

O/A 9-23-86

IN THE SUPREME COURT OF FLORIDA

FILED

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THE FLORIDA BAR,

JUN 2 1986

Case No. 68708

RE: REPLY TO PETITION TO AMEND THE RULES
REGULATING THE FLORIDA BAR -
CREATION OF CONTINUING LEGAL
EDUCATION REQUIREMENTS

SUPREME COURT

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GENERAL PRACTICE SECTION
REPLY BRIEF TO THE FLORIDA BAR

George O. Wilson III, Esquire
Chairman
General Practice Section
The Florida Bar
P.O. Box 3303
Tampa, Florida 33601
Telephone: (813) 224-2246

Jack O. Hackett, II, Esquire
Chairman-Elect
General Practice Section
The Florida Bar
P.O. Drawer 1447
Punta Gorda, Florida 33950
Telephone: (813) 639-1158

Stephen C. Page, Esquire
Secretary/Treasurer
General Practice Section
The Florida Bar
Suite 400
10 Central Parkway
Stuart, Florida 33497
Telephone: (305) 288-1980

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SUMMARY OF ARGUMENT

The General Practice Section of the Florida Bar (hereinafter "the Section") is not opposed to the concept of continuing legal education for lawyers and is, in fact, a strong proponent of such. However, the Section is opposed to the concept of mandatory CLE and the burdens it will place on the attorneys in the State of Florida. The need for mandatory CLE is unproven, either empirically, statistically or practically through the experience of other states. The program as promulgated by The Florida Bar is objectionable by its very nature and only serves as a poor public relations gambit instead of solving any real problems which may exist as to the small number of incompetent lawyers who are members of the Bar.

The mandatory CLE concept is not wanted or needed by the membership of The Florida Bar. Most members of the Bar are self motivated, competent professionals who, by the demands of their practice, are forced to keep up with the ever changing state of the law. There are many disciplinary procedures presently in place whereby incompetent or dishonest attorneys are weeded out of the profession. It is not correct to argue that the proposed mandatory CLE will significantly increase the professional competency of attorneys in Florida.

This Court has previously promulgated strict standards for the minimum qualifications to practice law in the State of Florida which include educational and testing requirements. Those lawyers who meet the criteria are considered to be competent to practice law pursuant to this Court's own guidelines. To now claim that additional mandatory CLE requirements should be imposed on all attorneys is tantamount to saying that the prior and existing methods of qualification are inappropriate. The General Practice Section does not feel that to be the case. The Section believes that mandatory CLE is unproven as it relates to competency and unnecessary in Florida today.

STATEMENT OF CASE AND FACTS

In 1984 The Florida Bar conducted a poll of members to determine the consensus as to a mandatory CLE program. As stated in Petitioner's Brief, 49.4% of the members voted for such a program and 48.4% voted against the programs with approximately 2% undecided. The Section sent out an informal survey to its members in May of 1985 and the results were overwhelmingly opposed to any type of mandatory CLE. The Florida Bar has indicated that the Task Force appointed by the Board of Governors and the CLE Committee has studied intensively a mandatory CLE plan. However it is clear that not a single statistical analysis has been performed on a nationwide basis which is indicative of the positive aspects of such a program. In fact there has been no direct correlation made between any type of mandatory CLE program, and/or the competence of attorneys within affected bar associations. Likewise no statistical studies link mandatory CLE to numbers of disbarments, numbers of disciplinary problems, decreases in grievances or other types of proceedings against lawyers.

There can be no question that the plan promulgated by The Florida Bar is a watered-down version of that originally proposed in committee. The facts are that the requirements themselves may not be onerous but the entire procedure is

objectionable. The Section has opposed any type of mandatory CLE from the inception of the concept in 1984. Members of the Executive Committee and representatives of the Section have appeared at a number of Board of Governors meetings and voiced opposition to the program commencing in September of 1984. It should be noted that the vote of the Board of Governors in May of 1985 to approve the concept of mandatory CLE was by a 17 to 16 margin. Thus, to indicate that the feeling of a "need" for mandatory CLE is pervasive amongst Bar members is totally inappropriate and would be a distortion of the real facts.

