

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE:  
AMENDMENTS TO THE RULES REGULATING  
THE FLORIDA BAR -- REGISTERED  
PARALEGAL PROGRAM

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CASE NO. SC06-1622

THE FLORIDA BAR'S RESPONSE TO COMMENTS

COMES NOW, The Florida Bar, Petitioner, and files its response to the comments filed herein as follows:

INTRODUCTION

On August 15, 2006, The Florida Bar filed a Petition to Amend the Rules Regulating The Florida Bar to add Chapter 20, the Florida Registered Paralegal Program. The filing was noticed and comments were requested. Numerous comments were filed in response to the Petition, the overwhelming majority of which are positive and urge adoption of the rule. All comments filed by members of The Florida Bar on their own behalf support passage of the rule. The rule is also supported by the Paralegal Association of Florida, Inc., the "largest, oldest and only statewide paralegal association in Florida." *See Comment of Paralegal Association of Florida, Inc..*

The remaining comments suggests changes to the rule or ask for the rejection of the rule. Although most of the concerns raised by the negative comments were

addressed prospectively in the Petition, they will be briefly addressed here. 1

Response to Comment of P. Kevin Seamon

P. Kevin Seamon is an academically-trained paralegal and has been performing paralegal work since 1979. Mr. Seamon is in support of the proposed rule but offers some suggestions. His first suggestion is to include American Bar Association (ABA) approved programs that offer certificates of completion rather than a degree to someone already holding a post-baccalaureate degree.

As noted in The Florida Bar's Petition, Subdivision 20-3.1(a) sets forth the education and experience necessary to obtain Florida Registered Paralegal status should the individual wish to use this avenue for registration. The types of degrees recognized are a Bachelor's degree, an Associates' degree and a Juris Doctorate degree. There was a great deal of debate by the Special Committee to Study Paralegal Regulation (hereinafter "the committee") as to whether to include certificate programs. The committee did not include "degrees" from certificate programs due to the fact that the quality of the certificate programs varies. The committee's decision was based in part on the testimony received at the public

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<sup>1</sup> Mary Katherine Day-Petrano filed a pleading which begins with "Objection" and does not go to the merits of the proposed rule per se. Petitioner will not be responding to Ms. Day-Petrano's pleading.

hearing.

Mr. Seamon then comments on the fact that there is no provision in the proposed chapter to enjoin paralegal work by individuals who are not registered as a Florida Registered Paralegal. This is correct. Registration is voluntary. Individuals do not have to register to work as a paralegal. A paralegal is defined in the rule as "a person with education, training, or work experience, who works under the direction and supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible." *See Proposed Rule 20-2.1(a), Appendix "A" to Petition.* Someone could work as a paralegal without being registered.

Mr. Seamon's comment appears to be prefaced on his assertion that only registered and attorney-supervised persons may perform paralegal work. While it is true that only those persons who are supervised by attorneys may perform paralegal work, his assertion that the purpose of the rule is also to limit such work to Florida Registered Paralegals is incorrect. As noted in proposed rule 20-1.1, "[t]he purpose of this chapter is to set forth a definition that must be met in order to use the title paralegal, to establish the requirements to become a Florida Registered Paralegal, and to establish the requirements to maintain Florida Registered Paralegal status." *See Proposed Rule 20-2.1(a), Appendix "A" to Petition.* The rule is not mandatory and is not intended to be mandatory.

Mr. Seamon's final comment goes to the lack of judicial review of any disciplinary action taken against a Florida Registered Paralegal. Mr. Seamon seems to argue that this somehow impacts the individual's right to work. As noted above, an individual can continue to work as a paralegal performing substantive legal work under the direction and supervision of a member of The Florida Bar even if the person is not registered as a Florida Registered Paralegal. Therefore, the lack of judicial review does not impact the individual's right to work.

#### Response to Comment of Mark Workman

Mark Workman is a paralegal in Miami and president of the South Florida Paralegal Association. Mr. Workman objects to The Florida Bar's oversight and implementation of the program. Mr. Workman believes this is a conflict of interest and questions the bar's authority to regulate an outside profession.

The proposed rule does not seek to regulate paralegals. The rule is voluntary. Those who wish to become a Florida Registered Paralegal must meet the standards of the rule. Those who choose not to become registered do not need to meet the standards of the rule. Those who voluntarily agree to become a Florida Registered Paralegal are subject to some regulation. Paralegals who do not wish to become registered are not.

Mr. Workman would rather see the program under this Court. As noted in the Rules Regulating The Florida Bar, The Florida Bar is an arm of this Court.

*Introduction, Rules Regulating The Florida Bar.* Any duties that the bar performs are performed under delegation from this Court. As a result, there is Court oversight.

Mr. Workman's comment does not question this Court's authority over the practice of law as that authority is set forth in the Florida Constitution. *Fla. Const. art. V, §15.*

As paralegals by definition work for members of The Florida Bar, adoption of Chapter 20 falls within this Court's authority. *Rules 4-5.3 & 10-2.1, Rules Reg. Fl. Bar.*

In his response Mr. Workman states that "[t]here is no other state that is implementing a program to regulate paralegals with oversight authority given to their respective Bar Associations." This statement is incorrect. Many states set forth minimum qualifications for paralegals. At least two states with unified bars have programs for paralegals, one of which -- North Carolina -- is similar to the proposal before this Court. In drafting the proposed rule, the committee looked to what other states have done. In adopting the rule, Florida will not be alone in its recognition of the paralegal profession.

As to Mr. Workman's concern regarding a conflict of interest, adoption of the rule would not create a conflict between the employing attorney and the nonlawyer employee, whether that employee be a paralegal or a Florida Registered Paralegal.

