

SUPREME COURT OF FLORIDA

In re Amendments to Articles of Incorporation of The Florida Bar Foundation, Inc.

876 So. 2d 554 (Fla. 2004) · Decided June 3, 2004

SUMMARY

The Florida Supreme Court approves proposed amendments to the Articles of Incorporation of The Florida Bar Foundation, Inc. The amendments were authorized by the Foundation's board of directors and approved by The Florida Bar's Board of Governors, and became effective upon filing with the Florida Secretary of State.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Chief Justice Anstead; Justice Wells; Justice Pariente; Justice Lewis; Justice Quince; Justice Cantero; Justice Bell
JURISDICTION	Florida
DECIDED	June 3, 2004
DISPOSITION	approved
PROCEDURAL POSTURE	The Florida Bar Foundation petitioned the Supreme Court of Florida for approval of proposed amendments to its Articles of Incorporation.
PRECEDENTIAL VALUE	precedential
PARTIES	The Florida Bar Foundation, Inc.

TOPICS

- corporate law
- corporate governance
- dissolution

PRACTICE AREAS

- corporate law
- corporate governance
- dissolution

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida had authority to approve the proposed amendments to the Articles of Incorporation of The Florida Bar Foundation, Inc.

2. Whether the proposed amendments should be approved and made effective upon filing with the Secretary of State.

HOLDINGS

1. The Supreme Court of Florida had authority to finally approve the proposed amendments to the Articles of Incorporation of The Florida Bar Foundation, Inc.
2. The proposed amendments to the Articles of Incorporation of The Florida Bar Foundation, Inc. were approved as set forth in the appendix.

KEY QUOTATIONS

“The amendments shall become effective upon their filing with the Secretary of State as provided by law.”
(876 So. 2d at 554)

FACTUAL BACKGROUND

The Florida Bar Foundation, Inc. proposed amendments to its Articles of Incorporation, also known as its charter. The amendments had been authorized by the Foundation's board of directors and approved by the Board of Governors of The Florida Bar. The Supreme Court of Florida reviewed the petition and approved the amendments as set forth in the opinion's appendix.

PROCEDURAL HISTORY

The Foundation's board of directors authorized the proposed amendments, and the Board of Governors of The Florida Bar approved them. The Foundation then petitioned the Supreme Court of Florida, which reviewed and approved the amendments.

DISPOSITION

approved

CASES CITED

- In re: Interest on Trust Accounts, 402 So. 2d 389 (Fla. 1981)

OPINION

PER CURIAM.

PER CURIAM. The Florida Bar Foundation, Inc. (Foundation), petitions this Court for approval of proposed amendments to its Articles of Incorporation, also known as the Florida Bar Foundation Charter. The proposed amendments were authorized by the board of directors of the Foundation and approved by the Board of Governors of The Florida Bar. This Court has the authority to finally approve the proposed amendments.

See Fla. Bar Found. Charter, art. 10.2(c). After considering the petition and the proposed amendments, we hereby approve the amendments to the Articles of Incorporation of the Florida Bar Foundation, Inc., as set forth in the appendix to this opinion. Additions are indicated by underscoring; deletions are indicated by struck-through type.

The amendments shall become effective upon their filing with the Secretary of State as provided by law. See Fla. Bar Found. Charter, art. 10.3. It is so ordered. ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur. APPENDIX THE FLORIDA BAR FOUNDATION, INC. ARTICLES OF INCORPORATION ARTICLE I NAME The name of this corporation shall be: The Florida Bar Foundation, Inc. For convenience it is herein called the corporation or the Foundation.

The principal office and place of business shall be at a location in Florida established and ordered by the board of directors. The business of this corporation shall be carried on at its principal office in Florida, and at such other places as may from time to time be authorized by the board of directors. ARTICLE II PURPOSES AND POWERS 2.1 Purposes.

The Foundation shall be operated exclusively for charitable, scientific, literary and/or educational purposes as described in Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax law ("Code") including, but not limited to the following particular purposes: a) The improvement of the administration of justice and the elevation of judicial standards; b) The promotion of the study of law and research in the law, the diffusion of legal knowledge and the continuing legal education of lawyers; c) The publication and distribution of works on legal subjects. d) The improvement of relations between members of the Bar, the judiciary and the public; e) The fostering of suitable standards of legal education and of admission to the Bar, and the furnishing of funds for making grants and loans to qualified and worthy persons for the study of law; f) The aiding of members of The Florida Bar who shall be in great need of assistance because of illness, misfortune or advanced age; g) The promotion of the preservation of the American constitutional form of government; h) In furtherance of the foregoing charitable, scientific, literary and/or educational purposes, the assets and earnings of the Foundation, including, but not limited to those assets or earnings derived from the Interest on Trust Accounts Program, implemented by Order of the Supreme Court of Florida, In re: Interest on Trust Accounts, 402 So.2d 389 (Fla.1981), as such Order may be amended from time, to time, may be used for any one or more of the following charitable activities undertaken for exclusively public purposes: (1) To provide legal aid to the poor; (2) To provide law student loans and scholarships; (3) To improve the administration of justice; and (4) For such other programs for the benefit of the public as are specifically approved from time to time by the Supreme Court of Florida for exclusively public purposes. i) No part of the assets or net earnings of the Foundation (including such assets or net earnings as may be derived from the Interest on Trust Accounts Program described in Article 2.2 hereof) shall inure to the benefit of any private shareholder or individual.

