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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

IN RE: David P. Frankel

Case No. 76,853

_____/

RESPONSE OF THE FLORIDA BAR
TO AMENDED PETITION OF DAVID P. FRANKEL

THE FLORIDA BAR ("the Bar") hereby files this response to the amended petition of David R. Frankel regarding legislative activities of this organization, and respectfully states:

The Petitioner in this action questions the propriety of eight matters formally advocated by The Florida Bar as official legislative positions of this organization. Petitioner argues that these positions violate standards adopted by this Court, and that the Bar should be enjoined from lobbying such issues in the legislative arena. Petitioner further seeks a declaration as to the unconstitutionality of criteria adopted by this Court to assist in determining whether certain topics are appropriate for the Bar's active legislative involvement.

The bulk of Petitioner's argument is premised on this Court's October 1989 opinion in The Florida Bar re Schwarz, 552 So.2d 1094 (Fla. 1989) cert. den. 111 S.Ct. 371 (1990) ["Schwarz II"]. Since that case was decided, the federal constitutional implications of political and ideological activities of the unified bar have been addressed by the United States Supreme Court, in Keller v. State Bar of California, _____ U.S. _____, 110 S.Ct. 2228 (1990). Additionally, the specific procedures for member dissent from Florida Bar legislative activities per Bar Rule 2-9.3 have now been reviewed by lower federal courts, in Gibson v. The Florida Bar, 906 F.2d 624 (11th Cir. 1990) petition for cert. filed (U.S., Jan. 17, 1991) (No. 90-1102) ["Gibson II"].

RECENT UNITED STATES SUPREME COURT ACTION
HAS CLARIFIED THE FIRST AMENDMENT IMPLICATIONS
OF POLITICAL ACTIVITIES OF THE INTEGRATED BAR

Rendition of Keller v. State Bar of California on June 4th of last year finally clarified the federal constitutional implications of certain uses of mandatory dues money within the integrated bar.

Keller involved a member challenge of various political activities of the integrated State Bar of California, all principally financed through the use of compelled membership dues. Those questioned matters, as listed by the Court, included: lobbying of the state legislature and other governmental agencies; the filing of amicus curiae briefs in pending cases; the conduct of an annual Conference of Delegates at which issues of current interest were debated and resolutions approved; and the presentation of a variety of education programs.

Consistent with the flow of lower court pronouncements, the Keller Court analogized the integrated bar to the compulsory union/agency shop environment. That opinion held the use of mandatory dues to financially underwrite a bar's political activities is violative of dissenting members' First Amendment rights in certain, but not all, instances. Reciting its ruling in the labor union case of Abood v. Detroit Bd. of Education, 431 U.S. 209 (1977), the Court stated:

> Abood held that a union could not expend a dissenting individual's dues for ideological activities not "germane" to the purpose for which compelled association was justified: collective bargaining. Here the compelled association and integrated bar is justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those

> goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.

Keller, 110 S.Ct. at 2236.

Then, in revisiting its only other pronouncement on the integrated bar -- Lathrop v. Donohue, 367 U.S. 820 (1961) -- the Court concluded:

> Thus, the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or "improving the quality of the legal service available to the people of the State." Lathrop, 367 U.S., at 843, 81 S.Ct., at 1838 (plurality opinion).

Keller, 110 S.Ct. at 2236.

The U.S. Supreme Court gave additional guidance as to how an integrated bar might properly address the First Amendment implications of Keller, as premised on Abood and related labor cases. Application of those cases involves a determination of the proportionate share of compulsory membership dues that dissenting members may be required to contribute toward support of authorized bar programs that are otherwise constitutional for First Amendment purposes.

For such "proportionate share" determinations, Keller endorsed the approach approved in Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986). That opinion enunciated the constitutional standards for a union's collection, as exclusive bargaining agent for members and non-members, of proportionate share payments from non-union members who benefited from union representation. The Court said such collection must include: "an

adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." Chicago Teachers, 475 U.S. at 310.

