

0/a 9-23-86

IN THE SUPREME COURT OF FLORIDA

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

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CASE NO. 68708

REPLY BRIEF OF HENRY P. TRAWICK, JR.

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SUMMARY OF ARGUMENT

The Florida Bar proposes five points in this proceeding for consideration by the Supreme Court. The first point is the only relevant one. The sole question that should be considered by this court is whether mandatory Continuing Legal Education will make members of The Florida Bar better lawyers and better able to serve the public.

All of the other points are inserted for no more useful purpose than to increase the length of the brief and have no relevance to the one point that should be considered by the Court.

## ARGUMENT

### Point 1

ADOPTION OF A CONTINUING LEGAL EDUCATION REQUIREMENT FOR EVERY MEMBER OF THE FLORIDA BAR RESIDING IN THE STATE OF FLORIDA OR RENDERING ADVICE ON MATTERS OF FLORIDA LAW WILL UPGRADE THE PROFESSION AND WILL BETTER SERVE THE PUBLIC

It is an axiom of governmental philosophy that the government cannot legislate for morals or against ignorance or against stupidity. However, here we go again. The last time it was mandatory interest on trust accounts that falls into the category of legislating for morals--at least the morals of some people. Now we are embarked on the course of legislating against ignorance by mandatory Continuing Legal Education.

Those lawyers who do not want to improve their legal knowledge will not improve it because they must attend Continuing Legal Education seminars. A man convinced against his will is unconvinced still. He will go to the seminar. He will pay his admission. He will turn in his attendance slips. He will sleep through the courses or he will read a book, but he cannot be forced to learn. He cannot be forced to improve his professional ability. If he does not want to do it, he will not do it.

That is the essence of what is wrong with this proposal. It will not work. It is against the grain of human nature.

Perhaps the only redeeming virtue of the Bar's brief is its candor in admitting there is no evidence that mandatory Continuing Legal Education has accomplished its purposes where adopted or that it will accomplish the purposes in Florida.

With all due respect to the author of the brief, the use of "upgrade" in Point I may be modern terminology, but it is not good law English. Can we send him to a continuing education seminar on grammar? Would it do any good? What he really wants to do is raise the scholarship of the profession or improve the ability of the profession to render the service to the public, but "upgrade" is a topographic expression.

Those persons who ask the Court to require Continuing Legal Education are those who can make money from it. This is shown by the persons who are listed as sponsors on page 5 of the Bar's brief. From that paragraph one learns that the intent of Continuing Legal Education is to improve the specialization of "very narrow aspects of these disciplines." What good will this do members of the Bar generally? Does this paragraph mean that lecturers at Continuing Legal Education seminars are going to be able to "synthesize the vast amounts of information" that all the rest of us cannot read, much less assimilate? Obviously, they will not be able to do so. They do not have the "time, resources or ability" to do it anymore than the rest of us do because, at least in The Florida Bar Continuing Legal Education program, they are going to be practitioners like the rest of us.

The fact that Continuing Legal Education has gained acceptance among those of us who want to continue to improve our professional abilities is not relevant. It simply shows our good sense. That does not mean we can force others to follow in our footsteps.

Two things must coincide for effective education whether

legal or otherwise. There must be a student willing to learn and an able teacher who wants to teach. Mandatory Continuing Legal Education will not provide the former. The Florida Bar has permitted the quality of its Continuing Legal Education program to diminish over the past decade so that it cannot be considered competent to furnish the latter. Perhaps respondent's viewpoint on this is colored by the fact that most Continuing Legal Education programs of The Florida Bar are directed to those members who have less than ten years experience. This is entirely proper. They need the help. However, it does little or nothing for the older and more experienced members of the Bar who are seeking additional learning.

