVERNMENT LAWYERS SECTION. WE CAN'T HIRE A LOBBYIST, WE CAN'T DO IT, AND THAT IS WHAT I WOULD LIKE YOU TO DO. I WILL PROBABLY FINISH BEFORE MY TIME EXPIRES.

CHIEF JUSTICE: YOU ARE WATCHING YOUR TIME.

CHIEF JUSTICE: YOUR COLLEAGUE IS IN DISTRESS.

IN THAT CASE, I WOULD BE MORE THAN HAPPY TO TURN IT OVER TOM AND HE IS ACTUALLY GETTING TWO MINUTES MORE THAN HE BARGAINED FOR. [LAUGHTER]

CHIEF JUSTICE: WE ARE SURE THOSE AREN'T BILLABLE HOURS.

I THINK WE TAKE JUDICIAL NOTICE THAT THAT IS HIS NATURAL STATE. [LAUGHTER]

I CONGRATULATED JUSTICE WELLS. DO I HAVE FIVE MINUTES LEFT OR TWO MINUTES LEFT? WHAT HAVE I GOT HERE?

MR. MARSHAL.

I HAVE SEVEN MINUTES. I AM SORRY. I THOUGHT YOU TOLD ME I ONLY HAD FIVE.

WE ARE NOT GOING TO LET HIM GET BACK UP THERE. GO RIGHT AHEAD.

THAT IS GOOD. GOOD MORNING. I WELCOME YOU, ALL OF YOU ALL, TO A NEW TALLAHASSEE, WITH AMENDMENT 9 IT IS GOING TO BE NEW, I ASSURE YOU. I CONGRATULATE BOTH OF YOU ALL FOR YOUR REELECTION TO OFFICE, AND I WANT YOU TO KNOW THAT YOU DID THAT IN SPITE OF MY SUPPORT, SO I AM REALLY CONGRATULATING YOU. I AM HERE ON BEHALF OF THE STATE ATTORNEYS OF FLORIDA. I AM BUDDY JACOBS, GENERAL COUNSEL FOR THEM FOR, NOW, 32 YEARS, AND I HAVE BEEN THROUGH THE CYCLE OF PRO BONO DISCUSSIONS ON A COUPLE OF OCCASIONS, AND WOULD JUST SUBMIT TO YOU THAT WE ARE A BIT DIFFERENT AS LAWYERS IN FLORIDA. WE ARE PART OF ARTICLE V, WHERE THE PROSECUTORS ARE SUPPOSED TO SEEK JUSTICE, AND IF WE ARE INVOLVED IN THESE KINDS OF THINGS, YOU ARE GOING TO HAVE TO CHANGE THE RULE. CERTAINLY WE HAVE THE PROHIBITION IN CHAPTER 27 THAT PROHIBITS STATE ATTORNEYS FROM PRACTICING LAW IN A PRIVATE FASHION. AND WE, AS ASSISTANT STATE ATTORNEYS, WE ARE, THEN, THE ALTER EGOS OF OUR BOSSES, AND THE RULE SAYS THAT EACH MEMBER OF THE BAR IN GOOD STANDING, AS A PART OF THAT MEMBER'S PROFESSIONAL RESPONSIBILITY, SHOULD RENDER PRO BONO LEGAL SERVICES TO THE POOR AND PARTICIPATE TO THE EXTENT POSSIBLE, IN OTHER PRO BONO SERVICE ACTIVITIES DIRECTLY, AND THAT KEY WORD THERE IS DIRECTLY RELATE TO THE NEEDS OF THE POOR. IN THE COMMENT THAT IS FOLLOWING THAT RULE, IT SAYS THAT THE SUPREME COURT OF FLORIDA HAS FURTHER RECOGNIZED THE NECESSITY OF FINDING A SOLUTION TO THE PROBLEM OF PROVIDING THE POOR GREATER ACCESS TO LEGAL SERVICE AND THE UNIQUE ROLE OF LAWYERS IN OUR ADVERSARIAL SYSTEM, IN REPRESENTING AND DEFENDING PERSONS AGAINST THE ACTIONS AND CONDUCT OF GOVERNMENTAL ENTITIES, AND WE ARE PART OF THE GOVERNMENT, INDIVIDUALS, AND NONGOVERNMENTAL ENTITIES. CERTAIN LAWYERS ARE PROHIBITED FROM PERFORMING LEGAL SERVICES BY CONSTITUTIONAL STATUTORY RULE AND OTHER REGULATORY PROHIBITIONS, AND IT GOES DOWN TO SAY MOST PRO BONO SERVICES INVOLVE SIMILAR PROCEEDINGS, GHACHB GOVERNMENT MUST PROVIDE INDIGENT REPRESENTATION IN MOST CRIMINAL MATTERS. I SUBMIT TO YOU THAT OUR PEOPLE ARE INVOLVED IN HELPING PEOPLE AROUND THE STATE. WE RENDER SERVICE TO THE POOR EVERYDAY, BY THE NATURE OF WHAT WE DO AS PROSECUTORS. UNFORTUNATELY, BECAUSE OF THE DEMOGRAPHICS OF OUR STATE, A LOT OF POOR PEOPLE ARE