Commenting further on this methodology, the Keller Court observed:

> In Teachers v. Hudson, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986), where we outlined a minimum set of procedures by which a union in an agency shop relationship could meet its requirement under Abood, we had a developed record regarding different methods fashioned by unions to deal with the "free rider" problem in the organized labor setting. We do not have any similar record here. We believe an integrated bar could certainly meet its Abood obligation by adopting the sort of procedures described in Hudson. Questions as to whether one or more alternate procedures would likewise satisfy that obligation are better left for consideration upon a more fully developed record.

Keller, 110 S.Ct. at 2237 - 8.

THE EIGHT LEGISLATIVE POSITIONS IN QUESTION ARE WITHIN ALLOWABLE SUBJECT AREAS OF POLITICAL INVOLVEMENT OF THE FLORIDA BAR

The Florida Bar's legislative programming has been shaped by state Supreme Court-promulgated rules and case law since integration of the Bar in 1950. Generally speaking, pertinent court opinions have reflected varying pronouncements on either the Bar's corporate authority or constitutional limitations in the legislative arena: Gibson II; Gibson v. The Florida Bar, 798 F.2d 1564 (11th Cir. 1986) ["Gibson I"]; Schwarz II; The Florida Bar re.

Schwarz, 526 So.2d 56 (Fla. 1988) ["Schwarz I"]; The Florida Bar re. Amend. to Rule 2-9.3, 526 So.2d 688 (Fla. 1988); In re Amendment to Integration Rule of The Florida Bar, 438 So.2d 213 (Fla. 1983); and In re Florida Bar Board of Governors' Action, 217 So.2d 323 (Fla. 1969).

In Schwarz I the Supreme Court of Florida considered a petition which questioned "the legality, propriety, scope and procedures, if any, through which this Court may exercise political power" through The Florida Bar. Schwarz I, 526 So.2d at 56. As a result of that action, this Court commissioned a review of the Bar's legislative program by Florida's Judicial Council. Recommendations from that Council were subsequently approved and adopted by this Court "as guidelines to be followed with respect to determining the scope of permissible lobbying activities of The Florida Bar." Schwarz II, 552 So.2d at 1098. This Court noted

> In seeking to define the administration of justice and the advancement of the science of jurisprudence, the Council recommended that the following subject areas be recognized as clearly justifying legislative activities by the Bar.
>
> (1) Questions concerning the regulation and discipline of attorneys;
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> (2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;
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> (3) increasing the availability of legal services to society;
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> (4) regulation of attorneys' client trust accounts; and
>
> (5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

Special Report on Legislative Activities, supra, at 9. The Council also recommended that the following

additional criteria be used to determine "the type of proposed legislative initiatives the Bar may become actively involved with when the legislation appears to fall outside of the above specifically identified areas."

(1) That the issue be recognized as being of great public interest;

(2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and

(3) the subject matter affects the rights of those likely to come into contact with the judicial system.

Id. at 9-10.

Schwarz II, 552 So.2d at 1095.

Petitioner seeks to make the Bar accountable, solely under Schwarz II, for the propriety of eight particular legislative positions adopted by the Board of Governors in October 1990. The questioned topics are a part of 14 separate recommendations of The Florida Bar Commission for Children, a prestigious interdisciplinary group which, for two years, has undertaken a substantial and in-depth examination of children's issues, societal problems and the role of lawyers in contributing to the solution of these problems. These topics were also a part of this organization's legislative agenda in the 1988-90 biennium but were formally "sunsetted" in July 1990 in accordance with official Bar policy. Legislative Policy and Procedure 9.11(d), 64 Fla.B.J. 128 (Sept. 1990).

As formally noticed per Bar Rule 2-9.3 in the October 15, 1990, issue of The Florida Bar News, the challenged topics include:

a. Expansion of the women, infants and children (WIC) program.
b. Extension of Medicaid coverage for pregnant women.
c. Full immunization of children.
d. Establishing children's services councils.
e. Family life and sex education/teen pregnancy prevention.
f. Increasing Aid to Families with Dependent Children.
g. Enhanced child-care funding and standards.
h. Creation of children's needs consensus estimating conference.

