

IN THE SUPREME COURT OF FLORIDA

In Re:
Amendments to Rule Regulating
The Florida Bar 5-1.1(g)

Case No. SC20-1543

**COMMENT BY TEXAS ACCESS TO JUSTICE FOUNDATION
ON PROPOSED AMENDMENTS**

Respectfully submitted,

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Introduction

The Texas Access to Justice Foundation (TAJF) respectfully requests that this Court consider this Comment. TAJF is a 501(c)(3) nonprofit corporation created by the Supreme Court of Texas to administer the Texas Interest on Lawyers' Trust Account (IOLTA) Program. Like the Florida Bar Foundation, TAJF is a member of the National Association of IOLTA Programs (NAIP), a non-profit, membership organization of civil legal aid funders throughout the United States and Canada that supports the growth and development of IOLTA programs and works to increase access to justice for all.

TAJF writes to provide this Court with the perspective of a similarly situated state which is also committed to ensuring that its IOLTA foundation advances the work of providing access to exemplary civil legal aid services for residents who cannot afford private counsel. Toward that end, this Comment focuses on those TAJF practices germane to the following changes proposed in Florida:

(1) 5-1.1(g)(9) *Use of IOTA Funds by Qualified Grantee Organization – Administrative Expenses:*

Limiting a qualified grantee organization from expending no more than 10% of the IOTA funds received for administrative expenses and reserves, and then restricting the definition of administrative expenses to “rent, training, and technology,” not all of which are administrative expenses.

(2) 5-1.1(g)(9) *Use of IOTA Funds by Qualified Grantee Organization – Expenditures to Facilitate Qualified Legal Services:*

Restricting the use of IOTA funds to enumerated uses which will eliminate the Florida Bar Foundation’s Loan Repayment Assistance Program (LRAP); and,

(3) 5-1.1(g)(8) *Distribution of IOTA Funds by the Foundation:*

Requiring that IOTA funds be distributed within six (6) months of receipt and thereby negatively impacting the ability of the Florida Bar Foundation to build and maintain a reserve to respond to anything from a national economic downturn caused by coronavirus to a regional catastrophe like Hurricane Irma.

Discussion

In 1984, the Supreme Court of Texas created the TAJF, a 501(c)(3) nonprofit corporation, to administer funding for civil legal

aid for poor Texans. TAJF is committed to the vision that all Texans will have equal access to justice, regardless of their income.

Today, TAJF is the largest Texas-based funding source for civil legal aid, granting tens of millions of dollars each year to nonprofit law firms throughout the state. TAJF administers the IOLTA Program, as well as legislative funds, foundation dollars, and private donations.

Since its inception, TAJF has granted \$780 million to legal aid organizations in Texas. These funds enable legal aid providers to assist more than 140,000 Texans each year in attaining access to the civil justice system. In addition, TAJF plays a pivotal role in nurturing the development of Texas' civil legal aid system, and in ensuring the disbursement of limited resources to maximize access to civil justice.

(1) 5-1.1(g)(9) Use of IOTA Funds by Qualified Grantee Organization – Administrative Expenses Limit of 10%:

In the experience of TAJF, a blanket limitation on indirect expenses would limit legal aid organizations from accomplishing their mission in optimally efficient and impactful ways. Legal aid organizations, like private law firms, are complex business

enterprises, requiring sophisticated forecasting and budgeting, robust IT capability and security, and human resource expertise. Their ability to be resilient, successful providers of civil legal aid depends upon their ability to secure investments from other philanthropic foundations and governmental funders. TAJF assists Texas' legal aid organization in building the necessary infrastructure to attract and leverage dollars for the benefit of serving Texas' low-income population. Organizations with robust infrastructure—which includes sound information technology systems, financial systems, continuing education training, fundraising processes, and other essential infrastructure support are more likely to succeed than those without.¹ Such expenses are considered indirect costs. One recent study found that, “[t]he median indirect cost rate for all 20 nonprofits [surveyed] was 40 percent, nearly three times the 15 percent overhead rate that most foundations provide.”²

