Case 70,702

COMMENTS ON JUDICIAL COUNCIL RECOMMENDATIONS
RE: FLORIDA BAR LEGISLATIVE ACTIVITIES

Comes now the undersigned, Ben L. Bryan, Jr., a member of The Florida Bar, and pursuant to the invitation of the Supreme Court, makes these comments relative to the Judicial Council Recommendations on Legislative Activities:

A. CONSTITUTIONALITY OF COMPULSORY BAR DUES.

I have no quarrel with the comments and analysis. The problem is defining what issues pertain to responsibilities which justify compelling attorneys to belong to the Association. The Board of Governors has in the past found virtually every issue, in some way, to relate to "the improvement of the administration of justice and advancement of the science of jurisprudence". For example, any proposed legislative action involving taxes or finances has been deemed appropriate to lobby, as any financial action could impact funding of the State Court system.

B. USE OF COMPULSORY FEES FOR LEGISLATIVE ACTIVITY.

The Council assumes the same conclusion that the Board of Governors has advocated over many years. That conclusion is that if The Florida Bar does not lobby an issue, the Legislature will not hear from attorneys. No one can dispute that attorneys' advice can be helpful to the Legislature. The Legislature can receive that advice under current Rules from the Sections of The Florida Bar, which are voluntary organizations. Additionally, lawyers are not hesitant to provide advice individually or through other legal groups where deemed appropriate. There are

other organizations which have the ability to obtain and forward legal advice to the Legislature on issues of interest.

The constitutional problem results when "The Bar" proceeds to "advise the Legislature and executive branches of government of its collective wisdom." That advice may not be its collective wisdom, but is the advice of the two-thirds majority of the members of the Board of Governors attending a meeting. Prohibiting such communication would not prohibit attorneys, either individually or through voluntary organizations, from tendering advice deemed appropriate. I am not convinced that either the public or the Legislature understands that the views expressed by The Bar are separate and distinct from individual members.

C. DETERMINATION OF RESTRICTIVE CRITERIA.

I have no quarrel with the subject areas set out on page 9, conditioned upon a strict interpretation of sub-section (2). If this Court agrees with the New Hampshire Court's conclusion that tort reform is an inappropriate area for the Bar to lobby, I suggest that number 2 would have to be refined. In my opinion, taking a position on tort reform would be allowable under sub-section (2).

The additional criteria set out on page 10 would be the basis for the Bar's lobbying issues which concern those of us who believe such constitutionally prohibited. I believe the problem is two-fold:

(1) If the issue is of public interest, then the Legislature will receive considerable advice, both legal and otherwise, on the matter and therefore there would be no necessity for

The Florida Bar to be involved. This is particularly true as, if there is great public interest, at least some of the sections could and would be involved representing the views and collective wisdom of their voluntary members. Insofar as the second criteria is concerned, I can think of no issue that lawyers would not agree that they were not especially suited by their training and experience to evaluate and explain the issue. Finally, I have heard, in six years on the Board of Governors, most issues determined to affect the rights of those likely to come into contact with the judicial system.

(2) My second concern, and this is or may appear inconsistent, is that if the court adopts the overall thrust of this report, then the ability of The Florida Bar to give advice to the Legislature in those areas where it could be most helpful and where the Legislature would not necessarily be getting substantial information is restricted. For example, if the Legislature determined to re-write the Rule against Perpetuities, or the law on statutory ways of necessity, or engage in some other similar endeavor that would not become of great public interest, The Bar could not give it the benefit of its collective wisdom. I suppose an answer would be that the Sections could, as I have suggested earlier. However, if there is value to "The Florida Bar" lobbying the Legislature, it probably would be in the arcane and complicated areas in which there is no great public interest.

I believe the solution is to eliminate these criteria and rely on the Sections. However, if the Court is not persuaded to this view, then I believe most of us who have constitutional concerns would not be any more concerned by criteria that would let The Bar lobby in obscure and uncontroversial areas.

D. THE FLORIDA BAR'S REBATE PROCEDURE.

I have no quarrel with the rebate procedure. My objections have never been to the $2 to $4 of my dues that go for lobbying. My objections have always been to what I believe to be an infringement on my individual rights by requiring me to be a member of an organization that takes legislative or other public positions on issues which I may disagree.

In conclusion, I urge the Court to review those cases cited by it in the Schwarz case, and suggest that all the legitimate goals of The Florida Bar in educating or persuading the Legislature as to any matter can be met by the Sections. If this is done, the constitutional question is eliminated and The Florida Bar could focus on the areas in which it is mandated to act, that is, lawyer discipline, judicial and legal aid funding, regulation of clients' trust accounts, law school and bar admission standards, and maintaining the confidence and integrity of the legal profession.

Ben L. Bryan, Jr.
Florida Bar #009691