Further, no substantial part of the activities of the Foundation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, nor shall the Foundation participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Except as more specifically herein-above set forth, such activities may be undertaken directly by the Foundation, or by the provision of funds by the Foundation to The Florida Bar, Florida Legal Services, Inc., or other organizations, to be used exclusively for such purposes.

2.2 Contributions. The Foundation may receive, by contribution, gift, bequest, devise, or in any other manner, money, assistance, and any other form of real, personal, or mixed property, from any person, firm or corporation to be used in the furtherance of the purposes of the Foundation, provided, however, that gifts shall be subject to acceptance by the board of directors as required by the ByLaws.

The Foundation may also receive all funds generated by the Interest on Trust Accounts Program.

2.3 Offices and Employees. The Foundation may establish one or more offices and employ such agents, employees and clerical force as may be deemed necessary or proper to conduct and carry on the work of the Foundation, and it may pay reasonable compensation for the services of such persons.

2.4 Powers: General. The Foundation may contract and be contracted with, sue and be sued, invest and reinvest the funds of the Foundation, and do all acts and things requisite, necessary, proper, or desirable to carry out and further the purposes for which the Foundation is formed.

2.5 Powers: Interest on Trust Accounts Program. With respect to the activities of, and assets and earnings derived, from, the Interest on Trust Accounts Program, the Foundation may: a) Authorize capital expenditures, accumulations, or reserves, only as may be necessary to meet the reasonable working needs of the Foundation. b) Retain professional investment advisory services; c) Through its directors adopt rules of procedure reasonably necessary or helpful in carrying out the purposes and powers of the Foundation in managing and administering the Interest on Trust Accounts Program.

ARTICLE III MEMBERS

3.1 Qualification. Each member of the Foundation shall be a member-of-The Florida Bar who is persons interested in the purposes of the Foundation.

3.2 Admission. Members shall be admitted by the directors in the manner determined by the ByLaws.

3.3 Terms.

The terms of membership of members shall be established by the ByLaws.

3.4 Rights. Each member shall be entitled to hold office and serve as a director of the Foundation, and shall be entitled to one vote at meetings of members of the Foundation, but no member of the Foundation shall have any vested right, privilege or interest of, in or to the assets, functions, affairs or franchise of the Foundation, or any right, interest or privilege which may be transferable or

inheritable or which shall continue if the member's membership ceases or while the member is not in good standing.

3.5 Termination. Membership shall be terminated in the manner provided by the ByLaws. — If a member ceases to be a member of The Florida Bar, the member's membership in the Foundation shall be thereby terminated. A membership may be terminated for cause by concurrence of a majority of all directors of the Foundation after due notice to the member and an opportunity to be heard.

3.6 Meetings. Meetings of members may be called in the manner provided in the ByLaws.

ARTICLE IV TERM; DISSOLUTION This corporation shall have perpetual existence. In the event of a dissolution of the corporation, its assets, after payment of all debts and charges of the corporation, and expenses of dissolution, shall be distributed among all fully accredited schools of law within the State of Florida, not organized and operating exclusively for the benefit of any private shareholder, or individual, nor substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

ARTICLE V The names and residences of the original subscribers hereto are as follows: NAME RESIDENCE Donald K., Carroll 1200 Sreenloaf Building Jacksonville, Florida J. -Laneo Laaonby Baird-Office Building Gainesville, Florida Kenneth B.- -Sherouse Supremo Court Building Tallahassee, Florida William A, Gillen Citiaens-Building Tampa, Florida J. Lewis Hall ■ íaifcE, Jefforson St. Tallahassee, Florida Sherwood-Spencor 1924-Hollywood Boulevard Hollywood,-Florida each of whom has been an officer or member of the Board of Governors of The Florida Bar. *557

ARTICLE VI DIRECTORS 56.1 Number.

The affairs of the Foundation shall be managed by a board of directors consisting of eight (8) — six (6) directors as set forth in Article 5.2 (a) through Article 5.2(e) hereof, no fewer than two or more than four directors as set forth in Article 5.2(f) hereof, eighteen (18) directors as set forth in Article 56.3 hereof, and the duly elected officers, set forth in Article 56.4 hereof.