The Executive Counsel of the General Practice Section, based on the feelings of its members, voted unanimously to oppose the concept of mandatory CLE and asked the Board of Governors of The Florida Bar to file this brief in opposition. That permission was granted by the Board of Governors at a meeting held in Tampa on March 20, 1986.

POINT I

MANDATORY CLE WILL NOT UPGRADE THE
PROFESSION OR BETTER SERVE THE PUBLIC

The Section does not question the need for CLE and other educational courses for attorneys. The Section is one of the most active groups within The Florida Bar in producing seminars and will be producing seven of them during the Bar's next Fiscal year. However, the appropriateness of having available educational opportunities is not the question at issue. The question at issue is whether a mandatory program serves any needed purpose within The Florida Bar such as to require an amendment to the Integration Rules and the entire requirements for practicing law within the State of Florida. Such a change is, of course, a drastic remedy and should be clearly and definitely needed prior to approval. The promulgation of a mandatory CLE program would somehow indicate that the Board of Governors feels that attorneys are not educating themselves presently and need mandatory attendance requirements to continue to foster their legal education. The real facts are that most attorneys pay great attention to educating themselves in any given area of the law and that only a small portion of that education comes from attending CLE courses. A great deal of the education needed to be a good and competent lawyer in a particular area arises from self study and review. There can be no question that the CLE courses presently offered within the State are

large in number and that a vast number of attorneys attend these programs. However, there have been constant complaints by attorneys in our Section and other sections of The Florida Bar that the CLE courses are often not of particularly high quality and are not helpful to the attendees. The promulgated program will simply increase the number of inadequate CLE courses that are offered and lower the quality of CLE programs on the average. The program also does not include any provision for self study aside from reviewing cassettes or audio tapes.

The Florida Bar admits that it is not able to demonstrate a direct measurable link between mandatory CLE and lawyer competence. It has admitted that even the ABA task force on professional competence has stated that there can be no definitive evidence that mandatory CLE will enhance the public confidence or improve the professional competence of individuals. It appears the Bar is using mandatory CLE as a public relations tool. If serving the public is the goal then policing of the profession is critical. Mandatory CLE is not and cannot be a tool to police the profession. Adequate tools exist such as grievance procedures, bar exams, and other standards already in place and approved by this Court. To now insist that a watered down mandatory CLE program is necessary is somehow indicative that the present

procedures are inadequate. However, time and time again the present procedure has proven adequate. There are other and better methods to have good public relations than to require mandatory CLE which will create a large bureaucracy and several new administrative layers within the Bar.

There is no statistical or empirical evidence from other states indicating that there are any positive benefits of mandatory CLE. There is no definitive proof or empirical studies that in any way suggest that the competence of the attorneys in question have been improved. It should be noted that there are no studies cited by The Florida Bar indicating that the number of grievances filed in those states have been reduced or that actions based on a lawyers' alleged incompetency have decreased. The Florida Bar has stated in its Petition that the States of California and Illinois have rejected the concept of mandatory CLE and the Supreme Courts of several states have rejected proposals for mandatory CLE made by several bar associations.

POINT TWO

REQUIREMENTS OF MANDATORY EDUCATION
IN OTHER PROFESSIONS NOT RELEVANT

As stated above there is no quantitative or statistical correlation between required education and competency which has been cited by The Florida Bar. The Bar has cited that a number of other professions require mandatory CLE. However, it should be noted that dentists and medical doctors are not subject to any type of mandatory education requirements in the State of Florida. In addition, because of the unique nature of the practice of law and the constant self-education and tutoring that must occur there is no necessary correlation between the needs, desires and programs established by any other profession and those which should be required in the legal profession.