The Florida Bar News, Oct. 15, 1990, at 4, col. 2.

Each of these issues was more fully described within a special issue of The Florida Bar Journal which predated the Board's action by some seven months: See Middlebrooks & Streit, "Lawyers Cannot Remain Silent," 64 Fla.B.J. 10 (Mar. 1990).

Petitioner proclaims that none of these legislative positions meets any of the five Schwarz II guidelines that would clearly justify Bar legislative involvement. He makes no argument that these matters are ultra vires in the corporate sense, nor should he in view of this Court's authorization for the Bar to "[e]stablish, maintain, and supervise . . . [p]rograms for promoting and supporting the Bar's public service obligations and activities . . ." Rules Regulating The Florida Bar 2-3.2(c)(8). Yet, if such advocacy must be judged by the three subordinate criteria in Schwarz II, the challenged topics still appear to be well within those guidelines.

As to the first criterion, Petitioner readily concedes the great public interest of these issues. With regard to the second criterion, the impressive and convincing presentation of these political priorities and other moral concerns of the legal

profession -- evidenced by a special Journal compendium and by the ultimate legislative passage of many of these measures -- verifies the specialty of training and experience within this profession to more than suitably evaluate and explain these matters.

As stressed in the comments of Bar leadership, such "advocacy and protection for children that only lawyers can provide" is "one of the highest callings of our profession" in keeping with "the highest ideals of professionalism and the role of lawyers in our society as counselors and healers." Zack, "To Volunteer to Help is to Light a Candle of Hope," 64 Fla.B.J. 4 (Mar. 1990).

The general charge to The Florida Bar Commission for Children further explains:

> A major priority of The Florida Bar during the upcoming year will be children's issues. The Florida Bar Commission for Children, composed of judges, lawyers, medical doctors, business executives, legislators, and community leaders, will recommend legislation for inclusion in The Florida Bar legislative program, as well as changes in court rules and legal practice. The Commission will also explore sources of funding for children's programs. . . .
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> . . .
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> The leadership of The Florida Bar believes that a greater investment of time and money spent on children in their early years will result in better, safer, more productive lives for all Floridians. The Commission's responsibility is to work to translate this belief into reality through utilization of the time and resources of Florida lawyers and cooperation with other groups and professions.

The Florida Bar, General Orientation Materials to The Florida Bar Commission for Children 1 (July 1989) (available at Florida Bar Headquarters)

None other than our current Governor, in the special Journal discussion of children's issues, unequivocally proclaimed: "Certainly our profession bears a special responsibility to represent unprotected and defenseless children." Chiles, "Florida's Children as Human Capital," 64 Fla.B.J. 8 at 9 (Mar. 1990).

Pointed language in the preamble to this Bar's Rules of Professional Conduct regarding a lawyer's responsibilities, unconditionally states that "[a]s a public citizen, a lawyer should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession." Rules Regulating The Florida Bar, Ch. 4.

In weighing the propriety of advocating these questioned topics the Bar's Legislation Committee chairman observed, "Who better to speak for those who cannot speak, than lawyers for children?" The Florida Bar News, Nov. 15, 1990, at 1, col. 2.

The training and experience of lawyers to evaluate and explain issues affecting children would seem heavily underscored by the 1984 action of the American Bar Association which read:

> BE IT RESOLVED, That the American Bar Association urges the members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting children including, but not limited to: (1) the preservation of children's legal rights; (2) the needs of children who have no effective voice of their own in government; (3) drug and alcohol abuse among children; (4) establishment of character, citizenship, parenting skills, and child safety

programs in public education; (5) implementation of statutory and programmatic resources to meet the health and welfare needs of children; (6) missing and molested children; and (7) establishment of guardian ad litem programs.

A.B.A. H. Res. 103A, 1984 Midyr. Mtg. (1984).

Inspiration for that ABA pronouncement, in part, stemmed from the salutory accomplishments of The Florida Bar's Committee on the Legal Needs of Children. That group, whose mission is now incorporated within the Commission for Children, was created in 1983 and represented the first interdisciplinary children's committee sponsored by a state bar. The activities of that predecessor committee have been well chronicled within this Bar, long known by this Court, and never questioned.

