

**IN THE SUPREME COURT OF FLORIDA**

IN RE AMENDMENT TO RULE

REGULATING THE FLORIDA BAR 1-7.3

CASE NO. SC14-1165

**COMMENT BY PROJECT DIRECTOR'S ASSOCIATION  
ON PROPOSED AMENDMENT**

Please consider this as the Comment offered on behalf of the members of the Project Director's Association (PDA), a voluntary association consisting of the executive directors of the legal aid programs in Florida. This Comment is offered in support of the proposed Amendment and the PDA members listed below are doing so in their individual capacity, not on behalf of their organizations or their respective boards or employees.

For purposes of this discussion, it is understood that all agree with the reality of the funding crisis facing the various Florida legal aid programs, as described in the Petition, and this issue will not be extensively revisited in this Comment. The Comment will focus on impact.

The funding crisis has resulted in a direct response: the programs have substantially cut staff and the ability to respond to the needs of Florida's working poor, veterans, domestic violence victims and others with critical access to justice issues has suffered as a result. Florida's economy continues to demonstrate stress (one of out every 346 housing units is in foreclosure; (<http://www.realtytrac.com/content/foreclosure-market-report/january-2014-foreclosure-market-report-7982>); two of the five metropolitan statistical areas in the United States where the rate of

current debt collections activity *equals or exceeds 45%* are in Florida (Urban Institute, Delinquent Debt in America, July 2014), and legal aid attorneys and staff are often the only recourse for those working poor Floridians, veterans, and the elderly facing debt collection, foreclosure, general housing issues, and issues relating to employment.

### **The Role of Legal Aid**

In Florida, the existence of legal aid is at the heart of the integrated Florida Bar, and is instrumental to all Bar members fulfilling their oath not to “reject...the cause of the defenseless or oppressed...”. Many Bar members neither provide voluntary contributions to the legal aid organizations nor *pro bono* hours (see, *pro bono* statistics provided by The Florida Bar for 2012-2013: approximately 13% of Florida attorneys state-wide contributed money to a legal aid organization, while approximately 50% personally provided *pro bono* legal services; roughly 34% of all Florida lawyers did not provide services or contribute.)

It is therefore left to the legal aid programs to attempt to fill the access to justice gap.

### **The Role of the Petition**

The PDA considers the Petition, and any additional monies provided by the Foundation for direct services, to be a ***supplement, not a substitute*** for a sorely needed Statewide approach to the uniquely Florida problems facing the working poor. The infrastructure of access to justice in Florida is critical to Florida’s

economy. As far back as 2003, the Florida Chamber of Commerce documented the fact that Florida had a significantly higher percentage of jobs in low-wage occupations, and noted that “Florida is generally not in very good shape with respect to the working poor, and ranks in the bottom half of the country on most indicators, suggesting needs for improved education, access to health care, and affordable housing.” (*Strengthening Florida’s Workforce - Strengthening the Economy*, Florida Chamber of Commerce Foundation, Inc., 2003). Florida generally has a large percentage of workers in the “service class” (workers in low-wage, low-skill occupations in food service and preparation, retail sales, clerical and administrative position.) For example, 53% of the Miami workforce is “service class,” which is higher than the national average; of the 10 largest metropolitan areas in the United States, Miami has the highest share of Census tracts (half) where more than 50% of residents are employed in the service class. (United States Census Data as summarized by The Atlantic in “*Class-Divided Cities: Miami Edition*,” March 1, 2013.)

In other words, the legal aid-eligible working poor Floridians who drive Florida’s economy are generally undersupported.

### **The Impact of Funding Cuts on the Larger Florida Economy**

Legal aid is critical in helping clients keep their homes, solve their debt problems, and manage emergency-level conditions such as eviction, job loss and fraud. With fewer lawyers as a result of the funding crisis, Florida legal aid

programs are facing a crippling lack of capacity as they attempt to fulfill this historical role.

The impacts on the Florida economic infrastructure are enormous. In just one area – prevention of foreclosure - the loss of capacity by legal aid programs has a dramatic impact on the Florida economy.