Loyalty to the employing attorney is already required. Placing this duty in the proposed Code of Ethics and Responsibility is not creating a new obligation.

Moreover, it is in the interest of the legal profession to promote the ethics and

competence of those who assist lawyers. This is not contrary to the goals of the paralegal profession.

Three paralegals -- Hannah L. Wilson, Michelle Sanderson, and Ivonne Santos -- filed letters supporting Mr. Workman's comments. The comments of Linda Vessels, Catherine Goe, Vivian Fusco, Barbara Willen and Gene Wakefield all echo the comments of Mr. Workman or the South Florida Paralegal Association. These comments will not be addressed separately.

Response to Comment of American Alliance of Paralegals, Inc.

The American Alliance of Paralegals, Inc. (hereinafter "AAP") sent comments to The Florida Bar when the rule was in the discussion phase. The comments and the bar's response are included in Appendix "C." The comment filed herein is similar.

The AAP supports the adoption of Chapter 20 but would like the American Alliance Certified Paralegal (AACP) designation added to the eligibility requirements. The rule as proposed states that an individual holding a PACE certification as offered by the National Federation of Paralegal Associations (NFPA) and individuals holding a CLA/CP certification as offered by the National Association of Legal Assistants (NALA) are eligible to become registered as a Florida Registered Paralegal. These two organizations are well known and long standing. In Florida alone there are three thousand, four hundred and fifty-six (3,456) CLA/CPs. There are eighteen paralegals holding the PACE certification. According to the AAP website, there is one paralegal

in Florida holding the AACP certification. The NALA and NFPA programs are widely recognized by the paralegal profession. Should other organizations such as AAP gain such recognition within the paralegal profession, the rule can be amended to allow registration based on their certification as well.

Although the rule does not recognize the AACP designation, members of AAP holding that designation can become Florida Registered Paralegals under one of the other eligibility requirements. As noted in AACP's comment, an individual must hold a Bachelor's degree, and Associates' degree, or a certificate in order to gain the AACP designation. Holding a Bachelor's degree or Associates' degree also makes an individual eligible for Florida Registered Paralegal status.

Response to Comment of American Institute for Paralegal Studies, Inc.

The comment of the American Institute of Paralegal Studies, Inc. centers on the lack of certificate programs as a basis for eligibility. As set forth in the Petition and noted in response to Mr. Seamon's comment, certificate programs are not included as the quality of the certificate programs vary -- some offer a program similar to those offered by a college or university while others offer a program with little or no class instruction or oversight. Because of the wide range of programs and the difficulty in quantifying the quality of the program, the committee voted to decline to include those types of programs at this time. In approving the rule, the Board of Governors of The Florida Bar approved the committee's reasoning in this area.

## Response to Comment of South Florida Paralegal Association

The South Florida Paralegal Association (SFPA) objects to the proposed rule as registration is not mandatory. The committee debated the issue of a mandatory scheme versus a voluntary scheme for countless hours. In the end, the majority of the members of the committee, including the representatives from the Florida Alliance of Paralegal Associations, voted in favor of the rule now pending before this Court. Subsequently, the rule was unanimously approved by the Board of Governors of The Florida Bar. As recognized by the majority of the individuals filing comments, the proposed rule is well thought out and serves the interests of the paralegal profession, attorneys and the public.

SFPA's remaining objections echo those of Mr. Workman, a member of SFPA, and have been addressed above. SFPA, like Mr. Workman, argues for Court rather than bar oversight and attaches a report from Wisconsin and a rule from Indiana as examples of regulation under court, rather than bar, authority. Indiana is not a unified bar, therefore, any regulation of the legal profession is through the court and not through the bar. While the committee reviewed the Indiana rule and used some of the same language and concepts encompassed in that rule, urging adoption of that rule ignores the difference in the governance of the practice of law between Indiana and Florida. The Wisconsin report was also reviewed by the committee. The Wisconsin rule is still pending.

SFPA's comment asks for the creation of a paralegal regulatory body. Such a body is already being formed by The Florida Bar.

On September 29, 2006, the Board of Governors of The Florida Bar approved the creation of the Florida Registered Paralegal Program Committee (hereinafter "FRP Program Committee"). The FRP Program Committee will be charged with assisting in the implementation of the Florida Registered Paralegal program if the rule is approved.

In addition, the duties of the FRP Program Committee include proposing rule amendments to Chapter 20 to the Board of Governors and appropriate Board committees, setting policy for the program within the rules governing the program, and providing guidance to bar counsel and the district paralegal committees.

The FRP Program Committee will be comprised of seven members appointed by the President of The Florida Bar. Three of the members will be paralegals, at least two of whom are Florida Registered Paralegals. As the FRP Program Committee may be appointed before the rule is implemented, the two seats requiring Florida Registered Paralegal status may be filled by individuals who meet the requirements for registration and intend to become registered. After implementation of the program, only Florida Registered Paralegals will be eligible for the two seats. One member of the FRP Program Committee will be a paralegal educator. The paralegal educator may be a lawyer or a nonlawyer. The remaining members will be members of The Florida Bar. It is the hope of the bar that the FRP Program Committee will be in place prior to the

effective date of the rule should this Court adopt the rule as requested.

### CONCLUSION

As noted in the introduction, the vast majority of the comments filed in response to this Petition are positive and urge passage of the rule. Therefore, Petitioner, The Florida Bar, request that this Court adopt Chapter 20 of the Rules Regulating The Florida Bar as set forth in the bar's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States mail to the following individuals this 1st day of November, 2006:

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