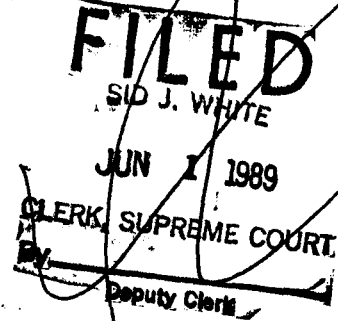


IN THE SUPREME COURT OF FLORIDA
CASE NO. 72,671

MATTER OF INTEREST ON TRUST
ACCOUNTS: A PETITION TO
AMEND THE RULES REGULATING
THE FLORIDA BAR



COMMENTS BY RESPONDENT

MICHAEL H. DAVIDSON

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I. MEMBERSHIP OF THE FLORIDA BAR FOUNDATION

Heretofore, membership in the Florida Bar Foundation has been governed by a set of By-Laws private to the Foundation. See Article III, 3.3 of the Foundation's Articles. Membership on the Board of Directors has been governed by a Byzantine labyrinth known as Article VI of the Foundation's Articles. The net result of interplay of those By-Laws and Articles is a dramatic limitation of eligibility on the part of any lawyer not already a Supreme Court Justice or of influence in the Florida Bar. Some observers might call the requirements a design to limit participation to only those members of the Bar and Court already known to be in sympathy with the current goals of the Foundation. While such a "closed-shop" approach to membership and directorship might arguably have been appropriate when the Foundation did not exercise dominion over the trust account of every lawyer in the State of Florida, the grant of that dominion by this Court certainly renders those restrictions inappropriate and autocratic. Henceforth, membership in the Florida Bar Foundation should be open to any lawyer, on application, and the Board of Directors of the Foundation should be chosen by popular election from the membership. That system seems to work well enough for the Florida Bar and there is no reason, save the licentious desire for raw power in the hands of an unrestricted few, to not now open the doors of the Foundation to democracy.

If the Foundation desires all the lawyers of Florida to participate in the IOTA program, why would it oppose such a notion? If it does oppose such a notion, is it unreasonable to conclude that what it really wants is not the Florida lawyers but only their money? Those who would oppose the entry of popular democracy into the Foundation should first consider the comments of Frederick Douglas that one cannot have democracy

and freedom without tumult anymore than one can have the ocean without its roar. The simple principle here is that public and quasi-public bodies are to be governed by democratic, not autocratic, principles and the now approved activities of the Foundation clearly surpass any of those traditionally recognized by this Court as belonging to a private body. Let the tumult begin !

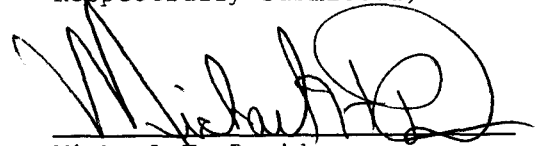
II. DISCLOSURE TO THE CLIENT

Many of the present members and directors of the Foundation have been and continue to be enthusiastic supporters of the notion of Government In The Sunshine. Yet, when asked to apply the philosophy behind that concept to the Foundation by requiring lawyers to inform their clients just what the Foundation does with the interest garnered on their money, they shrink from that proposition like a vampire from garlic. Why? What is the fear of disclosure ? Aren't many of the arguments against such disclosure the same arguments that were unsuccessfully (and deservedly so) raised against the Sunshine laws ? Why would the Foundation care to grow only in the dark, like some giant fungus ? Are its aims and objectives so evil or weak that they cannot survive their revelation to the public, generally, and clients, particularly ?

The excuse that the Foundation is " private " and therefore beyond susceptibility to notions of Sunshine is perceptibly weak. What " private " organization can force lawyers to give it money ? Could the Florida Bar do so were it not an arm of this Court ? Have the Courts been reluctant to disregard the notion of " privacy " when they felt the exercise of that " privacy " odious to the equal protection clause of the Constitution ? Beyond all that, however, what is the intellectually honest reason not to apply to the Foundation the philosophy of openness, propriety of appearances,

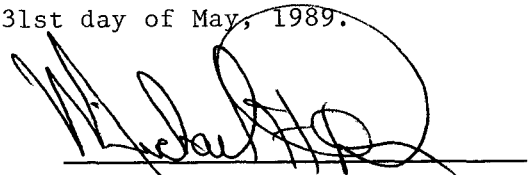
straightfowardness and fair-dealing that we now routinely ask of the vast bulk of our elected officials in the discharge of duties and the exercise of powers insignificant to those now possessed by the Foundation ? The instant respondent submits that there is no honestly persuasive reason for such timid refrain and suggests that the Articles and By-Laws of the Foundation be amended, accordingly.

Respectfully submitted,



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Fla. Bar No. 191637

I HEREBY CERTIFY that a true copy of the foregoing was forwarded by U.S. Mail to each addressee on the attached list, this 31st day of May, 1989.



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