



# Supreme Court of Florida

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Tallahassee, Florida 32399-1927

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November 13, 2020

The Florida Bar News Editor  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300

*In re: Amendments to Rule Regulating The Florida Bar 5-1.1(g),*  
Case No. SC20-1543

Dear Editor:

I have provided you with a copy of the proposed Rules in the above case. Please publish said Rules in the December 1, 2020, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location: **<http://onlinedocketssc.flcourts.org/>**.

Any comments should be filed with the Supreme Court on or before January 4, 2021. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. *See In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No.

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AOS17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

Thank you for your cooperation in this matter.

Most cordially,

A handwritten signature in black ink, appearing to be 'JAT', with a long horizontal line extending to the right.

John A. Tomasino

JAT/so

Enclosure

cc:

Honorable Charles T. Canady, Supreme Court Justice Liaison  
Diane West, Incoming Central Staff Director  
Deborah J. Meyer, Outgoing Central Staff Director  
Honorable Dori Foster-Morales, President, The Florida Bar  
Honorable Michael G. Tanner, President-elect, The Florida Bar  
Joshua E. Doyle, Executive Director, The Florida Bar  
Krys Godwin, Bar Staff Liaison  
Elizabeth Clark Tarbert, Ethics Counsel  
Mayanne Downs, Chair, Task Force on the Distribution of IOTA Funds  
Karen J. Ladis, Task Force on the Distribution of IOTA Funds  
Laird A. Lile, Task Force on the Distribution of IOTA Funds  
Hala A. Sandridge, Task Force on the Distribution of IOTA Funds  
The Hon. Edwin A. Scales, III, Task Force on the Distribution of IOTA Funds  
John M. Stewart, Task Force on the Distribution of IOTA Funds  
M. Scott Thomas, Task Force on the Distribution of IOTA Funds  
Chief Judges of the District Courts of Appeal  
Clerks of the District Courts of Appeal  
Chief Judges of the Judicial Circuits  
Clerks of the Judicial Circuits

The Task Force on the Distribution of IOTA Funds (Task Force) has submitted to the Florida Supreme Court a final report proposing amendments to Rule Regulating the Florida Bar 5-1.1(g) (Interest on Trust Accounts (IOTA) Program). The proposed amendments place restrictions on the use of IOTA funds and require a maximum amount of IOTA funds to be disbursed to qualified organizations that have a track record in providing direct legal services to low income clients.

The Court invites all interested persons to comment on the proposed amendments, which are reproduced below. The Task Force's final report is reproduced in full online at <https://www.floridasupremecourt.org/Case-Information/Rules-Cases-Proposed-Amendments>. All comments must be filed with the Court on or before January 4, 2021, with a certificate of service verifying that a copy has been served on the Task Force Chair, Mayanne Downs, c/o Elizabeth Tarbert, Ethics Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, [eto@flabar.org](mailto:eto@flabar.org), as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Task Force Chair has until January 25, 2021, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. *See In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

## **IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO RULE REGULATING THE FLORIDA BAR 5-1.1(g), CASE NO. 20-1543**

**RULE 5-1.1. TRUST ACCOUNTS**

**(a)-(f) [No Change]**

**(g) Interest on Trust Accounts (IOTA) Program.**

(1) *Definitions.* As used in this rule, the term:

(A) [No Change]

(B) “Foundation” means The Florida Bar Foundation, Inc. which serves as the designated IOTA fund administrator and monitors and receives IOTA funds from eligible institutions and distributes IOTA funds consistent with the obligations and directives in this rule.

(C)-(E) [No Change]

(F) A “qualified grantee organization” is a charitable or other nonprofit organization that facilitates or directly provides qualified legal services by qualified legal services providers and that has experience in successfully doing so.

(G) “Qualified legal services” are free legal services provided directly to low-income clients for their civil legal needs in Florida.

(H) A “qualified legal services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide qualified legal services.

(I) “Direct expenses required to administer the IOTA funds” means those actual costs directly incurred by the foundation in performing the obligations imposed by this rule. Direct expenses required to administer the IOTA funds must not exceed 15% of collected IOTA funds in any fiscal year without the court’s prior approval. These costs include preparation of the foundation’s annual audit on IOTA funds, compensation of staff who exclusively perform the required collection, distribution, and reporting obligations imposed by this rule and overhead expenses of the foundation directly related to fulfilling its obligations under this rule. These overhead expenses also include:

(i) actual costs and expenses incurred by the foundation to increase the amount of IOTA funds available for distribution;

(ii) funding of reserves deemed by the foundation to be reasonably prudent to promote stability in distribution of IOTA funds to qualified grantee organizations; and

(iii) direct costs related to providing training and technology to qualified grantee organizations, as specified below.

