

OA 10-3-88

IN THE SUPREME COURT OF FLORIDA

MATTER OF INTEREST ON TRUST)
ACCOUNTS: A PETITION TO) CASE 72,671
AMEND THE RULES REGULATING)
THE FLORIDA BAR.)

FILED
SID J. WHITE
AUG 3 1988
CLERK, SUPREME COURT
By *[Signature]*
Deputy Clerk

RESPONSE TO PETITION

The response of HENRY P. TRAWICK, JR. shows:

- 1. Respondent is a member of The Florida Bar.
- 2. Respondent was among those opposing the prior proposal of The Florida Bar Foundation on mandatory IOTA that was determined by the opinion of this Court in 402 So2d 398. That was the second appearance of the matter in this court.

3. The Florida Bar Foundation has again brought the same matter to this Court, but there has been no change in the facts, the philosophy or the reasons that were advanced in the earlier proceeding, except that the voluntary plan has failed.

- 4. This Court said in the last case at page 393:

"Our decision today, subject only to any technical difficulties properly and promptly brought to our attention, is our last endeavor in this field."

Respondent submits that the Court should adhere to this statement.

5. In the earlier decision the court admitted the significant opposition in philosophy to what is now sought. The fundamental basis for the current petition is the same. The lawyers of Florida have not adopted this concept with the wholehearted enthusiasm that the "do-gooders" would like. Since the members of the profession will not voluntarily do what the "do-gooders" want, the bar must now be forced to do it. The only factual reason given for this is that the "do-gooders" want everyone to do it.

6. The Florida Bar Foundation is a private corporation formed for charitable, scientific, literary and educational purposes so that it complies with the Internal Revenue Code making contributions to it tax deductible. It is authorized to spend money in four categories. The categories are stated in broad terms. The fourth item is not confined to anything that must affect the administration of justice, lawyers or the profession in general. It merely requires the approval of this Court. Nevertheless, this Court is not the

body designated by the Florida Constitution to decide what social programs should be implemented for the public. That function has been given to the Legislature by the people of this State.

7. Respondent said in his previous appearance on this matter and says again that he is opposed philosophically to many, if not most, of the programs of this private corporation. The Florida Bar Foundation says that it is not respondent's money that will be used. But it is respondent's interposition in the process that makes it possible. It will take respondent's time and money to comply with the rule if it is modified so respondent does have a pecuniary interest in what happens. The rule requires respondent to decide in each case whether client funds are to be deposited so that the interest can go to this private corporation. It will require respondent's bookkeeper to do the necessary work to keep the records in order to comply with other record keeping requirements of the Federal Government and The Florida Bar. Respondent is the person threatened with disciplinary proceedings, not the client or the bank whose money is taken.

8. Respondent is not a member of The Florida Bar Foundation. It is a private corporation that is, and always has been, operated by what is called the "establishment" of The Florida Bar. Respondent cannot become a member without paying a fee and being nominated by the board of directors. A close relationship between The Florida Bar Foundation and The Florida Bar is shown by the fact that the board of governors and executive director are ex officio members. Presumably they do not pay the annual fee. Members of this court are also ex officio members. Thus a relatively small group of persons will decide what matters will be supported by the funds derived from mandatory interest on trust accounts.

9. This private corporation that does not answer to the public in any way nor is it responsible to any duly elected public official with fiscal responsibility comes to this Court and says it needs more money for social programs. Justifications given are:

- (a) Poor people need more access to the court. This is not something that has been substantiated by evidence. It is a conclusion that the "do-gooders" have reached. Whether poor people do need the access and need all

of the legal services that The Florida Bar Foundation believes is a matter on which reasonable persons can differ.

- (b) It may be unethical for lawyers to have the interest used by banks. There is no evidence presented to this court that the allegations of the compensating balances unethical claim is true. It is asserted without proof. The courts of this state have universally condemned unverified allegations as being inappropriate. See *State ex rel Hawkins v Board of Control*, 53 So2d 116(Fla 1951); *Viking Superior Corp v W. T. Grant Co.*, 212 So2d 331(1 DCA 1968); *Whitaker v Wright*, 100 Fla 282, 129 So 889(1930). It is true that some banks have eliminated service charges for estates and trusts, providing free cashier checks and wire transfers and sometimes have cleared third party checks for immediate use. All of these items benefit clients. If there is a benefit to the lawyer, it is indirect. It helps the lawyer provide a faster and better service to the public. If there is any instance in which a bank has given a lawyer something else for his personal benefit, it should be investigated and prosecuted by the appropriate grievance personnel. Perhaps the grievance machinery of the bar could then provide a more useful service than it generally does.
- (c) The requested modification will benefit clients, so it is asserted, by requiring lawyers to make conscientious decisions about where to place the client's funds. How is the lawyer going to be compensated for taking this time and trouble? Certainly, he is not going to be compensated by the client. It is equally certain he will not be compensated by this private corporation that seeks the interest on the trust account.

10. Even on the technical level there is a serious error in what this private corporation wants to do in its proposed change of Rule 5-1.1(d)(4) when it does not set any standard for performance by the lawyer. Respondent may well decide in good faith that all of client funds should earn interest for the client, but respondent is certain that this private corporation would then initiate a disciplinary proceeding.

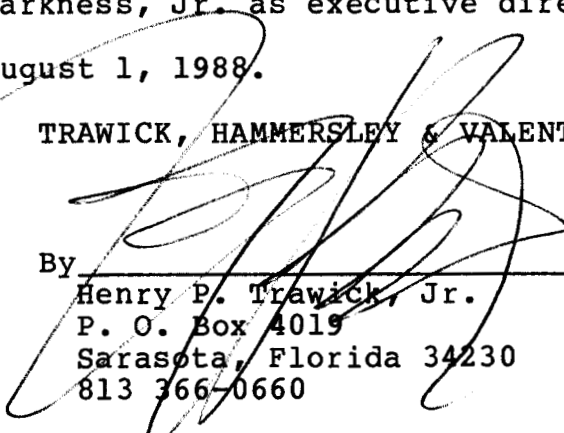
11. The fundamental objection to the relief sought is that some persons who have one philosophical social concept are asking this Court to force others who differ to conform. They are doing so without a majority vote. They are doing so without passing through the legislative process. They are doing so by fiat. They do not see, or will not see, that what they do for a "good" purpose today may be used for an evil purpose tomorrow. They do not, or will not, see that what they do tears at the fabric of constitutional government. Their end justifies their means. By whatever name this private corporation attempts to call the proposal, it is asking this

Court to apply naked force to mandate what a few Florida lawyers want. This is a facet of the problem this Court wrestled with in The Florida Bar Re Schwarz, 526 So2d 56(Fla 1988). The only difference between the philosophical concept in the Schwarz case and in this case is that The Florida Bar is supporting the request of a private corporation rather than making the request for itself. Respondent submits this makes the problem discussed in the Schwarz case even more acute because this court is favoring a private corporation in a manner not contemplated by the Constitution nor by any other law.

The undersigned certifies that a copy of the foregoing has been furnished to William O. E. Henry as president of The Florida Bar Foundation, Roderick N. Petrey as past president of The Florida Bar Foundation and John F. Harkness, Jr. as executive director of The Florida Bar by mail on August 1, 1988.

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By


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