¹ https://ssir.org/articles/entry/the_nonprofit_starvation_cycle

² <https://www.bridgespan.org/insights/library/pay-what-it-takes/pay-what-it-takes-philanthropy#:~:text=Of%20the%20nonprofits%20we%20surveyed,r ate%20that%20most%20foundations%20provide.>

(2) 5-1.1(g)(9) Use of IOTA Funds by Qualified Grantee Organization - Expenditures to Facilitate Qualified Legal Services as defined eliminate the Loan Repayment Assistance Program (LRAP):

The Texas Student Loan Repayment Assistance Program (SLRAP), created in 2003 by the Texas Access to Justice Commission, is an effective tool for attracting some of the best newly minted lawyers from law school across the country. It is funded in part and administered by TAJF, and it is a point of pride throughout the Texas legal aid delivery system. SLRAP is an invaluable and highly successful investment in the Texas legal aid system and TAJF leadership continually strives to grow the program.

SLRAP was originally created in response to the recognition that civil legal aid struggles to recruit and retain the best and brightest legal talent due, in part, to the rising cost of legal education. Low legal aid salaries coupled with high student loan debt make it difficult or impossible for a talented young lawyer with law school debt to embark on a career in legal aid. Thanks to Texas SLRAP, talented young lawyers are able to root themselves in the

communities in which they work, which is especially important for those who move to remote offices. TAJF plans to continue growing this program in future years.

(3) 5-1.1(g)(8) *Distribution of IOTA Funds by the Foundation:*

One of TAJF's primary objectives is to provide as much funding stability as possible to the legal aid delivery system upon which millions of low-income Texans rely. In over 35 years of administering IOLTA funds, TAJF has experienced the cyclical nature of interest rates and the havoc it wreaks on a state's legal aid delivery system. To provide more stability, TAJF has adopted a conservative strategy of awarding two-year grants during its grant allocation process. This strategy has not only proved effective in making grant awards, but also in giving grantee law firms the ability to plan and budget effectively. As with any business or professional practice, the ability to project and meet a budget is a key to business success. Being forced to lay-off lawyers as a result of short-term financial pitfalls means cases and people are negatively impacted. To support low-income Texans, we do all that we can to prevent funding volatility in our legal aid system.

In addition, Texas has pursued conservative reserve strategy which has proved essential to stabilizing not only the funding for legal aid, but the system itself. It also affords the opportunity to grow IOLTA reserves that enable the TAJF Board to respond when need spikes suddenly due to a natural disaster. The financial agility created through a robust reserve policy has proved invaluable in responding to a host of crises in Texas. In 2005, the TAJF Board was able to infuse \$1,131,594 into the areas of Texas hardest hit by Hurricanes Katrina and Rita. In the aftermath of Hurricane Harvey, TAJF was able to award an addition \$965,000, and leverage \$300,000 from an anonymous funder from another state. There have been many other disasters in Texas and in those instances TAJF has been a resource to the legal aid programs whose buildings have flooded or burned or whose organizations needed resources to overcome unexpected loss.

The pandemic has given us all a heightened definition of disaster. TAJF's ability to access reserves has helped grantees who relied on funding sources compromised by the coronavirus stay-at-home orders and court shut-downs.

Conclusion

Texas' bar and judiciary leaders initially learned the value and structure of IOTA from Florida. TAJF strives to live up to Florida's legacy. Today, TAJF hopes that it can offer back to Florida some insights to help Florida stretch and improve its IOTA program to best serve the low-income Floridians it was created to serve. TAJF is available to provide additional information, resources, and assistance. We are grateful for the opportunity to share this information, and hope it proves useful.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document complies with the word count limitation of Rule 9.210, Florida Rules of

Appellate Procedure, in that it contains 1,285 words (including words in headings, footnotes, and quotations), according to the word-processing system used to prepare this document. This document also complies with the line spacing, type size, and typeface requirements of Rule 9.045, Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice was filed with the Clerk of Court on February 10, 2021, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.

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