Foreclosure causes a massive reduction in a home's value – on average, 43% (see Schloemer, Li, Ernst and Keest, "*Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*," Center for Responsible Lending, 2006; Table 6) – to its owners. Foreclosure also reduces the property values of nearby homes – 9% for each home, a figure that totals 45% of the total value for the five homes immediately adjacent to a foreclosed property (per Schloemer, Li, Ernst and Keest – see above). In other words, foreclosure affects the entire community. In a neighborhood of homes in the Florida market priced at the 25th percentile (\$130,000 in Jacksonville in 2014 – per <http://www.deptofnumbers.com/asking-prices/florida/jacksonville/>), one foreclosure results in a loss of equity to homeowners and their neighbors amounting to a total of \$114,000.

Foreclosure also has a profound impact on lenders – a loss of 30% of the loan value (see “*Thaddeus McCotter says lenders lose 30% on foreclosures*,” Politifact.com, August 23, 2011). For a home valued at the 25th percentile

(\$130,000 – see above), with an 80% mortgage, this amounts to a loss to the lender of \$31,000 per foreclosed loan.

In 2012, Florida legal aid programs completed 7,443 foreclosure cases (per 2012 reports by FBF grantees). In many cases, legal aid lawyers were able to negotiate payment plans, restructure loans, or arrange an orderly transition for the homeowners into alternate housing, thereby saving millions of dollars for homeowners, their neighbors, and their lending institutions. With the dramatic funding cuts that Florida legal aid programs are facing, their capacity to continue producing these profound savings for the Florida economy will be sharply reduced.

### **The Impact of Funding Cuts on Florida's Courts**

Florida legal aid programs ease the growing burden on Florida's court resources caused by self-represented litigants attempting to navigate the court system on their own. Legal aid programs provide full legal representation to over 80,000 low-income clients each year who otherwise would be flooding the courts as self-represented litigants. Moreover, legal aid programs help thousands more to navigate the court system more efficiently and effectively by providing legal clinics where self-represented litigants can get coaching, form documents, and other assistance in preparing their papers and presenting their cases in hearings. Florida's legal aid programs also provide community legal education that helps many Floridians deal with simple matters themselves or to find answers to legal

questions before they grow into more serious legal problems - legal problems that invariably involve the judicial system.

### **The Role of Online Systems**

There is no doubt that technology will be a crucially important asset as Florida moves forward. Increasing numbers of the at-risk population served by legal aid organizations use smart phone and other technologies to access information, for example, but technology is not a panacea. Technology is a support tool, and a very expensive support tool that will take some time to build in Florida, given the historical lack of support for legal aid from our current Governor and many of Florida's counties. In other words, "society," at least in the form of many elected officials, has not demonstrated that it will build the infrastructure needed in Florida, let alone make the substantial investment needed in technology to support and enhance the work of legal aid programs and *pro bono* attorneys.

A comparison with Illinois' excellent online system provides some context. Illinois Legal Aid Online (ILAO) confirms that it provides essential legal services and support 24/7 to legal aid and pro bono attorneys, *pro se* litigants and lower-income individuals and families through its four websites and two mobile apps. (The system is careful to note that the legal information found on the Illinois Legal Aid Online web pages is not an adequate substitute for representation by a qualified attorney.) The ILAO system was greatly assisted by a grant from Illinois

Attorney General Lisa Madigan, who in 2012 provided \$620,000 to ILAO to provide on-line tools to assist Illinois homeowners facing foreclosure.

ILAO, which has been in existence for 13 years, has 19 staff members and a current budget of approximately \$1.8 million.

So - what would it take to develop a similar model system in Florida, given the overwhelming need and very limited and fractured technology that is the current infrastructure? A comparison of population alone suggests the task would be challenging: the most recent Census data indicates 15.6% of Florida's population of 19,552,860 (or 3.05 million individuals) lives below the Federal poverty level. By contrast, Illinois' population is just over half the size of Florida's, at 12,882,135, of which 13.7% (1.765 million) live below the poverty level.

In sum, Florida must build a system for almost twice the population, for arguably a population more critically in need, with fewer state-wide resources and without support from the Governor or many of Florida's counties.

Illinois Legal Aid Online is one astounding example of where the technology to support a strong online legal aid system in Florida should be directed in the future.

