

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC20-1543

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**COMMENTS ON PROPOSED AMENDMENTS TO
RULES REGULATING THE FLORIDA BAR 5-1.1(g)—
INTEREST ON TRUST ACCOUNTS (IOTA) PROGRAM**

The undersigned, on behalf of the Florida Pro Bono Coordinators Association (the “FPBCA”), file these comments to the proposed rule amendments to Rule Regulating The Florida Bar 5-1.1(g).

Summary of Comments

The FPBCA fully agrees with the Comments filed by the Past Presidents of the Florida Bar Foundation (the “Past Presidents”). Respectfully, the Task Force on the Distribution of IOTA Funds (the “Task Force”) gave no substantive basis for why any changes to the rule are necessary—and none are needed. However, if this Court disagrees, then we would urge the Court to adopt the alternative rule proposed by the Past Presidents (the “Consensus Rule”).

If this Court adopts the proposed rule from the Task Force unchanged, it will have significant detrimental impact. In addition

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to the harm set forth in other comments, the proposed amendments would have particular negative impact because (1) they include “Technology and Training” in the Administrative Expense Cap and (2) eliminate the Loan Repayment Assistance Program (the “Repayment Program”).

Pro bono coordinators, volunteers, and legal aid attorneys rely heavily on technology and training, which is, at present, partially subsidized by the Florida Bar Foundation (the “Foundation”). This includes, but is not limited to, WestLawNext and the case management system LegalServer. Including technology in the administrative cap of 10% puts access to these programs at risk, potentially resulting in great harm to the quality of legal services provided. The need for technology and training is especially important now that many attorneys are working remotely due to COVID-19. We urge this Court to, at a minimum, amend the 10% administrative cap in a manner that excludes technology and training.

In addition, the Repayment Program provides recent graduates with a yearly stipend to assist in paying back the overwhelming debt incurred by a majority of law school graduates. This is a

critical tool in recruiting talented new attorneys for the legal services arena. This is especially true given the significant salary reductions suffered by many of these new lawyers due to the COVID-19 pandemic. The FPBCA strongly urges that the Repayment Program be retained.

The FPBCA's Interest In This Proceeding

The FPBCA is the only professional membership organization in Florida solely devoted to promoting pro bono legal services to the poor and to the professional development of pro bono managers, professionals, and others interested in the field. It is a voluntary association of pro bono program coordinators throughout Florida, bringing together hundreds of years of experience in pro bono program development and management, and touching every corner of the state. Since its inception, the FPBCA has provided a myriad of services including:

- Training private and civil legal aid attorneys;
- Administering support to pro bono programs and staff;
- Facilitating information sharing amongst programs and within and amongst communities;
- Hosting networking opportunities;

- Coordinating volunteer recruitment, training, and monitoring;
- Creating pro bono programs and resources; and
- Coordinating pro bono efforts to improve and expand pro bono services throughout the state.

The FPBCA has a direct interest in the proposed rule changes because it receives funding from the Foundation, among other sources. The FPBCA’s annual budget for this past year was initially \$49,000. However, that budget was cut to \$11,850 following the Foundation’s reassessment of funds during the COVID-19 pandemic.

True Value of Pro Bono Services Donated Statewide

The Foundation undertook a review of pro bono program engagement recently, publishing its findings in 2018.¹ In its report, the Foundation found that “approximately 11 percent of the total 84,494 cases closed by Foundation grantees” were handled by pro bono volunteers.² The estimated value of those services was placed

¹ *Annual Overview of the Legal Assistance for the Poor Grant Program 2016*, The Florida Bar Foundation, https://fbfcdn-lwncgfpvgomdk2qxtd0e.stackpathdns.com/wp-content/uploads/2018/09/FBF-Statewide-Overview-2016-Final_9-11-2018.pdf (last visited Feb. 1, 2021).

² *Id.* at 8.

at \$12.1 million dollars.³ The true value of the pro bono services donated statewide, however, is much greater, as shown in the below table, which estimates the economic value of all pro bono services reported to The Florida Bar.

Reporting Year	Number of Pro Bono Hours Donated	Value of Pro Bono Hours Donated (@ \$300/hr)⁴
July 1, 2019 - June 30, 2020	1,293,102	\$387,930,600
July 1, 2018 - June 30, 2019	1,606,632	\$481,989,600
July 1, 2017 - June 30, 2018	1,581,941	\$474,582,300
July 1, 2016 - June 30, 2017	1,576,412	\$472,923,600
July 1, 2015 - June 30, 2016	1,648,409	\$494,522,700

³ *Id.*

⁴ Mark D. Killian, *Bar Survey Looks at Law Firm Economics*, Florida Bar News (Mar. 12, 2019), <https://www.floridabar.org/the-florida-bar-news/bar-survey-looks-at-law-firm-economics/#:~:text=The%20median%20hourly%20rate%20for,and%20Law%20Office%20Management%20Survey>.

Detrimental Impact Of Proposed Rule Amendments

While we appreciate the work of the Task Force, we believe its proposed amendments greatly underestimate the work of the FPBCA and the pro bono coordinators that make it possible for more than a million annual volunteer hours to occur—and we have a number of concerns regarding the proposed amendments. As the many, many comments filed with this Court establish, the proposed amendments will have a devastating impact.

