

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULE REGULATING
THE FLORIDA BAR 5-1.1(g)
_____)

CASE NO.: 20-1543

**COMMENTS OF SOUTHERN LEGAL COUNSEL
ON PROPOSED AMENDMENTS TO RULE
REGULATING THE FLORIDA BAR**

Southern Legal Counsel respectfully provides this comment to the Court regarding Proposed Amendments to the Rule Regulating The Florida Bar 5-1.1(g) as follows:

I. Statement of Interest of Southern Legal Counsel

Founded in 1977, Southern Legal Counsel is a Florida statewide not-for-profit public interest law firm committed to equal justice for all and the attainment of basic human and civil rights. Southern Legal Counsel assists individuals and groups with public interest issues who would not otherwise have access to the justice system. Southern Legal Counsel concentrates on people and issues having the greatest need for civil legal assistance, including children, seniors, people with disabilities, LGBTQ individuals, and those experiencing homelessness and housing instability.

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Southern Legal Counsel is a member of the Florida Civil Legal Aid Association (FCLAA) and a grantee of The Florida Bar Foundation. The FCLAA is comprised of various types of programs, including large and medium legal aid organizations (some receive federal Legal Services Corporation funding and some do not), local bar association programs, programs that focus on one population (e.g., children, immigrants), and a few that serve clients statewide.

As a statewide program, Southern Legal Counsel differs from local legal aid programs. We complement local legal aids and work closely with them around the state. We represent clients that local legal aids do not. For example, Legal Services Corporation regulations prohibit its funding to be used for class actions. We can and do fill that justice gap. Some legal aids obtain funding from local government or local school boards which forecloses litigation against those entities. Southern Legal Counsel is independent and does not accept government funding, and thus has no such conflicts in representation. Local legal aids set priorities which are different across the state. This results in a lack of access to counsel in some localities for a variety of vulnerable populations. Southern Legal Counsel fills this gap with no geographic limitations and

represents children, seniors, people with disabilities, Medicaid recipients, individuals experiencing homelessness, and others who do not otherwise have access to counsel. Moreover, we are one of the few legal aids that litigate in administrative, state and federal forums as well as at the trial and appellate levels.

Southern Legal Counsel is a small program with six attorneys (including the Executive Director), two paralegals, and one administrator. Our Pro Bono program leverages hundreds of student and attorney volunteers for thousands of hours that expand the scope of what six attorneys can accomplish. In 2020, we hosted over 200 volunteers, including 56 attorneys from more than a dozen law firms. More than 5300 hours of service were provided, valued at over \$607,000. We were only able to accomplish this due to a Florida Bar Foundation Pro Bono Transformation grant that enabled us to assess our pro bono needs, plan a re-imagined and expanded pro bono program, and hire a Pro Bono Director to put our vision into action. The success of this grant has made Southern Legal Counsel more efficient and has allowed us to accomplish more than we could if we litigated without the time and resources of pro bono co-counsel and volunteers.

Southern Legal Counsel receives a substantial percentage of our budget from Florida Bar Foundation grants. While Southern Legal Counsel engages in fundraising and is able to obtain other small grants, unlike local legal aids it is difficult for Southern Legal Counsel to raise substantial funds as a small, statewide firm with little local constituency. Florida Bar Foundation grants are vital to Southern Legal Counsel's financial stability.

II. Impact of Proposed Amendments to Rule 5-1.1(g)

Southern Legal Counsel has serious concerns regarding the Task Force's proposed amendments. Southern Legal Counsel supports the comments submitted by FCLAA, the Past Presidents of The Florida Bar Foundation, The Florida Bar Foundation, Past Presidents of The Florida Bar, Florida Children First, Bay Area Legal Services, The Florida Bar Pro Bono Coordinators Association, Business Law Section of The Florida Bar, Pro Bono Legal Services Committee of The Florida Bar, The Florida Bar Public Interest Law Section, and the Innocence Project of Florida. We also support the "Consensus Rule" submitted by the Past Presidents of The Florida Bar Foundation. We focus our comments here on how three of the proposed Task Force changes will impede access to the courts and

deny access to justice by seriously diminishing Southern Legal Counsel's capacity to continue to provide legal services.

A. Funds for training and technology should be considered as part of legal services and not administrative.

Proposed Rule 5-1.1(g)(9) provides that grantees must limit the expenditure of IOTA funds to 10% for "administrative expenses," and defines administrative expenses as including training and technology. The limit of 10% is problem enough (see FCLAA comments) but including training and technology in that small amount compounds the problem.

Training and technology are vital to support the legal services that Southern Legal Counsel attorneys provide. Southern Legal Counsel attorneys practice in complex areas of the law, including Medicaid and federal special education litigation, as well as federal constitutional law, and use complex procedural mechanisms such as class actions. Maintaining up-to-date understanding of the law and procedures is vital to complying with ethical competency requirements and the CLE mandate. Moreover, due to the nature of our practice, expensive national trainings are often the option that best meets our needs, although we do attend trainings provided

through FCLAA's statewide training initiative funded in part by The Florida Bar Foundation and grantees. If the Foundation can no longer subsidize grantee training, the increased financial burden falls to the grantees, making it extremely difficult to meet the proposed 10% cap on administrative expenses. It would also restrict our ability to share our expertise and train fellow grantees.

