

DA 11-7-88
047

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Certified Mail
Return Receipt Requested

August 1, 1988

72,671

Justices of the Supreme Court of Florida
Supreme Court of Florida
Tallahassee, FL 32399-1927

FILED
SID J. WHITE
AUG 4 1988
CLERK, SUPREME COURT
By M
Deputy Clerk

RE: The Florida Bar Foundation to amend the Rules of Regulating
the Florida Bar, Rule 5-1.1(d), Interest on Trust Accounts
(Case Number 72-671)

Dear Justices:

The following are my comments in opposition to the Florida Bar
Foundations' attempted amendment to the rules regulating the
Florida Bar concerning mandatory interest on trust accounts.

The Florida Bar started out as a regulatory agency to regulate
attorneys who practice law within the State of Florida.
Specific concern was given to the discipline of attorneys, and
the qualifications of attorneys to practice law within the
State of Florida. However, over the years, Florida's bar
association has taken on aspects of a trade association
becoming involved in lobbying activities before the State
legislature, as well as public advertising and related
matters. The Florida Bar Association has taken on political
activities funded by mandatory bar fees.

For example, in the Petition of Chapman (1986), 509 A2d 753,
the New Hampshire Supreme Court told the New Hampshire Bar
Association to exercise circumspection in regard to legislative
lobbying activities before the State legislature.

In Gibson v. The Florida Bar, (11th Circuit 1986) 798 F2d 1564,
the Eleventh Circuit Court of Appeals stated as follows:

"The Florida Bar may use compulsory bar dues to
finance its legislative program only to the extent
that it assumes a political or ideological position
on matters are germane to the Bar's stated purposes."

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The Court suggested in a footnote that the Bar either allow members to contribute toward legislative lobbying voluntarily, or at least allow members who oppose a certain position to receive a refund of their dues allotted to that activity. See Falk v. State Bar of Michigan, (1981) 305 NW2d 201; Arrow v. Dow (1982) 544 F. Supp. 458.

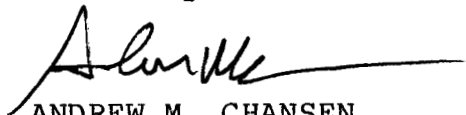
Now the Florida Bar wants to become involved, in addition to a regulatory agency and a trade association, in a welfare agency by requiring mandatory contributions from non-lawyers interest on money belonging to non-attorney's trust funds to be used for programs which will be used for social programs, e.g. providing welfare assistance by way of attorney fees to the poor and other related programs.

Needless to say, the taking of money from non-attorneys to be used by the Florida Bar for whatever purpose would violate those persons Fifth Amendment rights from unlawful taking without just compensation. Additionally, those persons would have no voice in the use of the funds which would be controlled by the Florida Bar Association.

As an alternative to a mandatory contribution from non-lawyers to fund Bar Association activities, I would suggest that the Bar Association simply let the various sections of the Florida Bar constitute those activities for which they deem necessary. These various sections are voluntary organizations which can be funded through contributions by those members of the Florida Bar who choose to belong. Requiring attorneys and/or their clients to contribute to a mandatory program unrelated to the regulatory purpose of the Florida Bar is unnecessary, unconscionable and unconstitutional.

I urge you to deny the petition of the Florida Bar Foundation requiring mandatory interest on trust accounts.

Cordially,



ANDREW M. CHANSEN

AMC:ps

cc Clerk Sid White