



Federal Bar Association

Constitution, Bylaws, Rules and Resolutions Committee

Date: August 1, 2017

To: Federal Bar Association's National Council

From: Constitution, Bylaws, Rules and Resolutions Committee

Tyler Brooks
Geoffrey Cheshire
Kristin Kimmelman
Stacy King (Staff Liaison)
Kevin Maxim (Chair)
Matt Moschella

Peg O'Connor
Thomas Schuck
Tom Segars
Beth Smith
Paul Vamvas

**Re: Committee Report & Recommendation:
Proposed Constitutional Amendment regarding
Associate FBA Membership for Clerks of Court Not Admitted to Any Bar**

I. Background

Pursuant to the Federal Bar Association's Bylaws at Sections 8(a)(1)(c) and 14, the Constitution, Bylaws, Rules and Resolutions Committee (the "Committee") reports that it has received a proposal from FBA General Counsel Matt Moschella to amend the FBA's Constitution.

Mr. Moschella proposed to amend the Constitution so as to add a new category of associate membership in the Association designated for Clerks of Court who are not members of any bar.

On May 16, 2017, the Committee submitted its report and recommendation to the Board of Directors to request the Board members' approval or disapproval of the constitutional amendment proposed below. At its June 23, 2017 meeting, the Board recommended that the proposed amendment be approved in the form proposed below, to which proposal the Board had no recommended revisions.

As a reminder, pursuant to Article XIV of the FBA's Constitution, entitled "Amendment to the Constitution," the National Council is empowered to put this proposed amendment to the Constitution to an FBA member vote:



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Section 1. Initiation of Amendment. A proposal to amend this Constitution may be initiated in any one of the following ways:

a. Subject to satisfying the notice and quorum requirements of Article VII, by two-third's vote of those present and voting at a meeting of the National Council, if written notice of the proposal has been included in the notice.

...

Section 2. Adoption of Amendment. An amendment so proposed shall be submitted to the members in good standing under procedures established by the Bylaws of the Association, either mailed or transmitted electronically. An amendment so submitted shall become effective upon the affirmative vote of two-thirds of the members who vote upon it.

The Committee now submits its report on the proposal to the September 2017 National Council convening at the FBA's Annual Meeting & Convention in Atlanta.

II. Proposed Constitutional Amendment

Mr. Moschella has recommended the additional language shown below to create a new Clerk of Court associate membership category for non-attorneys. The proposed language is shown below in the context of the other associate membership categories found in the FBA's Constitution at Article IV, § 3:

Section 3. Associates. Subject to such limitations as are contained in the Bylaws of the Association, any person is eligible to become an associate of the Association, as hereinafter provided. Such an associate may also maintain association with any one or more Chapters, Sections, and Divisions. However, such associate is not a member of the Association; accordingly, in no event may such associate vote or hold any elective office in the Association or in any Chapter, Section, or Division thereof.

a. Foreign Associate. Any person who is admitted to practice law before a court or administrative tribunal of a country other than the United States of America is eligible to become a foreign associate of the Association.

b. Law Student Associate. Any law student actively enrolled in an accredited law school and not admitted to the practice of law before a Federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia is eligible to become a law student associate of the Association.



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c. Clerk of Court Associate. Any individual who holds the position of “Clerk of Court” or “Circuit Executive” of a Federal court established under Article I or Article III of the Constitution of the United States or a tribal court of record or his or her designee who is not admitted to the practice of law before a Federal court, or a court of record in any of the several states, commonwealths, territories or possessions of the United States or in the District of Columbia is eligible to become a Clerk of Court associate of the Association.

III. Summary of Arguments For and Against the Proposed Amendment

By way of background, those Clerks of Court who have been members in the Association typically have been members of some bar, and become full-fledged, voting members in the Association.

It has come to Mr. Moschella’s attention that there are a very few current Clerks of Court for the Federal Districts and tribal courts who are not admitted to any bar. Of those few, some Clerks are long-time friends of the FBA, but who, because they are not members of any bar, are unable to have any membership status in the FBA.