POINT THREE

THE PROPOSED PLAN IS NOT ACCEPTABLE

The final proposal, rules and policies promulgated by The Florida Bar are certainly a watered-down version of what was drafted previously. The rules themselves are fairly innocuous and the number of hours required is not large. That in itself is indicative of the fact that there is no correlation of any type between a Mandatory CLE requirement and professional competence. It is very hard to successfully argue that ten hours of attendance at a mediocre seminar by a lawyer will increase his professional competence to practice law. The requirement is not significant and is unlikely to make a measurable difference in the competence of an attorney. It should be noted, however, that while the plan may not be particularly onerous from an educational standpoint, significant dollars will be expended by individual attorneys, the Bar and the public in supporting the program. It will create one or more levels of administrative bureaucratic machinery which will ultimately require large sums to operate. The staffing will be significant, new CLE programs will have to be instituted, tapes and cassettes will have to be produced, new CLE commercial companies will enter into the field, commercial CLE programs will have to be reviewed for certification, attorneys will have to spend more time away from their offices attending programs, attorneys will have to spend more time in travel and registration expense, and the

courts will have to spend more time reviewing compliance with the program. The cost of all of the above will be passed on ultimately to the consumer of legal services. This vast bureaucratic machine will cost untold large sums with no demonstrative proof of the need, the effectiveness or the results of such a program.

POINT FOUR

THE ADMINISTRATION REVIEW AND SANCTION
PROCESS WILL BE EXPENSIVE

The due process and other requirements contained within the promulgated program require various hearings, and administrative procedures to assure compliance with the program. The procedures, hearings and ultimately Supreme Court review will all cost significant sums of money with highly questionable results. The administrative and judicial time taken could be significant on a program that will likely have little results in terms of real competency of attorneys. All of the costs will eventually be passed on to the public.

In Verner v. State of Colorado, 716 F.2d 1352,1353 (10th Cir. Colo. 1983), the Court held that mandatory CLE may be required by a state as long as a Court determines there is a rational connection between the program and the fitness or capacity to practice law. The Section submits that no such rational connection with the fitness or capacity to practice law has been demonstrably proved by the Florida Bar as to its proposed program.

CONCLUSION

The Florida Bar has attempted to promulgate a watered-down mandatory CLE requirement which is not needed in the State of Florida. There is no empirical or statistical proof that such a program is needed or will in any way increase or help the competency of the profession. As a public relations tool the program is insufficient and expensive and there are better and other ways to improve public relations, specifically by more carefully and properly policing the profession. A number of administrative procedures, including grievance procedures and review before this Court are already available to determine lawyer competency. In addition, this Court has long established the guidelines and requirements to practice law in the State of Florida including educational, bar exam, investigation and other requirements. To now argue that ten additional hours of some type of continuing legal education program should be added to the existing requirements, without any basis or facts to support it, is not acceptable.

The members of the Section are opposed to any program of education which is mandatory in nature. The requirements for the practice of law in this state are already stringent and sufficient; additional mandatory requirements are not needed, and thus this court should deny the Petition To Adopt A Mandatory CLE Program.

Respectfully submitted,



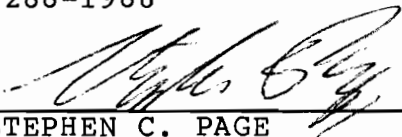
Stephen C. Page
Gunster, Yoakley, Criser & Stewart, P.A.
Suite 400
10 Central Parkway
Stuart, Florida 33497

I HEREBY CERTIFY that a copy of the GENERAL PRACTICE SECTION REPLY BRIEF TO THE FLORIDA BAR has been mailed to the following this 4th day of June, 1986

Phyllis Shampanier, Financial Federal Bldg., 407 Lincoln Road Miami, Beach, Fl. 33139; John F. Harkness, Jr., Esq., The Florida Bar, Tallahassee, Fl 32301; John N. Hogenmuller, The Florida Bar, Tallahassee, Fl 32301; Patrick G. Emmanuel, Esq., The Florida Bar, P.O. Drawer 1271, Pensacola, Florida 32596; William E. Loucks, Esq., P.O. Box 5386, Daytona Beach, Fla 32018; George C. Wilson, Esq., P.O. Box 3303, Tampa, Florida 33601; and Jack O. Hackett, II, Esq., P.O. Drawer 1447, Punta Gorda, Florida 33950

GENERAL PRACTICE SECTION
THE FLORIDA BAR
10 Central Parkway, Suite 400
Stuart, Florida 33497
(305) 288-1980

BY:



STEPHEN C. PAGE
SECRETARY/TREASURER