

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

In the Matter of )  
 )  
FISK UNIVERSITY, ) No. 05-2994-III  
 ) Chancellor Ellen Hobbs Lyle  
Petitioner. )  
 )

FILED  
2010 SEP 17 PM 4:16  
CLERK & MASTER  
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D.C. & M.

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MOTION TO CLARIFY THE COURT'S MEMORANDUM AND ORDER OF  
SEPTEMBER 14, 2010

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The Attorney General respectfully submits this Motion to Clarify the Court's *Memorandum and Order* of September 14, 2010.

This Office takes seriously its statutory obligation to oversee charitable gifts to protect the interests of the citizens of this state who are the beneficiaries of such gifts. Accordingly, the Attorney General requests that the Court clarify its *Memorandum and Order* to assist the Attorney General in fulfilling this statutory duty.

In particular, on page two of its September 14 *Memorandum and Order*, this Court noted the unusual aspect of *cy pres* law under which the Court can solicit information and proposals from the parties. On the basis of that authority, the Court has suggested modifications to the proposed agreement between Fisk University and the Crystal Bridges Museum to address the Court's concerns under *cy pres* law. This Motion respectfully requests that the Court apply this authority to provide similar guidance for the Attorney General's proposal.

In formulating the proposal filed at this Court's invitation on September 10, the Attorney General followed the Court's directive to conform as closely as possible to Georgia O'Keeffe's charitable intent, which was articulated by the Court of Appeals and reaffirmed by this Court on

August 20. Accordingly, the Attorney General offered a proposal that would guarantee the continued maintenance and display of the Collection in Nashville 100% of the time into the future. In addition, the Attorney General's proposal was carefully constructed to satisfy the conditions placed by Ms. O'Keeffe on the Collection.

The Court in its ruling earlier this week rejected the Attorney General's proposal as a "short-term solution" and a "temporary fix." The Attorney General would like to correct that apparent miscommunication. There is nothing "short-term" or "temporary" about the plan. It provides an appropriately funded and structured mechanism to support the full-time display and maintenance of the Stieglitz Collection in Nashville into the indefinite future.

The only "temporary" element of the arrangement is the appropriate suggestion that Fisk University should be able to resume custody and display of the art when it has the financial ability to do so. This does not make the proposal a temporary fix; rather, it recognizes Fisk's historic connection with the art and allows the proposal to adhere even more closely to Ms. O'Keeffe's charitable intent. In contrast, it is the transaction proposed by Fisk University that risks permanent loss of the Collection by the campus, the students and Nashville.

The Attorney General believes that his proposal most closely approximates Ms. O'Keeffe's charitable intent as required by *cy pres* law, but the Attorney General would welcome guidance from the Court on this and any other element of his proposal that the Court considers inconsistent with Ms. O'Keeffe's intent. The Attorney General asks that the Court engage in the same process with his proposal that it has followed with the Crystal Bridges Museum agreement – identify the specific provisions of the Attorney General's proposal that the Court believes to be inconsistent with *cy pres* relief and allow the Attorney General the opportunity to suggest appropriate modifications. Such a process could yield a better result and

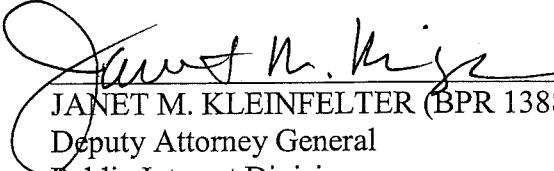
could be accomplished on the filing schedule that the Court has already adopted. In fact, according to its September 14 *Memorandum and Order*, the Court contemplates that the parties would continue to submit "proposals and comments" by the briefing deadlines set for Fisk and the Attorney General on October 8 and 22, respectively.

This process is particularly important because the Crystal Bridges Museum agreement, as this Court notes in its ruling this week, is not a "perfect solution" and threatens the existence of "a continued, permanent Nashville connection to the Collection." This is especially the case given that Fisk has offered no financial plan and has made no commitment to use any of the \$30 million from the proceeds of the sale to support the Collection or otherwise advance Ms. O'Keeffe's intent to promote the study of art in Nashville. Even under a modified Museum agreement, there remains a considerable risk that the agreement will inevitably lead to the permanent transfer of the Collection away from the Fisk University campus and Nashville to northwestern Arkansas.

Accordingly, the Attorney General respectfully requests that the Court grant this Motion to Clarify and use its *cy pres* power to facilitate a solution that most closely approximates Ms. O'Keeffe's intent and makes the Collection permanently available to the people of Nashville and the South for the promotion and study of art.

Respectfully submitted,

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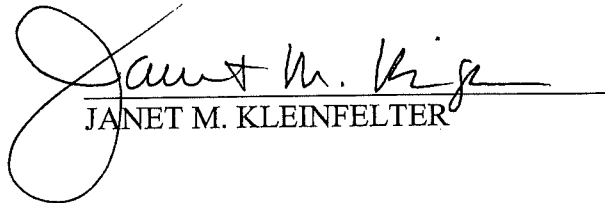
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been sent by electronic transmission and by U.S. Mail, postage prepaid, to:

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this 17th day of September, 2010.

  
JANET M. KLEINFELTER

**NOTICE OF HEARING**

THIS MOTION HAS BEEN SET TO BE HEARD ON THE COURT'S REGULAR MOTION DOCKET ON FRIDAY, THE 15<sup>th</sup> DAY OF October, 2010 AT 9:00 A.M.

IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED AND COUNSEL OR PRO SE LITIGANT NEED NOT APPEAR IN COURT AT THE TIME AND DATE SCHEDULED FOR THE HEARING. See Rule 26.04(f) of the Davidson County Local Rules of Practice.