Directors as set forth in Article 56.2(f) and Article 56.3 hereof shall be selected for staggered terms of office. Directors shall be members of the Foundation during their term(s) as directors. 56.2 Designated Directors. No fewer than eight (8) or more than ten (10) directors shall be directors by virtue of office, designation, or selection as follows: a) Two judicial officers to be designated by the Chief Justice of the Supreme Court of Florida; b) The president of The Florida Bar; c) The immediate past president of The Florida Bar; d) The president-elect of The Florida Bar; e) The president of Florida Legal Services, Inc. and f) No fewer than two or more than four public members, who shall not be lawyers, to be selected by the joint nominating committee of The Florida Bar Foundation and The Florida Bar in the manner provided by the ByLaws.

Membership on such joint nominating committee shall be comprised of three directors of the Foundation appointed by the president of the Foundation and three members of the Board of Governors of The Florida Bar appointed by the president of The Florida Bar. 56.3 Selected Directors. Eighteen (18) directors shall be selected as follows: a) One-third selected by the Foundation in the manner provided by the ByLaws; b) One-third selected by the Board of Governors of The Florida Bar and certified to the Foundation no later than March 1st of every year; and c) One-third selected by the Supreme Court of Florida and certified to the Foundation no later than March 1st of every year; and d) Any director selected as set forth in Article 56.3 hereof who is a member of The Florida Bar shall be a member of the Foundation at the beginning of their term of office.

56.4 Officers Serve as Directors. In the event a person is elected president; president-elect, or secretary-treasurer, secretary, or- treasurer of the Foundation, such person shall resign his or her remaining term of office as a director of the Foundation, but shall be a director of the Foundation by virtue of his or her office. 56.5 Term; Removal; Vacancies. a) The president of The Florida Bar, president-elect of The Florida Bar, and president of Florida Legal Services, Inc. shall be directors of the Foundation during their respective terms in office.

The two judicial officers designated by the Chief Justice shall serve for two-year terms of office and may be redesignated for additional two-year terms at the pleasure of the Chief Justice. The immediate past president of The Florida Bar shall serve for a one-year term. b) The two-public members selected pursuant to Article 56.2(f) hereof shall serve for not more than two, two-year staggered terms.

Their removal from office shall be determined by the ByLaws. Vacancies of directors selected pursuant to Article 56.2(f) hereof which are caused in any manner shall be filled by the joint nominating committee of The Florida Bar Foundation and The Florida Bar pursuant to Article 56.2(f) hereof for the unexpired term. c) Directors selected pursuant to Article 56.3 hereof shall serve for a three-year term, and may serve for one additional, consecutive three-year term.

Their removal from office shall be determined by the ByLaws. Vacancies of directors selected pursuant to Article 56.3 hereof which are caused in any manner shall be filled by the selecting authority for such directors for the unexpired term. d) Officers of the Foundation who are directors only by virtue of being officers shall be directors for their terms in office only.

Their removal from office and the filling of vacancies shall be determined by the ByLaws. 56.6 Executive Committee. The affairs of the Foundation may be managed by an executive committee between meetings of the board of directors.

The executive committee shall consist of directors and shall be established in the manner and with the authority provided by the ByLaws. 6⁷ — Transition- To-achieve Article 6.2(f) hereof and in

order to achieve Article 6.3 hereof, as terms of existing directors -expire-or are terminated, selections of directors shall be-made-in the following man- —a-)IR-June-1990, -(l)-The nominating- eommittee shall select-one-(l) lay member for a -one-year term-beginning- June -1990 and one (1) lay member -for a — two-year term beginning June 1990.as -set forth in-Artiele 6.2(f) hereof; -(2) The Board-of-Governors of-The Elorida^Bar-shall-select-four -(4) directors as-set-4orth-in Article 673(b) -hereof- and -(3) The Supreme-Court of Florida shall -select-four (4) directors as set forth in Article-6.3(-c-)-hereof. —b) In June 1991, -(1) The Board- of-Governors of The Florida- Bar-shall select two-(2-)-dir-eetors-as-setrLorth-in-Arti&le 6.3(b) hereof; -(2) The Supreme Court of Florida shall select two- (2)-directors as-set forth in Article-6,3(c) -hereof; and - (3) The Foundation shall select one (-1-) director-as. set forth in Article 6.3(a) —c)-In June 1992, the Foundation-shall select-five -(5) directors as- set- forth in Article-6,3(a)-hereof.

ARTICLE VII OFFICERS 67.1 Number. The affairs of the Foundation shall be managed by a board of directors and administered by a president, president-elect, and secretary-treasurer, each of whom has previously served on the board of directors, and such assistant officers as the board of directors shall from time to time deem desirable.