Indeed, it would seem indisputable that children -- wards of the court -- are the responsibility of lawyers as officers of the court. In the context of reviewing juvenile dependency proceedings in our state, this Court recited the conclusions of one of its own ad hoc study committees which observed, "a greater investment of time by lawyers in the system is necessary, if we are to protect the important rights of the children and families whose lives come under the control of the system." The Florida Bar In re Advisory Opinion HRS Nonlawyer Counselor, 547 So.2d 909 at 910 (Fla. 1989).

The foregoing should easily support the involvement of The Florida Bar in these matters under the second prong of Schwarz II's three additional criteria -- and even arguably suggest "clear justification" for advocacy of such matters due to their relationship to the "ethics" and "integrity" of the legal profession under the fifth guideline of that opinion.

And, as to Schwarz II's third criterion, regardless of Petitioner's dismissal of (1) any nexus between the rights affected by these legislative issues and (2) some reason that unprotected

children may come into contact with the judicial system, that view is disputed by one of Florida's premier prosecutors:

> As I analyze the backgrounds of people who commit crime, I see recurring patterns: A child born into poverty, raised by a single parent in substandard, squalid housing without adequate health care, left to wander the streets after school, ignored by a parent who has plunged into drugs, truant at nine years of age, a dropout at 13, a delinquent at 14, and in prison at 18.
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> . . .
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> Each scenario is different, but common sense dictates that unless we make a major investment in our children up front, we will pay far more for prisons and the cost of crime by the time these children turn 18.

Reno, "To Protect Our Children is to Prevent Crime," 64 Fla.B.J. 16 (Mar. 1990).

Press accounts of the Bar's Legislation Committee deliberations on these measures highlight similar debate on this identical concern. The Florida Bar News, Nov. 15, 1990, at 2, col. 3.

The preceding analysis should therefore confirm the propriety of the Bar's involvement in these legislative matters under the application of the three additional Schwarz II criteria. Still, Schwarz II further admonishes the Bar to "exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar." Schwarz II, 552 So.2d at 1097.

Following the extensive Journal discussion of these topics and their formal notice for member reaction, only nine objections against these specific measures -- from a membership of 45,166 -- were filed under the provisions of Bar Rule 2-9.3. During the 1988-90 legislative biennium, these issues garnered but three member objections. All have been paid or authorized partial dues rebates from the Bar. Further, that Journal presentation chronicled some $27,000 in voluntary contributions from 526 lawyers toward a separate Florida Bar Children's Fund -- and donations increased appreciably after that publicity. These reports hardly signal any deep division on these measures that bear on the ethics and integrity of our legal profession.

In sum, The Florida Bar would maintain that the eight legislative positions challenged by Petitioner are appropriate when considered against the standards adopted by this Court in Schwarz II. Consequently, no order should issue, pendente lite or thereafter, enjoining The Florida Bar from engaging in any lobbying activities pertaining to these issues.

ADDITIONAL CRITERIA OF THIS COURT FOR DETERMINING ACCEPTABLE LEGISLATIVE ACTIVITIES OF THE FLORIDA BAR ARE VALID UNDER THE UNITED STATES CONSTITUTION

Petitioner further seeks from this Court a declaration that the three "additional criteria" adopted in Schwarz II are violative of the First and Fourteenth Amendments to the United States Constitution, both in their express language and as applied.

The Bar notes the uniqueness of this additional request, filed pursuant to this tribunal's declaration that "any member of The Florida Bar in good standing may question the propriety of any legislative position taken by the Board of Governors by filing a timely petition with the Court" [Schwarz II, 552 So.2d at 1097] and the authorization of "injunctive actions seeking to prevent unauthorized bar activities and expenditures" [The Florida Bar re

Amend. to Rule 2-9.3, 526 So.2d at 689]. These cases say nothing on the issue of awarding attorneys' fees to a member-objector, and such relief would seem totally inappropriate in the event of failure to prevail in such proceedings or the assertion of a nonmeritorious claim.