Technology also is critical to the litigation we undertake. Especially in the current virtual world, we rely on technology to take virtual depositions, argue cases in court, manage tens of thousands of exhibits, and research complex legal questions. The grantees' case management system and Westlaw research contracts were negotiated by the Foundation for low group prices and are administered and subsidized by the Foundation. If the Foundation can no longer subsidize technology, the increased financial burden again falls to the grantees, making it even more difficult to meet the proposed 10% cap on administrative expenses. An additional benefit of a common case management system among grantees is that it allows for efficient statewide coordination of cases, including co-counseling and referrals.

Training and technology also are indispensable to supporting pro bono attorneys and student volunteers, especially in the current pandemic, but will remain important even after in-person meetings resume. This semester, due to technology, we are able to host 23 undergraduate and law clerk interns from around Florida as well as around the country, including Yale, Brown, Whitman College in Washington, and the University of Virginia School of Law. Also, in order to recruit and support pro bono lawyers, we provide specialized training. For example, we conducted an all-day training for potential pro bono lawyers in special education representation, which is a difficult area for pro bono counsel to assist. We recruited pro bono lawyers and continue mentoring them through technology in their special education cases.

B. IOTA funds should be permitted to be spent on the Loan Repayment Assistance Program.

Proposed Rule 5-1.1(g)(8) limits the distribution of IOTA funds to “qualified grantee organizations.” This restriction would eliminate the Foundation’s Loan Repayment Assistance Program (LRAP) as that program’s funds are not sent to grantees, but rather directly to grantee staff attorneys. The Foundation administers LRAP, and provides a vital component for recruiting and retaining young

lawyers in the legal aid system, who are compensated at comparatively low salaries and burdened with high student debt. LRAP is essential to ensuring that the legal aid system in Florida is comprised of a diverse group of attorneys, as attorneys of color experience a higher student debt load. See, e.g., Judith Scott-Clayton & Jing Li, *Black-white disparity in student loan debt more than triples after graduation* (Brookings Inst., Oct. 20, 2016), available at: <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/>.

Three of Southern Legal Counsel's attorneys currently receive payments from LRAP. An additional attorney was able to pay off her student loans with the assistance of LRAP. A fifth is in a similar program through her Equal Justice Works Fellowship. All of these attorneys relate that they could not maintain employment in legal aid without loan repayment assistance. Losing this program would decimate the retention of Southern Legal Counsel's high-quality attorney staff.

If the Foundation no longer provided LRAP to Southern Legal Counsel's attorneys and Southern Legal Counsel paid instead, our budget costs would substantially increase, and our administrative

burden of administering such a program would rise. Further, it is unclear whether LRAP payments would be considered as part of the 10% administrative cap. Without LRAP, half of SLC's attorneys would feel compelled to consider leaving for higher paying private law firms.

An additional problem with grantees providing funds for LRAP directly to its employees is that the attorneys lose a tax advantage. When an *employer* provides student loan repayment assistance as opposed to a program like the Foundation's, it appears that the amounts provided will be considered wages subject to payroll tax withholding. Discontinuing the Foundation's LRAP program makes no fiscal sense.

C. Standards to be developed must be flexible and not rigidly based solely on census or other numeric criteria.

Proposed Rule 5-1.1(g)(8) provides that distribution of IOTA funds by the Foundation must be pursuant to "objective standards" yet to be developed. It further provides:

to ensure fair distribution of IOTA funds across Florida, [the standards] must consider relevant data, including:

- (A) demographic data provided by an appropriate governmental agency,

such as the U.S. Bureau of Labor
Statistics; ...

Standards for distribution of IOTA funds based solely on demographic data would diminish or possibly eliminate the capacity to prioritize funding for unmet needs and vulnerable populations, or to address crises such as natural disasters or a pandemic. Basing the distribution of funds on numerical standards that apply evenly across the state would bar qualitative considerations about the potential impact of the use of funds in priority areas.

Compelling distribution on an objective basis that is not defined, or the impact not thought through could totally eliminate funding to statewide programs like Southern Legal Counsel. If the standards were developed so that local programs received all of the money on a per capita basis, how does a statewide program get funded? That decision should not be made in a proposed rule without a comprehensive analysis about its impact. Without a statewide program, there would be no accounting for the justice gaps around the state. A per capita distribution would be unable to ensure that all vulnerable populations were assisted. There would be no prioritizing for attending to emergencies.

While appearing to be objective, the proposed rule has set an arbitrary parameter with unforeseen consequences. What is called a “fair distribution” could inadvertently result in exacerbating the inequities in access to justice for Florida’s poor.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this submission complies with the typeface and type-style requirements of the applicable Florida Rules of Appellate Procedure because it has been prepared in Bookman Old Style, 14-point font.

/s/Michael M. Brownlee
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CERTIFICATE OF SERVICE

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

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