VICTIMS OF CRIMES, AND WE ARE INVOLVED IN THAT REPRESENTATION. AND THAT IS ON THE CRIMINAL SIDE. WE DO OTHER THINGS. WE DO THE TEEN COURT STUFF, THE THING THAT IS THE Y LIST, THE THINGS THAT ARE INVOLVED, BUT THAT DOESN'T INVOLVE REPRESENTING PEOPLE. IT DOESN'T INVOLVE DOING WHAT YOU WANT TO DO. YOU WANT TO HAVE LAWYERS, YOU KNOW THAT, IS THE WAY WE USED TO BE IN ENGLAND, YOU KNOW, YOU BECAME A LAWYER, AND YOU HAD YOUR OWN MONEY AND YOU COULD STEP DOWN AND HELP PEOPLE THAT NEEDED YOUR HELP. YOU HELP PEOPLE HAVE ACCESS TO THE COURT SYSTEM. AND AS A PRIVATE LAWYER, I AM CERTAINLY, THINK THAT PRIVATE LAWYERS OUGHT TO BE INVOLVED IN THAT, BUT PUBLIC LAWYERS, PARTICULARLY PROSECUTORS IN FLORIDA, ARE DIFFERENT. WE, WE ARE A BIT LIKE JUDGES. WE ARE SUPPOSED TO BE SEEKING JUSTICE. WE ARE NOT SUPPOSED TO JUST PROSECUTE EVERYBODY. WE, EVERY CASE THAT COMES IN, WE HAVE TO ANALYZE IT, ASSISTANT STATE ATTORNEYS HAVE TO ANALYZE THEM. ASSISTANT STATE ATTORNEYS CAN SIGN INFORMATIONS. WE ARE THE CHIEF LAW ENFORCEMENT OFFICIAL IN EACH CIRCUIT IN FLORIDA. AND WE HAVE TO BE IMPARTIAL AND SO HAVE US INVOLVED IN REPRESENTING PEOPLE IN CIVIL CASES, WHICH WE ARE PROHIBITED TO DO ANYWAY, I BELIEVE, IS THE WRONG THING.

SO YOU WOULD BE, EVEN IF THE BAR WERE TO LOBBY FOR REMOVAL OF WHATEVER THE PROHIBITION IS, SAY, FOR STATE ATTORNEYS, ON BEHALF OF THE, IF I AM UNDERSTANDING WHAT YOU ARE SAYING, ON BEHALF OF THE STATE ATTORNEYS, YOU WOULD SAY THAT WOULD BE A MISGUIDED EFFORT, BECAUSE OF THESE OTHER CONSIDERATIONS THAT YOU ARE BRINGING TO OUR ATTENTION.

I WOULD SUBMIT TO YOU THAT WE ARE INVOLVED IN PROVIDING SERVICE TO PEOPLE OUTSIDE OF OUR JOBS. WE DO EXTRACURRICULAR ACTIVITIES, BUT YOU HAVE TO CHANGE THE DEFINITION OF, YOU HAVE A NARROW FOCUS, NOW, WHICH IS GOOD, TO HELP TO GET PEOPLE, IN OTHER WORDS LAWYERS NEED TO REPRESENT PEOPLE IN CASES. THEY NEED TO ADVISE THEM ABOUT SITUATIONS.

BUT MR. MUSTOE IS SAYING -- MR. MUSTO IS SAYING WE SHOULD REJECT IT, AND WE SHOULD ENCOURAGE THE BAR TO GO AND ELIMINATE THESE STATUTORY PROHIBITIONS. YOUR POSITION IS THAT WE CAN'T CHANGE THE REQUIREMENT, BECAUSE THERE ARE STATUTORY PROHIBITIONS, BUT IF I AM UNDERSTANDING YOU, YOU WOULD NOT WANT THIS COURT TO ENCOURAGE THE BAR TO TRY TO HAVE THE STATUTORY PROHIBITIONS REMOVED, WITH REGARD TO AT LEAST STATE ATTORNEYS, BECAUSE OF THESE FACTORS. IS THAT CORRECT?