If Schwarz II is premised on federal constitutional considerations, it must certainly be reconciled with the Keller holding. Nevertheless, the five primary guidelines in Schwarz II seemingly fit squarely within Keller's dual standard for the uses of compulsory Bar dues. Interestingly, the argument for issuance of a writ of certiorari to the United States Supreme Court in Schwarz II, made personally by Mr. Schwarz, acknowledged that this Court's five guidelines "are appropriate under Keller." Petitioner's Supplemental and Reply Brief in Support of Petition for Writ of Certiorari at 7, Schwarz II.

If, however, Schwarz II was meant to be an interpretation of this Bar's chartered purposes, the observation best said by the Eleventh Circuit panel in Gibson I has great significance:

> Abood specifically noted that the union was free to politicize on any issue of interest to that group. See 431 U.S. at 235, 97 S.Ct. at 1799. Only the use of compelled funds was prohibited for issues unrelated to collective bargaining. Id. Similarly, the Bar may speak as a group on any issue as long as it does so without using the compulsory dues of **dissenting** members.

Gibson I, 789 F.2d at 1570 (footnote omitted) (emphasis in original; boldface emphasis added).

Certainly The Florida Bar desires to speak as a group on any issue it is authorized by this Court to advocate -- and will accommodate member dissent in the process. With regard to this point, the Bar would maintain that the Schwarz II opinion reads

much like another discussion of this organization's corporate authority in the political arena, primarily influenced by provisions in the Bar's charter document and by consideration of basic member relations concerns. Aside from a singular reference to the Judicial Council's preliminary conclusion as to the constitutionality of general Bar lobbying [552 So.2d at 1095], only Justice McDonald's dissenting opinion in Schwarz II even mentions the First Amendment [552 So.2d at 1098]. Concern over The Florida Bar's delegated authority is further indicated by this Court's extensive references, in Schwarz I, to the Supreme Court of New Hampshire's resolution of that state bar's advocacy role:

> The court noted that the issue was whether or not the board's decision to oppose tort reform was inconsistent with the powers and authorities conferred upon the bar association. The New Hampshire Court commented that it "is obligated to interpret the limits on bar activities so as to preclude the first amendment infringement that would result if the Association were to take positions on issues outside the scope of those responsibilities that justify compelling lawyers to belong to it." [In re Chapman, 128 N.H.24, 509 A.2d 753 (1986)] at 31, 509 A.2d at 758.

Schwarz I, 526 So.2d at 58.

The guidelines in Schwarz II would appear to be a restrained pre-Keller effort by this Court to redefine The Florida Bar's chartered authority, done with an appreciation of the dynamic nature of this issue within the federal courts and throughout the integrated bar community: Schwarz I, 526 So.2d at 57, n. 4. The three Schwarz II criteria, if confirmed as pronouncements of The Florida Bar's range of corporate authority in the political arena, present absolutely no federal constitutional question, regardless of their scope, provided member dissent is accommodated consistent with Chicago Teachers for those issues advocated beyond Keller's

two core areas. Nor is injunctive relief appropriate in this instance.

The Bar submits that an appropriate dissent mechanism was in place to protect Petitioner and all its members -- and that the three additional criteria in Schwarz II are a fully constitutional recitation of this organization's authorized range of political advocacy beyond issues of lawyer regulation and the delivery of legal services, per Keller. And, because of such available relief for dissenting Bar members, this range of activity should be accorded an interpretation broad enough to authorize the legislative activity at issue in this case.

Most importantly, if the logic of the Supreme Court of New Hampshire in Chapman still influences any application of the Schwarz II rationale, this Court is certainly no longer obligated to construe the corporate limits of The Florida Bar's political activities in a manner identical to First Amendment parameters. Given the clarity of Keller as to the constitutional uses of compulsory dues vis-a-vis member objection, and the protection of Chicago Teachers in order to accommodate such dissent, this Court may confer on The Florida Bar the utmost power and authority it can delegate in the legislative arena.