The board of directors may, from time to time as it deems desirable, separate the office of secretary-treasurer and elect, for that term, a secretary and a treasurer. Officers and assistant officers shall be members of the Foundation-at the beginning of-their terms of office. 67.2 Election.

The officers shall be elected annually by the board of directors in the manner provided by the ByLaws. Terms of office may be limited as provided in the ByLaws. *559ARTICLE VIH BYLAWS The board of directors of this corporation shall make and adopt ByLaws for the corporation, and said board and its successors in office shall have power to alter, amend, and rescind such ByLaws or to adopt new ByLaws.

ARTICLE VIIIIX DIRECTORS' AND OFFICERS' COMPENSATION AND INDEMNIFICATION 89.1 Compensation. Directors of the Foundation shall not receive compensation, directly or indirectly, for their services as directors. Officers of the Foundation shall not receive compensation, directly or indirectly, for their services as officers, unless they are employed by the board of directors as a member of the administrative staff of the Foundation.

These prohibitions shall not preclude reimbursement of a director, officer or duly appointed committee member for expenses or advances made for the Foundation that are reasonable in character and amount and approved for payment in the manner provided by the ByLaws. 89.2 Indemnification. Every director and every officer of the Foundation shall be indemnified by the Foundation against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon such director or officer in connection with any proceeding or any settlement of any proceeding to which such director or officer may be a party or in which such director or officer

may become involved by reason of such director or officer being or having been a director or officer of the Foundation, whether or not such director or officer is a director or officer at the time such expenses are incurred, except when the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of the director's or officer's duties; provided that in the event of a settlement before entry of judgment, the indemnification shall apply only when the board of directors approves such settlement and reimbursement as being in the best interest of the Foundation.

The foregoing right of indemnification shall be in addition to and not' exclusive of all other rights to which such director or officer may be entitled. Appropriate liability insurance, if available, shall be provided for every officer, director and agent of the Foundation in amounts determined from time to time by the board. 89.3Interest of Directors and Officers in Contracts.

Any contract, whether for compensation or otherwise, or other transactions between the corporation and one or more of its directors or officers, or between the corporation and any firm of which one or more of its directors or officers are stockholders or employees, or in which they are interested, or between the corporation and any corporation or association of which one or more of its directors or officers are shareholders, members, directors, officers or employees, or in which they are interested, shall be valid for all purposes, notwithstanding the presence of such director or directors, officer or officers, at the meeting of the board of directors of the corporation which acts upon or in reference to such contract or transaction and notwithstanding their participation in such action, if the fact of such interest shall be disclosed or known in writing to the board of directors, and the board of directors shall, nevertheless, authorize, approve and ratify such contract or transaction by vote or majority of the directors present, such interested director or directors, officer or officers to be counted in determining whether a quorum is present but not counted in calculating the majority of such quorum necessary to carry such vote.

This section shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto. ARTICLE IX AMENDMENT 910.1 Notice of Amendments. Notice of the subject matter of a proposed amendment to these Articles shall be included in the notice of the meeting at which a proposed amendment is considered.

910.2 Procedure. These Articles of Incorporation may be amended in the following ways: a) By petition of 50 or more members of the Foundation directly to the Supreme Court of Florida, after advance notice to and opportunity for consultation with and comment by the board of directors of the Foundation and the Board of Governors of The Florida Bar, and approval by the Court. b) By petition of the Board of Governors of The Florida Bar directly to the Supreme Court of Florida, after advance notice to and opportunity for consultation with and comment by the board of directors of the Foundation, and approval by the Court.

A resolution adopting a proposed amendment or amendments shall be approved by an absolute majority of the members of the Board of Governors of The Florida Bar. c) By petition of the board of directors of the Foundation directly to the Supreme Court of Florida, after advance notice to and opportunity for consultation with and comment by the Board of Governors of The Florida Bar, and approval by the Court.

A resolution adopting a proposed amendment or amendments shall be approved by an absolute majority of the directors of the Foundation. d) “Advance Notice” means submission of the subject matter and language of the proposed amendment to the body having the right to consult and comment at least thirty days before its next regularly scheduled meeting. 910.3Effective Date.

Any amendment approved by the Supreme Court of Florida shall be effective upon filing with the Secretary of State as provided by law. Historical Note: The names and residences of the original incorporators of the Foundation are: Donald K. Carroll, Jacksonville, Florida, J. Lance Lazonby, Gainesville, Florida, Kenneth B. Sherouse, Tallahassee, Florida, William A. Gillen, Tampa, Florida, J. Lewis Hall, Tallahassee, Florida, Sherwood Spencer, Hollywood, Florida.