YES, MA'AM. AND LET ME ADD TO THAT. WE SHOULD NOT BE INVOLVED IN REPRESENTING PEOPLE IN CIVIL CASES, BECAUSE PROSECUTOR HAS THAT NAMEPLATE ON HIM EVERYWHERE HE GOES. HE IS 24/7 LIKE JUDGES ARE. IN THAT COMMUNITY, IN SMALL AND LARGE COMMUNITIES, THE PROSECUTORS ARE KNOWN. THEY ARE KNOWN TO BE THE PROSECUTOR, AND I THINK THAT THAT, AGAIN, GIVES THEM AN OR THEIR CLIENT, PERHAPS, AN UNFAIR ADVANTAGE OVER THE NEXT PERSON, BECAUSE EVERYWHERE YOU GO, IF IT IS A JURY TRIAL OR WHATEVER IT IS YOU DO FOR THIS PERSON, YOU ARE STILL THE PROSECUTOR, AND I THINK THAT THAT IS AN UNLEVEL PLAYING FIELD, AND, ALSO, YOU HAVE GOT SOME MALPRACTICE PROBLEMS, BECAUSE OUR FOLKS DON'T KNOW A LOT ABOUT TENANT LAW AND DIVORCES AND THAT KIND OF THING. ALSO YOU HAVE A SUPPORT PROBLEM, BECAUSE OUR SUPPORT PEOPLE ARE PAID BY THE STATE. WE ARE SUBJECT TO AUDIT. IF WE HAVE THEM OUT DOING THESE KINDS OF PRIVATE CASES, YOU KNOW, I THINK YOU HAVE GOT PROBLEMS WITH THAT AS WELL, BECAUSE IT IS NOT PART OF OUR BUDGETARY SYSTEM.

DO YOU OBJECT TO THE STANDING COMMITTEE'S PROPOSAL THAT, I GUESS, AND I WOULD HAVE TO LOOK AT HOW THIS WOULD BE DONE, THAT FOR GOVERNMENT LAWYERS THAT ARE OTHERWISE PROHIBITED FROM PRACTICING LAW, HAVING THE DEFINITION EXPANDED FOR THEM, SO THAT THEY KNOW THEY ARE ENCOURAGED TO DO THESE KINDS OF THINGS THAT YOU SAY MANY OF YOUR MEMBERS ARE ALREADY DOING.

IF YOU EXPAND THE DEFINITIONS AND CHANGE THE RULES, SO THAT THIS IS ASPIRATIONAL TODAY, AND I HAVE LIVED LONG ENOUGH TO SEE THINGS WHICH ARE ASPIRATIONAL TODAY BECOME MANDATORY TOMORROW, AND SO IF YOU WOULD EXPAND THE RULE SO THAT WE HAVE, THE THINGS THAT WE ARE ABLE TO DO, LIKE YOU TALKED WITH THE JUDGES BEFORE. IF YOU GIVE THEM THINGS TO DO THAT ARE, THEY ARE ABLE TO DO BECAUSE OF THE VERY NATURE OF THEIR WORK, WE WOULD HAVE NO OBJECTION TO THAT. WE, BECAUSE AS I SAY, OUR PEOPLE ARE OUT THERE DOING THINGS, BUT WE JUST CAN'T BE REPRESENTING PEOPLE IN CASES. UNFORTUNATELY.

CHIEF JUSTICE: UNFORTUNATELY --

MY TIME.

CHIEF JUSTICE: NOW YOUR TIME REALLY IS GONE.

UNFORTUNATELY FOR ME BUT FORTUNATELY FOR YOU, I AM OUT OF TIME. WE THANK YOU VERY MUCH FOR LISTENING.

CHIEF JUSTICE: REBUTTAL.

YES, YOUR HONOR. MAY IT PLEASE THE COURT. THE COMMENT TO RULE 4-6.1 SAYS THAT PRO BONO LEGAL SERVICE TO THE POOR NEED NOT BE PROVIDED ONLY THROUGH LEGAL SERVICES TO INDIVIDUALS. IT CAN ALSO BE PROVIDED THROUGH LEGAL SERVICES TO CHARITABLE, RELIGIOUS OR EDUCATIONAL ORGANIZATIONS WHOSE OVERALL MISSION AND ACTIVITIES ARE DESIGNED, PREDOMINANTLY, TO ADDRESS THE NEEDS OF THE POOR. FOR EXAMPLE, LEGAL SERVICE TO ORGANIZATIONS SUCH AS A CHURCH, CIVIC OR COMMUNITY SERVICE ORGANIZATIONS RELATING TO A PROJECT SEEKING TO ADDRESS THE PROBLEMS OF THE POOR WOULD QUALIFY, AND THAT INCLUDES WORKING POOR EARLIER IN THE COMMENT.