(J) “The court” means the Florida Supreme Court.

(2)-(7) [No Change]

(8) *Distribution of IOTA Funds by the Foundation.* Within 6 months of receipt, the foundation must distribute to 1 or more qualified grantee organizations all collected IOTA funds except for direct expenses required to administer the IOTA funds. Prior to distribution, the foundation must maintain IOTA funds separate from other foundation funds. The foundation may not condition distribution of IOTA funds to a qualified grantee organization on payment to the foundation for any purpose, including training, or technology. The foundation must select qualified grantee organizations based on objective standards it develops. When adopted, the foundation must provide those standards to both The Florida Bar and the court and also prominently publish those standards on the foundation’s website. The standards must require that IOTA funds be used to provide qualified legal services and, to ensure fair distribution of IOTA funds across Florida, must consider relevant data, including:

(A) demographic data provided by an appropriate governmental agency, such as the U.S. Bureau of Labor Statistics; and

(B) data provided by the qualified grantee organization on the use of any IOTA funds previously received.

(9) *Use of IOTA Funds by Qualified Grantee Organizations.* A qualified grantee organization must expend at least 90% of the IOTA funds received to facilitate qualified legal service providers providing qualified legal services. A qualified grantee organization must expend no more than 10% of the IOTA funds received for administrative expenses and establishing reserves. Administrative expenses include rent, training, and technology. Expenditures to facilitate qualified legal service providers providing qualified legal services are limited to:

(A) compensation paid to qualified legal service providers;

(B) compensation paid to support staff who are directly assisting qualified legal services providers, such as paralegals;

(C) compensation paid to staff necessary for coordinating volunteer qualified legal service providers; or

(D) expenses that otherwise directly facilitate providing qualified legal services.

Compensation includes benefits such as health insurance and bar membership fees.

(10) Reporting by the Foundation. In addition to providing the court with a copy of the annual audit of IOTA funds, the foundation must annually certify to the court its compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

(A) the amount of IOTA funds received;

(B) a detailed breakdown of direct expenses required to administer the IOTA funds;

(C) the name of each qualified grantee organization to which distributions were made;

(D) the amount of distribution received by each qualified grantee organization;

(E) a description of the process for determining eligibility and selection of each qualified grantee organization, including the objective standards developed for that purpose;

(F) the total amount received from sources other than IOTA funds;

(G) a detailed summary of the information provided to the foundation from qualified grantee organizations as required by section (11) of this rule; and

(H) any other information the court determines is relevant.

(11) *Reporting by Qualified Grantee Organizations.* Qualified grantee organizations must annually certify to the foundation their compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

(A) the number of qualified legal services providers compensated or facilitated by the use of IOTA funds;

(B) the number of clients receiving qualified legal services paid for or facilitated by the use of IOTA funds;

(C) the number of low-income Floridians who, while not directly represented, are nevertheless impacted by qualified legal services paid for or facilitated by the use of IOTA funds;

(D) the number of hours expended delivering qualified legal services paid for or facilitated by the use of IOTA funds;

(E) the types of matters for which clients received qualified legal services paid for or facilitated by the use of IOTA funds;

(F) an accounting of the use of IOTA funds, including the amount used to establish reserves and pay for overhead and administrative expenses;

(G) the total amount received from sources other than IOTA funds by the qualified grantee organization; and

(H) any other information the court determines is relevant.

(12) *Required Review.* The court will cause a review of these amendments to be conducted to advise the court regarding their overall efficacy 2 years after their effective date. The scope of this review may also include any other matters related to the IOTA program.

(13) *Effective Date and Transitional Rule.* This amended rule becomes effective on July 1 following the date of the final adoption of these rules. During the fiscal year beginning on that July 1, the foundation must apply these

rules not only to funds that will be received prospectively, but also to funds that were received during the prior fiscal year and not yet distributed to grantees.

**(h)-(k) [No Change]**

### **Comment**

[No Change]

#### **Foundation provision of training and technology**

While the foundation may use IOTA funds to provide training and technology to qualified grantee organizations, and qualified grantee organizations may use disbursed IOTA funds to pay the foundation for that training and technology, the foundation may not condition a grant on payment for these, or any, services provided by the foundation to the qualified grantee organization. For instance, the foundation may arrange for bulk purchasing of technology which can then be provided to a qualified grantee organization at a lower cost than would be otherwise available to the qualified grantee organization, but the foundation may not, as a grant condition, require the grantee to pay the foundation for such services. A qualified grantee organization should, but is not required to, receive funds from sources other than IOTA funds to support its overall mission.