



THE FLORIDA BAR FOUNDATION

FILED

SID J. WHITE

APR 24 1989

CLERK, SUPREME COURT

By _____
Deputy Clerk

April 21, 1989

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The IOTA Program

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- Vice-President:
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- Secretary-Treasurer:
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- Assistant Secretary:
Gerald B. Cope, Jr.
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EXECUTIVE DIRECTOR

Jane Elizabeth Curran

The Honorable Chief Justice
and Justices of the
The Supreme Court of Florida
Supreme Court Building
Tallahassee, FL 32301

Re: Case No. 72,671 (Governance of
The Florida Bar Foundation, Inc.)

May it please the Court:

On behalf of The Florida Bar Foundation Inc. I am accepting your kind invitation to comment on our submission to the Court of proposed amendments to the articles of incorporation of the Foundation. The submission of the proposed amendments was made before April 1, 1989 pursuant to your order dated January 26, 1989 in connection with your approval of mandatory participation in the interest on trust accounts program.

1. The proposed amendments have been approved by the board of governors of The Florida Bar. The board of governors are, of course, the elected representatives of the members of The Florida Bar and represent reasonably well the views of the membership.

2. A major responsibility of The Florida Bar Foundation Inc. is to consider applications for, and to make, grants of IOTA funds to grantees who provide legal aid to the poor, improve the administration of justice, or provide law student financial assistance. The Foundation is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code and may not engage in political activities. The governing structure and the selection of its policy makers must be appropriate for that responsibility and the restraints on its exercise.

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3. The proposed amendments represent a compromise of many constituencies, both within the Foundation and without it, including the legal aid provider community. Representatives of the Florida Bar and the Foundation, separately and collectively, and the board of governors and the Foundation board of directors hammered out the amendments during intense debates over a period of several months and are deemed in their entirety as creating a governing structure designed to get input from all interested persons and at the same time provide protection for the interests of many constituencies. Notwithstanding the compromises, all constituencies believe the advantages of the proposed amendments outweigh any disadvantages and that, therefore, the Court should approve the amendments.

4. The Foundation is a non-profit corporation organized under the laws of the state of Florida and the amendments become effective upon their filing with and approval by the department of state in the executive branch of Florida government. The articles of incorporation provide that the amendments must be approved by the Supreme Court of Florida and we construe this to mean that the court may approve or, if it does not approve them, reject the proposed amendments, but the Court does not appear to have authority to directly amend the articles. However, you may be assured that the Foundation would be favorably disposed to accepting any changes to the articles that the Court might suggest while rejecting the proposed amendments.

5. Until the proposed amendments have been approved by the Court and articles of amendment have been filed with the department of state, the existing governmental structure for the Foundation remains in place. The present governmental structure provides for directors to be elected at the annual meeting of members of the Foundation. The 1989 annual meeting has been noticed for and is scheduled to be held at the site of the annual convention of The Florida Bar on Friday, June 16, 1989.

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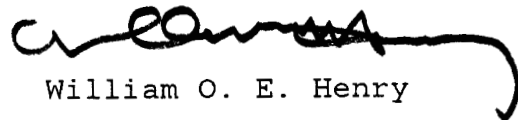
6. The proposed amendments would have directors selected by the board of governors and by the Court in time for an organizational meeting of the board of directors presently scheduled for Friday, June 16, 1989. Obviously, between now and June 19, 1989, it will be difficult for the Foundation to schedule and hold a special meeting of the board of directors to amend its bylaws to implement the new governing structure, for the nominating commission to be created, for the Court to consider and select directors from among nominees from the nominating commission, for the board of governors at its May meeting to decide on its selection of directors. Thus, we hope you find the proposed amendments acceptable and that you will approve them promptly.

7. I have agreed with the chief justice that, if necessary, I will request the board of directors of the Foundation and the Foundation members to adjourn their respective meetings to times certain later this year and to continue those adjourned meetings from time to time until appropriate action can be taken with respect to the selection or election of directors pursuant to the requirements of the articles of incorporation, either as presently existing or as amended.

Please let me know if you have any questions.

Thank you for your concern.

Sincerely yours,



William O. E. Henry

WOEH/meg

cc: Mr. Samuel S. Smith
Ms. Susan B. Werth
Ms. Jane Elizabeth Curran

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