Point 2

A GOING NUMBER OF STATES ARE RECOGNIZING THE NEED FOR A CONTINUING LEGAL EDUCATION REQUIREMENT

Point 3

THE NEED FOR CONTINUING LEGAL EDUCATION HAS BEEN RECOGNIZED BY OTHER PROFESSIONS WITHIN THE STATE OF FLORIDA AND IN OTHER JURISDICTIONS

These two points are not the same, but they can be answered in one argument. They are not relevant. What is done in other states has no bearing on what Florida does or should do. The only thing it says is that others are engaging in exercises in futility.

The situation for dentists and doctors is quite different on a factual basis because of the differences between the law and those disciplines. Even so, they must combat the same problems that are referred to under Point 1.

The Board of Governors is again pandering to the press in an attempt to improve the lawyer's image. This is a commendable goal, but there are many other ways of meeting the problem. If The Florida Bar genuinely wants to improve the quality of Florida lawyers, it should consider an internship program.

Point 4

THE PROPOSED CONTINUING LEGAL EDUCATION REQUIREMENT IS  
NOT BURDENSOME AND CAN EASILY BE MET

On page 12 of its brief The Florida Bar says the "end product is a meaningful requirement." It refers to the rule. Again, we have some grammatical problem with the brief that might justify someone taking a course in English grammar. What is really meant is that the rule can easily be complied with. It has no meaning and cannot be "meaningful." This point says is that the Bar bureaucracy has evolved a procedure by which it can regulate the membership if this Court adopts the proposal. That has no bearing on the desirability of the proposal and is irrelevant. We all know that under the Peter Principle the cost will go up in a geometric proportion as the years go by and all of us will pay for it in one way or another.

It would be very interesting if the Bar had listed the 76 courses that it gave so this Court would be in a position to determine whether the program now being conducted affords continuing educational opportunities to all members of The Florida Bar. Suppose there are no programs that can improve a particular member's expertise? Is he to waste his time and money going to courses simply for compliance?



Point 5

THE REVIEW AND SANCTION PROVISIONS OF THE PROPOSED RULE SATISFY DUE PROCESS REQUIREMENTS AND ENFORCEMENT OF THE REQUIREMENT WILL NOT BE BURDENSOME

This point is not relevant because if this Court decides the matter, it is final. It may not be right in the moral sense, but it is certainly final and constitutional.

This point goes to great lengths to say what procedural safeguards will be accorded a member who does not comply. That is beside the point. The question before this Court is whether Continuing Legal Education should be mandatory. Is it desirable?

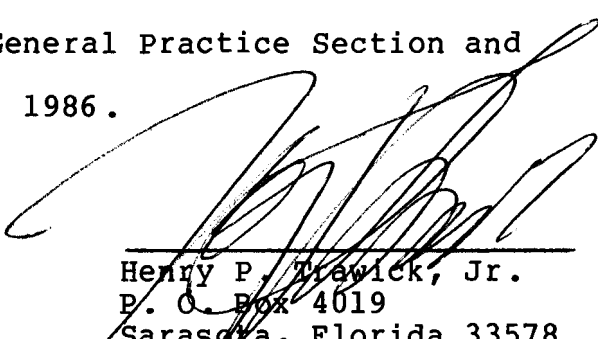
The part of the brief beginning on page 17 concerning compliance in other states and the prophecy about compliance in Florida is likewise irrelevant. The Florida Bar filed a 19 page brief, not including exhibits, and it devoted less than two pages to a discussion of the question that is before this Court.

The brief, and the proposal, are cluttered with socialistic, bureaucratic and wasteful words. They do try to solve a problem. Indeed, they concede there is no evidence that the problem can be solved in the manner proposed.

CONCLUSION

This Court should not approve the proposal of The Florida Bar.

The undersigned certifies that a copy of the foregoing has been furnished to Phyllis Shampanier, Joseph J. Reiter as president of The Florida Bar, John F. Harkness, Jr. as executive director of The Florida Bar, William E. Loucks, John N. Hogenmuller, Jack O'Hackett, II as chairman of the General Practice Section and Stephen C. Page by mail on July 3, 1986.



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