BUT HOW OFTEN DOES THAT SITUATION ARISE, WHERE YOU HAVE A CHURCH THAT HAS A PARTICULAR LEGAL ISSUE PERTAINING TO SERVICE TO THE POOR, AND THEY NEED A LAWYER TO REPRESENT THEM. DOES THAT HAPPEN VERY OFTEN?

HABITAT FOR HUMANITY IS A GREAT ONE. NOT DOING THE BUILDING BUT IF YOU DO THE CLOSING, YOU KNOW THAT IT IS GOING TO HELP A POOR PERSON AS AN ATTORNEY. THAT IS A LEGAL SERVICE THAT YOU CAN PROVIDE.

AREN'T THERE MALPRACTICE ISSUES WITH A PROSECUTOR DOING THE CLOSING FOR HABITAT FOR HUMANITY HOUSE?

WHEN I WAS A PROSECUTOR I DID TELEPHONE INTAKE. I DIDN'T DO THE HABITAT FOR HUMANITY AS AN ATTORNEY. PERSONALLY I MAY HAVE BUT NOT AS MY LEGAL SERVICE AND RESPONSIBILITY UNDER THIS RULE. BUT PROSECUTORS CAN DO A VARIETY OF THINGS. THEY CAN DO TEEN CORPS, WHICH IS THE ALTERNATIVE DISPUTE RESOLUTION PROCESS. YOU KNOW THAT IS GOING TO TOUCH POOR PEOPLE, AND IT IS ALSO GOING TO INCREASE ACCESS TO THE COURTS FOR THE POOR AND THE WORKING POOR. ALSO WE HAVE THE, I THINK I MENTIONED EARLIER, A PROGRAM THAT WE HAVE IN ORANGE COUNTY CALLED THE EARNED INCOME CREDIT. YOU CAN BE AT THAT CLINIC AND JUST ASSIST PEOPLE WITH FILLING OUT FORMS. THAT IS DIRECT ACCESS, HELPING SOMEONE OBTAIN SERVICE.

IS THERE ANY EMPIRICAL DATA WITH REGARD TO LOSING FOCUS OF REPRESENTATION OF INDIGENT INDIVIDUALS AND ACTUALLY PROVIDING THEM A LAWYER IN THE MIDST AFTER DIRECT LEGAL DISPUTE? HOW WOULD YOU RESPOND TO THAT, BECAUSE THERE SEEMS TO BE SOME CONCERN THE BROADER THE SCOPE, THE LESS WE HAVE DIRECTED TO THE AREA INITIALLY INTENDED, AND THAT WAS THE DIRECT REPRESENTATION. ARE WE HAVING A PROBLEM IN OTHER

COUNTIES, MAYBE NOT ORANGE BUT ARE WE HAVING THAT PROBLEM?

I HAVE NOT HEARD OF ANY PROBLEM AS THE CHAIR OF THE COMMITTEE, YOUR HONOR. I SUBMIT TO YOU THAT WE ARE NOT INTENDING TO EXPAND. IF YOU LOOK AT 4-6.5, THERE IS A LIST THAT THE THIS COURT RECOMMENDED, AND IT INCLUDED ADD VARIETY OF ACTIVITIES, AND I DON'T WANT TO TAKE THE TIME TO READ IT RIGHT THIS SECOND, BUT IT HAS A WHOLE LITANY OF THINGS THAT CAN BE PERFORMED. I DON'T THINK THAT IS A PROBLEM AROUND THE STATE.

CHIEF JUSTICE: ON THAT NOTE THE TIME HAS EXPIRED. WE THANK YOU ALL FOR YOUR PUBLIC SERVICE THAT YOU HAVE RENDERED TODAY.

IF I COULD JUST SAY ONE LAST THING. WE HAVE ASKED THAT THE COURT ADD THAT PRO BONO SERVICE IS OVERALL A PUBLIC SERVICE, AS PART OF OUR PETITION. THANK YOU.

CHIEF JUSTICE: ALL RIGHT. ON THAT NOTE, THANK YOU ALL VERY MUCH.

CAN I CLAIM PRO BONO CREDIT FOR THIS ARGUMENT?

IT WOULD NOT QUALIFY, YOUR HONOR, THERE ARE NO POOR PEOPLE OUT THERE. [LAUGHTER]