THERE IS NO PROCEDURE PROMULGATED BY THIS COURT OR ANY CONSTITUTIONAL IMPERATIVE THAT REQUIRES THE FLORIDA BAR TO RECOGNIZE A GENERAL OBJECTION TO ANY OF ITS LEGISLATIVE ACTIVITIES

Petitioner finally seeks this court to require The Florida Bar to recognize "the established right" of dissenting members to state general objections to The Florida Bar's lobbying activities, and to provide dissenters with refunds of all compulsory dues used for legislative lobbying.

Petitioner asserts that the past decisions of this Court and the most recent federal court rulings on this point are contrary to

"clear precedent" from the United States Supreme Court. In support of that thesis, Petitioner selectively cites from Abood, which predates Chicago Teachers by some nine years. Prior to the holding in Chicago Teachers that a union's collection of proportionate share payments must include "an adequate explanation of the basis for the fee," it was quite logical for the Abood Court to have been sensitive to a dissident's difficulty in identifying "the specific expenditures" [97 S.Ct. at 1802] for possible objection, and in monitoring "all the numerous and shifting expenditures" [97 S.Ct. at 1803] that a union might incur. Now, however, a member objection procedure which comports with Chicago Teachers should vitiate that argument -- especially when the formal notice provisions of that procedure include specificity as to contestable matters and substantially reduce any burden of monitoring the organization's political activities.

Absent any clear Supreme Court pronouncement on the general objection issue since Chicago Teachers, the Eleventh Circuit addressed the precise point raised by Petitioner in the Gibson II opinion.

> Gibson next contends that the Bar's procedures impermissibly require dissenting members to object on an issue-by-issue basis, thus forcing them to identify their own political positions. The Bar responds that members need only make a generalized objection that a given issue is not closely enough related to the Bar's purposes to justify an expenditure of compulsory dues. The Bar claims that such an objection does not impermissibly require objectors to disclose their own position regarding the issue. We agree.
>
> As the Supreme Court has stated, the dissenter "has the burden of raising an objection." Chicago Teachers, 475 U.S. at 306, 106 S.Ct. at 1075 (citing Abood, 431 U.S. at 239-40 & n. 40, 97 S.Ct. at

> 1801-02 & n. 40). This burden "is simply the obligation to make his objection known." Id. 475 U.S. at 306 n. 16, 106 S.Ct. at 1075 n. 16. The affirmative objection requirement here is within the scope of this obligation. It merely requires the objector to inform the Bar that he objects to the Bar's use of compulsory dues to support a given legislative policy. Beyond that, the objector need not provide any further information concerning the motivation for his objection or his own position concerning the legislative policy at issue. We therefore reject Gibson's challenge on this point.

Gibson II, 906 F.2d at 632.

Rejection of that challenge seemed hardly inconsistent with the Eleventh Circuit's earlier ruling in the Gibson I litigation although Petitioner is even more selective in his references to a footnote within that opinion. In that case, although the Court indicated understandable concern over the First Amendment protection of a dissident Bar member's right not to disclose his beliefs, the Court observed -- in the very passage cited by Petitioner -- that "the difficult task of discerning proper Bar position issues could be avoided by...(2) a refund procedure allowing dissenting lawyers to notify the Bar that they disagree with a Bar position, then receive that portion of their dues allotted to lobbying." Gibson I, 798 F.2d at 1570 n. 5 (emphasis added).

That holding and all others on the subject otherwise sanction a mandatory membership organization's use of compulsory dues for political or ideological activities germane to the group's basic purposes, member dissent notwithstanding. And, when dissent must be accommodated with regard to non-germane matters, applicable case law acknowledges the necessity of a somewhat focused objection. Petitioner cites from Abood but, again, seemingly overlooks the significance of his own authority, which observed:

"As in Allen [Railway Clerks v. Allen, 373 U.S. 113 (1963)], the employees here indicated in their pleadings that they opposed ideological expenditures of any sort **that are unrelated to collective bargaining.**" Abood v. Detroit Bd. of Education, 431 U.S. 209 at 241 (emphasis in original; boldface emphasis added).

