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A Visionary Opinion

Honorable Arthur J. England Jr.*

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Abstract

By petition filed pursuant to Article XIII of the Integration Rule, more than twenty-five members in good standing of The Florida Bar asked the Court to partially de-integrate the bar-that is, to eliminate the compulsory membership requirement first imposed by the Court in 1949 for persons eligible to practice civil law in Florida.

KEYWORDS: Visionary, Supreme Court, Integration

A Visionary Opinion*

THE HONORABLE ARTHUR J. ENGLAND JR.
Chief Justice
The Supreme Court of Florida

IN THE SUPREME COURT OF FLORIDA

IN THE MATTER OF
THE PETITION OF MORE
THAN TWENTY-FIVE ATTORNEYS
TO PARTIALLY DE-INTEGRATE
THE FLORIDA BAR

PER CURIAM

By petition filed pursuant to Article XIII of the Integration Rule, more than twenty-five members in good standing of The Florida Bar asked the Court to partially de-integrate the bar—that is, to eliminate the compulsory membership requirement first imposed by the Court in 1949 for persons eligible to practice civil law in Florida. The petition is both supported and opposed by persons, groups and governmental units too numerous to list. The arguments arrayed by both sides are carefully developed, well documented and artfully expressed, and because these efforts have greatly facilitated the very sensitive task we are now called upon to perform, it seems appropriate to summarize the majority positions asserted.

The petitioning attorneys' basic premise for this proceeding is that regulation of the civil side of the legal profession by the Court is no longer necessary or desirable, in light of the limited number of bar members practicing civil matters and the narrow range of matters which require any form of legal representation. This premise is

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historically based, reflecting evolutionary developments in the practice of law not only in Florida but throughout many industrialized societies.

Those opposing the petition also take a historical view, basically contending that there are good reasons why attorneys have been, and should continue to be, governed by the Court in civil matters, no matter how few there are or what legal representation they provide.

It is not essential that we recount here the early history of the legal profession as it developed in Great Britain and in the United States. We accept as accurate respondents' showing that the profession was, in form and substance, regulated by the courts as to civil matters even from earliest times, when a small number of lawyers delivered a relatively narrow class of legal services to a limited group of clients. Nor is it essential to restate the original reasons, still valid today, which underlay that regulatory interest by the judiciary. On the other hand, to understand petitioners' argument it is necessary to recount several Florida milestones affecting the delivery of legal services since 1949.

As mentioned, the profession was "integrated" in 1949, requiring membership in the bar for all who would practice law in the state. From an initial statewide membership of 2,700 paying annual dues of $25 per person or $67,500 in the aggregate, the organized bar grew to a membership in 1979 of 25,681, paying annual dues of $125 per person or $3,210,125 in the aggregate. (The year 1979 was selected because the 1970s were significant ones, as will be shown.) Legal services performed by the bar on the civil side during this period included, principally, tort (including personal injury) litigation, compensation for workers' injuries, real property transactions, and family matters, such as marriage dissolution, child custody and the like.

Legal services in these areas of law had historically been available only to the affluent. A relatively recent set of pressures altered that, however, to compel increasing availability of civil legal services to poorer persons. In the 1960s, legal aid organizations and public interest law firms emerged as vehicles to provide personalized civil representation to the poor and to broaden constitutional rights through attacks on those laws which, it was believed, disadvantaged poor persons generally. Governmental entry into the delivery of legal services to the poor, through such organizations as the Office of Economic Opportunity, the Legal Services Corporation, Florida Legal Services, Inc., and Florida Rural Legal Services, Inc., was a hallmark

of the 1970s.

Before and during the 1970s, other means for providing civil legal assistance on a broad basis had evolved in Florida. These included: (i) contingent legal fees for personal injury claims and for prevailing parties in claims of deceptive and unfair trade practices, (ii) a comprehensive compensation scheme for work-related injuries, (iii) prepaid legal insurance plans, (iv) summary court procedures for relatively small civil claims, and (v) neighborhood justice centers for the resolution of minor disputes. Outside Florida, other means were being devised toward the same end, such as California's 1979 legislation requiring arbitration as a prerequisite to a court proceeding for all civil claims under $1,500. These mechanisms, of course, were the first primitive manifestations of an emerging awareness that courts were virtually inaccessible to the poor, and that, among citizens and residents of America, access to civil justice was vastly disparate.

A serious access to justice movement began in the 1980s, leading inevitably to the now-familiar dispacement of non-traditional legal services. Open advertising by lawyers drove down the costs of providing certain legal services in the early 1980s, although this feature of the access movement was not widely used in Florida and inevitably lost momentum when mounting inflation forced even the law clinics to raise their fees. In 1981 this Court directed that all Florida attorneys, as a requisite to the annual renewal of their bar memberships, be open and available to members of the public for one half hour of free consultative services each month. This innovation, which was inspired by the 1979 Report of Great Britain's Royal Commission began with a voucher system for minimal compensation from funds generated by interest on lawyers' trust accounts. Like so many other tentative steps toward affordable justice which were geared to compensate attorneys for the delivery of legal services, however, this methodology eventually gave way to the record-less, non-compensable, hour-per-week "open office" plan which the bar ultimately asked us to approve.