What Florida needs right now are more legal aid lawyers.

## **The Need for Experienced Legal Aid Lawyers Handling Street-Level Advocacy**

The data from the Florida Bar Foundation (FBF) relating to legal aid funding is startling - more than an 11% decrease in total funding from 2009-2012; more than a 33% decrease in funding from the FBF during that same time period, and a resulting 10% drop in total number of closed cases. Greater reductions have only been averted because of the FBF's strategic use of substantial reserves which have now been all but exhausted. Almost all legal aid programs have lost staff - Jacksonville Area Legal Aid alone laid off 20% of its program staff in 2012.

During that time, the cases handled by legal aid lawyers have continued to increase along two tracks: (1) complexity and (2) a related lack of counterparts in the private Bar, since so little of what legal aid does, especially in the family law and landlord/tenant context, is fee-generating. In other words, the Bar is becoming increasingly specialized, but with fewer private attorneys specializing regularly in the types of issues faced regularly by legal aid applicants. This trend can be demonstrated in foreclosure litigation, where Fair Housing issues, use of federal statutes such as the Garn St. Germain Act, and increasing partnerships with non-profit HUD counselors, are commonly used by legal aid attorneys. The use of significant discovery directed by servicers to *pro se* foreclosure defendants is also common - one recent Request for Admissions asked a U.S. Military Veteran / VA homeowner to:



“8. Admit that Plaintiff is a “person entitled to enforce” the promissory note, a copy of which is attached to the complaint filed in above-styled, in accordance with Fla. Stat. 673.3011.

9. Admit that Plaintiff has standing and capacity to bring the actions set forth in the Complaint filed in the above-styled matter.

16. Admit Defendant was contacted by Plaintiff and/or its agent regarding all loss mitigation opportunities, credit counseling and borrower financial assistance available pursuant to applicable state and federal law; but that, Defendant has failed to respond to Plaintiff’s or its agent’s inquiries in this regard.”

It would be no stretch to conclude (1) a typical *pro se* litigant would have no realistic chance of meaningfully understanding and responding to the above Requests; and (2) an attorney in private practice who normally does not handle foreclosures (in other words, the vast majority of attorneys in Florida) would have no realistic chance of meaningfully understanding and responding to the above Requests. This level of complication is regularly experienced by legal aid applicants and is regularly handled by legal aid attorneys.

## **Conclusion**

Former Florida Bar President Eugene Pettis was exactly correct when he stated that “...providing legal services to those who cannot afford them is a societal issue.” For the time being, however, “society,” at least in the form of Florida’s Governor and others, has not stepped up, and has preferred to direct Florida’s taxpayer funds to other issues, while generally ignoring Florida’s continuing systemic and critical problems with foreclosure, debt, vacant properties, returning

and existing veterans with critical legal needs, and the needs of Florida's significant elderly population, who are routinely at risk of predatory schemes and lack the resources to pay for legal services. For many, there is no one else ready to assist other than the lawyers within Florida's legal aid network and their *pro bono* counterparts in private practice.

As poet June Jordan said, "We are the ones we have been waiting for."

The following members of the PDA respectfully submit this Comment in support of the Amendment, and we very much look forward to continuing this dialogue with the Supreme Court, the Bar, the Bar Foundation and others as we search for more effective ways to change the lives of our fellow Floridians.

Submitted this 14th day of August, 2014.

/s/ James A. Kowalski, Jr.

James A. Kowalski Jr.

2014-2015 President

Submitted On Behalf of the Project Directors  
Association, not on behalf of the boards or the  
employees of the respective legal aid organizations

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14th day of August 2014, I electronically filed the foregoing Comment with the Clerk of Court using the Supreme Court of Florida E-Filing Portal. I also certify that the foregoing Comment is being served this date via email on Raoul G. Cantero, Esquire, White & Case LLP, Southeast Financial Center, 200 Biscayne Blvd., Suite 4900, Miami, FL (raoul.cantero@whitecase.com); and John F. Harkness, Jr., Esquire, 651 East Jefferson Street, Tallahassee, FL 32399-2300 ([harkens@flabar.org](mailto:harkens@flabar.org)).

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