Mr. Moschella’s proposal would expand the Association’s associate membership ranks to beyond the two categories currently existing for Foreign Associates and Law Student Associates. *See* FBA Constitution at Art. IV, §§ 3(a) and (b). As noted in Section 3 of Article IV, “in no event may such associate vote or hold any elective office in the Association or in any Chapter, Section, or Division thereof.”

The potential benefits of Mr. Moschella’s proposal might include offering an opportunity to increase the affiliation and participation of the offices of the Clerks of Court who might otherwise not have an opportunity to associate with the FBA. One key benefit for both the Clerks of Court and the local Chapters would be that associate members are included in the distribution list for local Chapter communications. In addition, associate members receive the FBA’s weekly e-mails and other important national announcements about the Association. Absent at least associate membership status, Clerks of Court who do not happen to be members of the bar have no status within the association in which they might be regularly included in those local and national FBA communications channels. The proposal would formally include those Clerks of Court and ensure that the Clerk’s offices are better informed, and hopefully, more involved.

A potential downside to Mr. Moschella’s proposal would include establishing a precedent for expanded associate membership in the FBA for non-attorneys, when the association is of course a *bar* association. Concerns were expressed about creating a slippery



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slope to more expansive membership in the Association by non-attorneys, especially since the new proposed category would extend associate membership to those who are not at least (a) members of some foreign bar or (b) studying to become a member of a bar.

One perspective on the slippery slope argument is that the Association has previously allowed for non-lawyer, honorary members to be vested with the full rights and privileges of membership:

Section 2. *Honorary Membership.* Honorary members of the Association, as hereinafter provided, shall be exempt from payment of dues but shall have full rights and privileges of membership:

...

b. Any person who has rendered conspicuous service to the United States Government or to this Association may be elected to an honorary membership by vote of three-fourth's of the members of the Board of Directors then present;

See FBA Constitution at Article IV. The proposed Associate membership category, while being extended to certain non-lawyers, would not carry with that membership the full rights and privileges of membership, and therefore appears to pose less of a risk of a non-lawyer slippery slope than other, pre-existing provisions in the Constitution.

Another potential pitfall was identified in the “or his or her designee” language of this proposal. While the Clerk of a given Court may be known to the local Chapter, the proposal leaves to the Clerk of Court the discretion to appoint someone else to stand in her or his stead for purposes of the relationship between the Chapter and the Clerk’s office. That discretion in theory could connect the local Chapter with a designee that would not be the Chapter’s first choice. Some viewed that discretion as a potential benefit in that the flexibility might allow a Clerk of Court, who might decline on grounds that he or she had insufficient time to devote to the FBA relationship, to designate someone that the Clerk supervised to invest the needed time and attention to the FBA on behalf of the Clerk’s Office.

IV. Committee Recommendation

After analysis, discussion, and a vote, the Committee recommends the following addition to the FBA Constitution’s Article IV, Section 3, with the one revision to the originally proposed language shown in comparison format below:

c. Clerk of Court Associate. Any individual who holds the position of “Clerk of Court” or “Circuit Executive” of a Federal court established under Article I or Article III of the Constitution of the United States or a tribal court of record or his or her designee and who is not admitted to the practice of law before a Federal



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court, or a court of record in any of the several states, commonwealths, territories or possessions of the United States or in the District of Columbia is eligible to become a Clerk of Court associate of the Association.

The addition of the word “and” as shown above is believed to clarify that the clause “who is not admitted...” qualifies “[a]ny individual” and not just “his or her designee”.

With that small change, the Committee believes that it would benefit the Association to make this constitutional change to facilitate the relationship and communications between non-bar member Clerks of Court on the one hand, and the FBA and its local Chapters on the other.

The Committee does not believe that the proposed amendment conflicts with any other provision of the Constitution or Bylaws.

The Committee respectfully recommends that the National Council approve of submitting this proposed constitutional amendment to an FBA member vote.