In 1982, this Court determined that, in order to serve the public interest better, Florida law professors should be paid from bar dues income to provide consultation in certain fragmented but repetitive administrative matters such as welfare claims, disability controversies, and state employment and hiring disputes. The now familiar "public service consultation provision" eventually became a standard feature of law faculty contracts, thus providing full and free representation in a

broad range of administrative and non-administrative legal matters, without any demonstration of indigency or hardship.

By 1983, the access movement turned from the growing costs of underwriting legal services to less costly alternatives. In that year the Court relaxed the definition of the "practice of law" to approve the establishment of "socio-legals"—persons receiving a one-year, combined training course offered by the graduate and law facilities at Florida institutions—to make available lower cost, unregulated counselling services in matrimonial and juvenile matters. One year later, the Florida Legislature partially de-judicialized dissolution of marriage, following the British model from the early 1970s, to allow court-approved consent filings which required no legal representations. After another four years, as we know, this tentative step gave way to the procedure which had long been in existence in Japan, by which matrimonial dissolutions took the same form as marriages and required only a simple, non-judicial filing with the registry of vital statistics. This last step, of course, is now recognized as having been an important feature of the so-called "first wave of de-legalization."

A second major feature of the emerging first wave was the elimination of the need for legal representation in tort and workmen's injury matters. This came about as a result of the adoption in 1988 of Florida's comprehensive injury compensation system, modelled after the one adopted in 1974 in New Zealand. Under this system, all injuries, without regard to fault or relationship to job, became compensable by the state through wage loss supplements obtained simply by filing a claim with the state's division of income assurance.

A third feature of the first wave, made possible primarily by technological advances, came about as a result of the 1989 statute on land transfers, under which the state's computerized land registry allowed instantaneous and reliable title transfers without the need for legal representation.

Parallel developments, arising principally from technological improvements and from the 1970s movement toward lay representation on professional regulatory boards, combined to bring about the so-called "second wave of de-legalization." Only the three principal developments of the second wave need be identified here.

First, in 1985, the Court put non-lawyer members on the Florida Board of Bar Examiners and on the bar's Board of Governors. This step was followed in 1991 by the Court's adoption of election

procedures for the bar similar to those enacted by the legislature for other regulated professions. Under these procedures, the division of elections simply conducts open local elections for members of the Board of Governors, without any proportionality requirement for attorney members.

Second, in 1987, the Court took initial steps toward computerized jury selection procedures. This led, quickly and inevitably, to the present system under which persons throughout the state perform jury service from their homes through interconnected, video transmitter/receivers in the form of small boxes connected by court personnel to juror's home television sets for trial purposes.

The third feature of the so-called second wave is now sometines called the "appearance of justice," or the "demystification" wave, of the access to justice movement. It began, of course, in 1979, when this Court opened Florida's courtrooms to the electronic media and displayed to citizens nationwide the realities of the operation of the judicial branch of government.

The cumulative consequence of the second wave, as we now know, led rather rapidly to further inexpensive, convenient and workable legal fusions (too numerous to mention here), from which evolved an expanding relaxation of historical "practice of law" doctrines.

These historical highlights provide the backdrop for petitioners' argument to the Court today that we should inaugurate a "third wave" of the access to justice movement—bodily asserted to be the final or "free access" wave—by deregulating the civil bar and by allowing attorneys at law to compete freely with other business people and professionals in providing civil justice in the few areas of human relations which still require a law license. Petitioners recognize that there are areas on the civil side of the law in which attorneys may continue to assist the courts in the performance of their responsibilities—setting policy through class actions, passing on the constitutionality of statutes, resolving contract impairment problems, and the like—but they argue that the small number of practitioners available or needed for these matters can operate under the direct supervision of the courts before whom they practice, as when our country was formed, without the more elaborate trappings of a compulsory, organized bar association.

The mere recitation of developments in the law since the 1960s illustrates amply the serious and difficult nature of petitioners' cause. It

is precisely because of the gravity and difficulty of this matter that we have unanimously decided not to act at this time, but rather to refer this question to The Florida Bar for further analysis. We turned to the bar in 1979, through our *Furman* decision, to devise new ways to expand the delivery of legal service to the disadvantaged. In 1980, the bar demonstrated to the legislature that general Court supervision over a representative governing board for Florida's attorneys had been over the years both an effective and a responsive regulatory scheme which should be preserved. We are confident that the public interest will best be served if we again turn to the organized bar to reconsider the entire subject of the delivery of human services to the less affluent, and to advise the Court, not later than January 1, 1999, whether an integrated civil bar is any longer necessary or desirable.

It is so ordered.

Filed July 1, 1998

ALL JUSTICES CONCUR.