Yet Petitioner contends in this action, as he has done in his written communications to The Florida Bar, that no portion of his compulsory dues be used to fund any legislative lobbying whatsoever. The correspondence shared with the Court as Appendices D & E to the Amended Petition does not express Petitioner's limited opposition to that lobbying unrelated to the Bar's core functions. Instead, Petitioner seeks a complete bye on supporting any advocacy of the integrated Florida Bar which, as Justice Terrell observed, is "the process by which every member of the bar is given an opportunity to do his part in performing the public service expected of him, and by which every member is obliged to bear his portion of the responsibility." Petition of Florida State Bar Association, 40 So.2d 902 at 904, (Fla. 1949).

That original notion has continuing significance with respect to the core functions of today's integrated bar. As the Keller Court underscored:

> The plan established by California for the regulation of the profession is for recommendations as to admission to practice, the disciplining of lawyers, codes of conduct, and the like to be made to the courts or the legislature by the organized bar. It is entirely appropriate that all of the lawyers who benefit from the unique status of being among those admitted to practice before the courts should be called upon to pay a fair share of the cost of the professional involvement in this effort.

Keller, 110 S.Ct. at 2235.

Petitioner asserts that, "despite numerous requests, the Bar has never explained in any detail to Petitioner why the Bar will not recognize Petitioner's general objection to its legislative activities." Yet, at least seven separate responses from the Bar's executive director to Petitioner essentially reiterate the previous argument herein, where it is noted that pertinent case law authorizes the use of compulsory dues on topics germane to the Bar's core purposes, and that this Court's adoption of a member objection procedure in Bar Rule 2-9.3 contemplates objections to specific legislative positions.

In the interest of brevity, the Bar's direct response to Petitioner's August 8, 1990 and June 14, 1989 correspondence (Petitioner's Appendices E & D, respectively), plus one of several objection letters, are attached to this response as Respondent's Appendices A, B & C respectively. Petitioner's demands for a free ride on even the most basic matters of Bar business is contrary to all applicable precedent.

A RESOLUTION OF THE INSTANT PETITION MAY INVOLVE COLLATERAL ISSUES OF SIGNIFICANCE TO THE LEGISLATIVE ACTIVITIES OF THE FLORIDA BAR

These comments only address the matters directly raised by the Amended Petition in this case. However, it should be noted that Bar Rule 2-9.3, regarding member objections to legislative activity of The Florida Bar, is presently before this Court (Case No. 76,853) for various amendments resulting from the Gibson II ruling, Schwarz II and prior commentary from the Petitioner in this instant action. Mr. Frankel has already filed additional comments in that case, requesting oral argument as well.

The Bar would respectfully submit that, if procedural aspects of this organization's legislative activities may be impacted in a resolution of the instant petition, that this related case be considered in conjunction with this matter to whatever degree is deemed necessary. Should a formal notice to consolidate

these actions be in order, the Bar will formally do so when appropriate; otherwise, no objection is expressed against such consolidation sua sponte by this Court.

CONCLUSION

The Florida Bar respectfully submits that the "additional criteria" of Schwarz II and the legislative positions at issue in this action are acceptable and constitutional under controlling law, that the injunctive relief and Bar Rule revisions sought in this case are inappropriate, and that no additional relief or costs are merited in this matter.

Respectfully submitted,

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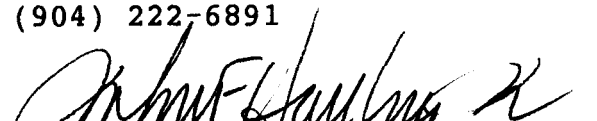
By: 

John F. Harkness, Jr.
Florida Bar #0123390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: David P. Frankel, 4336 Garrison Street, N.W., Washington, D.C. 20016 and Joseph W. Little, 3731 N.W. 13th Place, Gainesville, Florida 32605, by mail, this 28 day of January, 1991.

John F. Harkness, Jr.