

## Integration/Privatization of The Florida Bar

In 1948 the Florida State Bar Association resurrected its petition to the Florida Supreme Court to integrate by court rule the Bar of the State of Florida. Integration of the bar means, that the Bar which was under the State of Florida, was turned into an association, membership in which was required by all the attorneys practicing law in Florida. It was a scheme to wrest control from the Legislature and to place the attorneys under the exclusive jurisdiction of the Florida Supreme Court.

The Committee on Bar Integration of the Florida State Bar Association made a complete roster of the Bar of the State of Florida and found that it contained the names of 2,700 lawyers. The Committee sent a letter with ballots enclosed to each of these attorneys, requesting that they vote on the issue of integrating the Bar of the State of Florida. The lawyers were informed that it was not necessary for them to sign the ballot. The ballots were returnable to the Florida State Bar Association. The lawyers were informed that, if the vote is favorable then the Committee will file a petition with the Florida Supreme Court asking to integrate the Bar by court rule. The letter further stated that upon approval of the petition each lawyer will be required to belong to the integrated bar, to pay to the Treasurer of the integrated Bar \$5.00 annually and that the Bar will be governed by a Board of Governors.<sup>(6)</sup>

Of the 2,700 ballots the Bar Association mailed to the attorneys, 1,631 were voted and returned. Of the returned ballots 1,131 voted in favor and 500 voted against integration. Thus, less than half of all the lawyers or 42% purportedly voted in favor of integration. The court rejected any challenge by opponents, ruling that the "referendum was fairly conducted".<sup>(6)</sup> The court abolished legislative control over the attorneys, by declaring the integration of the bar to be a judicial and not a legislative function. The court integrated the bar by rule of court, without any legislation, based on an alleged "inherent power". The court said it possessed "inherent power" because it was a court and further claimed that,

"Under our form of government it is the right that each department of government execute the powers falling naturally within its orbit when not expressly placed or limited by existence of similar power in one of the other departments."

In ousting the legislative control over the attorneys, the Supreme Court disregarded its prior decision made eleven years before in 1938 that, the admission and discipline of attorneys rested with the Legislature, and that legislative control could not be ousted by rule of court.

While integration was promulgated under the lofty ideals of "improving the administration of justice" and "public service" the opponents maintained that integration was in defense of the "accusations that the bar is not worthy of public trust". The Florida Supreme Court took the position that to ward off these accusations it needed a bar in which all practicing attorneys were members because,

"We think that this duty devolves on the bar as a whole rather than on a minority organization to it. The assault on our institutions, which the bar is expected to take the leading role in challenging, also requires the impact of the full man power of the bar."

Yet another objective was that, a mandatory bar would take over the many programs that was burdensome on a minority of attorneys in a voluntary bar, and to spread over the cost of these activities with mandatory dues. The programs of the Florida State Bar Association, were taken over by the integrated Bar, which was appended to the Florida Supreme Court. All practicing attorneys were required to be members in the Bar Association and to assume its programs and objectives. The court was of the opinion that "integration"

"provides a fair and equitable method by which every lawyer may participate in and held to bear the burden of carrying on the activities of the bar instead of resting that duty on a voluntary association composed of a minority membership."

The financial responsibility was spread over all the attorneys. A mandatory "membership fee" was imposed by the Florida Supreme Court on all the attorneys in the Bar Association "to support the bar integration activities". The court acknowledged that only the Legislature has the power to impose a tax. The court rationalized that the membership fee was not a tax but, an exaction for regulation, whereas the purpose of tax is revenue. Justice Barns in his dissent responded that the judiciary cannot lawfully levy a tax by whatever name it may be called.

In 1950 the Bar Association was renamed the Florida Bar. In 1951 the Legislature by Florida Statute delegated to the Florida Supreme Court the authority to regulate admission to the bar. In 1956, House Joint Resolution 810 was approved by the electorate amending the Florida Constitution Article V § 23, to give the Supreme Court exclusive authority to regulate the practice of law, the admission and discipline of attorneys. Article V § 23 was amended in 1972 and appears in the current Florida State Constitution as Art. V § 15 stated as follows:

"The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

The admission of attorneys to practice law is within the authority of the Florida Board of Bar Examiners and the discipline of the lawyers is under the Florida Bar. Both of these agencies were created under rules of the Florida Supreme Court, without any participation by the Legislature. The Florida Bar is often referred to by the legal profession as a private Bar.

Since the judges of the Supreme Court and the Board of Governors, who govern the Florida Bar, are all lawyers and members of the Florida Bar, it is a system of lawyers regulating lawyers. Furthermore, since the judges of the Supreme Court are appointed and the lawyers of the Board of Governors are private attorneys, it is a system without any representation by the people through their elected officials. Such absolute power was never enjoyed by the attorneys prior to 1949, when by judicial fiat, public participation through their legislative process was eliminated.

<http://www.judicialaccountability.org/baraccountability3.htm>