

March 5, 2004

Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Objection to Florida Bar MJP Proposals In Light of
The State Bar v. Rapoport, 845 So.2d 874 (2003).

Your Honor:

We hereby object to the Florida Bar MJP Recommendations in light of this Honorable Court's decision in the *The State Bar v. Rapoport*, 845 So.2d 874 (2003). We further, for the reasons that follow, request this Honorable Court to enact an MJP rule that gives sister-state attorneys appearing in federal arbitrations equal rights to the Florida Bar MJP proposal for foreign attorneys appearing in international arbitrations.

Under the present Florida Bar MJP proposal foreign attorneys appearing in international organizations have far greater rights than sister-state attorneys appearing in federal securities arbitrations. We believe this Honorable Court has a constitutional duty and obligation to the citizens of Florida to remedy this defect.

By way of introduction, we are a national organization dedicated to advancing MJP in the United States and the equal and uniform enforcement of the Bill of Rights throughout the States. Particularly, the First Amendment freedoms to speak, associate, and to petition the Government for redress of grievances. These freedoms are the hallmark of a civilized society and the foundation on which our thirteen separate colonies joined together to form a more perfect union, establish justice, and secure the blessings of liberty. These freedoms in this 21st Century information age and global economy are as fundamental today as they were when the First Amendment was adopted over 225 years ago.

The First Amendment provides, in pertinent part:

Congress shall make no law abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

As stated by Justice Robert Jackson for the majority in *Board of Education v. Barnette*, 319 U.S 624, 638 (1943), “(T)he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.” *Ibid.* “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *Ibid.*

It is thus beyond dispute the “fixed star in our constitutional constellation” and the First Amendment freedoms including the freedoms to associate and petition the Court for redress of grievances “may not be submitted to vote; they depend on the outcome of no elections.” *Ibid.*

As noted above, the Florida Bar MJP proposals we object to are: (i) that proposal authorizing international arbitrations to be conducted in Florida by foreign lawyers; and (ii) that proposal by omission that denies sister-state attorneys in federal securities arbitrations the same freedoms.

What we have here in the Bar's MJP Report is blatant and direct discrimination in the exercise of First Amendment rights. We have an MJP proposal that gives foreign attorneys appearing in international arbitrations in Florida, who do not have First Amendment rights, greater freedoms than sister-state attorneys are granted in federal arbitrations by this Court's decision in *The State Bar v. Rapoport*, 845 So.2d 874 (2003). In *Rapoport*, this Court enjoined a sister-state attorney from appearing as counsel in federal securities arbitrations.

This disparate treatment is disgraceful. It shocks the conscience. There is no other way to describe it. The Florida Bar, in effect, has voted to abridge the First Amendment rights of sister-state attorneys that appear as counsel in federal arbitrations. The State of Florida has no compelling interest to authorize foreign attorneys appearing in international arbitrations greater First Amendment rights than sister-state attorneys appearing in federal arbitrations.

One of our Floridian associates Albert Rapoport is particularly victimized by this MJP proposal in light of this Court's decision in his case. We represented Mr. Rapoport in his petition for certiorari in the United States Supreme Court.

As this Court may recall, Mr. Rapoport is a World War II and Korean War Veteran who is a Florida citizen and has been a member of the bar for over 50 years. Mr. Rapoport has been a licensed stockbroker. He is a specialist in federal securities arbitrations, and he limited his practice to this specialty. None of his clients have ever lodged a complaint against him. He was further injured in presenting his case for review to the Florida Supreme Court, because he had recently had a heart attack and the trial judge refused to grant him a continuance. Mr. Rapoport is a citizen of Florida, and he deserves to be treated with the respect and admiration that should be afforded to a Veteran who has fought for and earned his First Amendment rights.

It is plain that this MJP proposal, giving international attorneys greater First Amendment rights than sister-state attorneys, is unconstitutional. It is well settled the standard of review for discrimination in the exercise of First Amendment rights is strict scrutiny. As noted above, Florida has no compelling need to authorize foreign attorneys' greater rights than sister-state attorneys. There are obviously far less restrictive means available to satisfy the State's legitimate interests. These less restrictive alternatives include: (i) registration with the Florida Bar as a federal securities law specialist; (ii) a Rule requiring the sister-state attorney appearing in federal securities arbitrations to pay a licensing fee; (iii)) a Rule requiring the sister-state attorney appearing in federal securities arbitrations to submit to discipline by the Florida Bar and reciprocal discipline enforcement; (iv) a Rule granting admission on motion to the Florida Bar for sister-state attorneys consistent with the ABA MJP Commission Recommendations.

We cannot forget that we are a nation of the People, for the People, and by the People – and that all of the People including Albert Rapoport have a right to have their constitutional rights enforced.

We thus respectfully request this Honorable Court to enact an MJP Rule that gives sister-state attorneys in Florida as well as Albert Rapoport the same and equal rights the present proposal gives to foreign attorneys.

Respectfully submitted,

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