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November 7, 2006

Florida Supreme Court
500 S. Duval Street
Tallahassee, Florida 32399-1927

RE: *Case No: SC06-1622*
The Florida Bar Amendment to the Rule Regulating the Florida Bar –
Registered Paralegal Program

Dear Chief Justice and Members of the Court:

Please accept this *pro-se* reply comment being filed in reply to The Florida Bar's Response to Comments filed November 1, 2006, as it relates to The Florida Bar's Petition Amending the Rules Regulating the Florida Bar – Registered Paralegal Program. Since some of the responses referenced by The Florida Bar ("The Bar") were specific to comments that I timely filed with this Court on August 17, 2006 and are designed solely to refute my argument, I am compelled to reply accordingly and urge this Court to accept my reply as timely filed in accordance with Florida Rules of Appellate Procedures 9.210(f).

As noted in The Bar's Response to Comments, I am a practicing nationally Certified Paralegal in Miami and President of the South Florida Paralegal Association ("SFPA"). My responsive comments referenced below are my own and not reflective of SFPA as those may be addressed separately by SFPA.

Regulation of the Profession

The Bar states that "[t]he proposed rule does not seek to regulate paralegals" (see, Response pg. 4). Although this may be somewhat correct on its face, it fails to take into account the future ramifications of the rule. The growth of the paralegal profession over the past decade is unprecedented. Likewise, future growth is forecasted to soar over the next decade. As such, safeguards should be considered for this future growth of the profession – inclusive of any rule, whether mandatory or voluntary – which will work as a precursor to those wishing to achieve the professional status that comes with any exclusionary title such as Florida Registered Paralegal, as well as the requirements that comes into being with the passage of such rule.

This proposed rule, if granted, will invoke non-retractable authority to The Bar to regulate this profession not only now, but well into the future. There are no safeguards in

the proposal which would prohibit the administrators of the rule to invoke changes as may be in The Bar's best interest, including changes that are not in the best interest of the profession or public. All of which would not be subject to the purview of this Court. In essence, two years from now, The Bar could mandate participation into the program without the majority input from those who practice in the profession or without public input – all without oversight from anyone, inclusive of this Court. There are no appeal mechanisms in place.

With all due respect to The Bar, this proposal *does* seek to regulate the paralegal profession. It is highly likely that our employers - members of the Florida Bar - will want us to partake in their program or they would not seek the approval as recommended. Otherwise, what is the point in having this program? The underlying reality is that despite their claims to the contrary, The Bar wants to control the destiny and direction of our profession and that no others, including this Court, should be able to interfere. Approval of this program would grant that sole authority to The Bar. Moreover, our employers are likely to mandate that we participate in the “voluntary” program which would be their choice as an employer¹. The Florida Bar admits that this would subject the Florida Registered Paralegal to “some regulation.” The choice of whether to participate will be short-lived by paralegals and The Bar will ultimately become the regulatory authority for the paralegal profession should the proposal be approved.

Authority of the Florida Bar

It is acknowledged that The Bar is an arm of this Court; however, the length that that arm reaches is *defined by this Court and is limited in its scope*. In actuality, the creation of this arm of the Court is for the purposes of regulating the practice of law through the regulation of attorneys that practice law. It by no means operates independently and The Bar's scope of authority is limited to its disciplinary power over attorneys (see, Petition of Florida State Bar Ass'n, 40 So. 2d 902, (1949)). This Court, not The Bar, controls admissions to The Bar and promulgates rules that regulate The Bar's governance, *id.* Therefore, the authority of The Bar is limited and certainly does not extend to any regulatory scheme of any other profession, even a profession so closely entwined as that of the paralegal professional. If this authority is granted, legal secretaries, office services workers and other support staff would be subject to the regulatory power of The Bar. In the *Petition of Florida State Bar Ass'n*, delegation of that which is granted to this Court by the Constitution was not passed on to The Bar in totality.

Integration of The Bar, in essence, requires membership by all attorneys practicing in the state of Florida to be a part of The Bar and subject to its delegated police powers. Essentially, for The Bar to have any jurisdictional disciplinary authority, one would first have to become a member, and to be a member, one must be an attorney. NOWHERE in the pending petition is membership to The Bar a requisite or is it even suggested. The Bar's scope of authority does not extend to non-members and/or non-

¹ Many employing attorneys already mandate that their paralegal employees obtain a CLA or CP designation from NALA which is a national accreditation.

attorneys. This is a conundrum that cannot be corrected without expanding the power of The Bar beyond those who do practice law to those that are simply a part of their legal staff or members of the legal support community.

Conflict of Interest

The conflict of issue created by this proposed rule, far exceed any loyalty issue as referenced in The Bar's Response. It goes to the heart of the distinctions between an employer and their employees and the paralegals ethical responsibility of protection of the attorney's client covenants. The two separate responsibilities cannot be intertwined to justify regulatory authority by an employer over an employee. Of course it is in the interest of the legal profession to promote the ethics and competence of those who assist attorneys and it is not contrary to the goals of the paralegal profession; however, it should not be The Bar – in all instances an employer to all who are subject to this proposed rule – to decide the future course of a separate profession and alter the ethical bounds a paralegal has to an attorney's client and claim that loyalty as their own. The conflict of interest issue is obvious on many levels and The Bar's administration, implementation and oversight authority of this proposal is one that cannot be overcome. Moreover, the promotion of ethics, professionalism and competency should be instilled in and mandated by all paralegals, not simply confined to those who volunteer into the program as petitioned by The Bar. The Bar's proposal fails on all counts.

Finally, in the Introduction section of The Bar's Response to Comments, The Bar states that, [T]he rule is also supported by the Paralegal Association of Florida, Inc., the "largest, oldest and only statewide paralegal association in Florida." As an active member of the Paralegal Association of Florida, I was never once solicited, asked for my thoughts on the subject nor was there ever a vote taken as to the members position on the pending proposal. For PAF to voice its approval on behalf of its membership, inclusive of myself, without first holding a meeting or a vote on the issue, clearly shows that the voice of Florida's largest and oldest paralegal association is not the voice of its membership at all but the voice of its leadership who was a member appointed by The Bar to The Florida Bar's Committee to Study Paralegal Regulation, the actual author of this proposal. Further, I would urge this Court to review the comments of various PAF members at the public meeting held by the Florida Bar's Committee to Study Paralegal Regulation October 28, 2005, which is Appendix D, Part 2 of the Florida Bar's Petition to this Court.

Sincerely,

Mark Workman, CP
Certified Paralegal

cc: All persons on attached Service List