We emphasize here just two of the many problems with the proposed amendments. First, “technology and training” should be removed from the administrative expense cap. Second, the Repayment Program should be retained.

A. “Technology and Training” Should Be Removed From The Administrative Expense Cap.

The proposed rule prohibits grantee organizations from spending any more than 10% of their IOTA funds on administrative expenses. Administrative expenses are defined as including “rent, training, and technology.”⁵ Imposing this limitation could have

⁵ *Proposed Amendments to Bar Rule 5-1.1(g) (Interest on Trust Accounts (IOTA) Program)*, Florida Bar News (Nov. 12, 2020), <https://www.floridabar.org/the-florida-bar-news/proposed-amendments-to-bar-rule-5-1-1g-interest-on-trust-accounts-iota->

significant negative effects.

The importance of up-to-date and ethically-delivered technology has never been more critical than it is today. In light of the COVID-19 pandemic and the drive to remote learning, work, and socialization, every person and business (both for-profit and non-profit) has been forced to reevaluate the status of both their hardware and software. When legal aid programs shifted in March to providing remote legal services, they required new phone systems to allow remote access, additional laptops, virtual private networks, and WiFi hotspots to ensure secure access. They also needed updated software, including subscriptions to webinar and on-line meeting programs such as Zoom, Microsoft Teams, and WebEx. These improvements were expensive, but necessary. Indeed, many volunteers were forced to pay for these items out of pocket with the hope that funds could be reallocated for reimbursement.

In addition, after COVID-19 is brought under control, it is likely that many coordinators and volunteers will continue to work remotely—just as attorneys at many businesses and private law firms will continue to do. Including technology and training within

[program/](#).

the 10% limitation on spending funds may effectively limit access to technological resources, putting pro bono clients at a significant disadvantage as compared to the clients of their adversaries—who often have the best technology and training available.

Importantly, pro bono coordinators, volunteers, and legal aid attorneys rely heavily on the above-described technology, which is, at present, partially subsidized by the Foundation. This includes, but is not limited to, WestLawNext and the case management system LegalServer. Including technology in the administrative cap of 10% puts access to these programs at risk, potentially resulting in significant negative impact on the quality of legal services provided.

In addition, and with equally harmful impact, the proposed rule changes do not take into account the variety of training and support necessary to recruit, train, and retain qualified pro bono volunteers. This includes, but is not limited to:

- The development of training programs and materials for pro bono attorneys to ensure they are up-to-date on relevant issues;
- Pro bono awareness campaigns and events, held

throughout the state (now virtually), to recruit and recognize pro bono volunteers;

- The time and cost of mentoring attorneys, particularly newly admitted attorneys, who are engaged in pro bono service;
- The time and cost of organizing clinics, including virtual clinics, which encompasses:
 - Identifying a community partner to host;
 - Finding a location and/or testing available technology;
 - Outreach to the target client population;
 - Preparing materials for distribution;
 - Arranging for IT assistance during the clinic; and
 - Following up with all clinic attendees (both client and volunteer) afterwards, possibly even taking on continued representation, among other things.

The FPBCA cannot emphasize strongly enough how important technology and training are for the FPBCA and its members' work. We urge this Court to, at a minimum, amend the 10% administrative cap in a manner that excludes technology and

training from that cap.

B. The Loan Repayment Assistance Program Should Be Retained.

The proposed amendment also eliminates the use of IOTA funds for the Repayment Program. Currently, 234 legal aid attorneys benefit from the Repayment Program, receiving up to \$5,000 annually to assist in repaying law school loans. This employee benefit is a tremendous asset in recruiting legal service attorneys. This is especially true now, when, in light of COVID-19, many attorneys have suffered salary reductions, face job insecurity, and confront daily health concerns. Taking away this benefit adds insult to injury for those who have dedicated their careers to providing legal services to the poor.

The following illustrates the impact of eliminating this benefit. The Florida Bar's Young Lawyers Division conducted an earnings survey in 2018, finding that 75% of respondents who had recently graduated from law school had outstanding student loans, **with a median debt of \$150,000.**⁶ The same study also showed that law

⁶ Jim Ash, *YLD Takes a Hard Look at Law School Debt*, The Florida Bar News (Apr. 9, 2019) <https://www.floridabar.org/the-florida->

school graduates reported a median income of \$75,000.⁷ By contrast, a survey by the National Association for Law Placement revealed that the median pay for new legal-services lawyers was \$48,000.⁸ This pay is so low, in fact, that many public interest attorneys have to work a second job to make ends meet, particularly those living in more expensive areas like Miami or West Palm Beach.⁹

Another study found that a graduate with six-figure debt would need to make “between \$112,000 and \$168,000 to maintain the 10-15% income-to-debt ratio recommended by most financial advisors.”¹⁰ Even with income-based repayment options, monthly

[bar-news/yld-takes-a-hard-look-at-law-school-debt/](#).

⁷ *Id.*

⁸ See Debra Cassens Weiss, *Median pay for public service lawyers rises modestly*, NALP reports, ABA Journal (Jul. 10, 2018), https://www.abajournal.com/news/article/median_pay_for_public_service_lawyers_rises_modestly_nalp_reports.

⁹ Steven Chung, *Public Interest Organizations Must Use Their Surge in Donations to Pay Their Lawyers a Living Wage*, Above the Law (Jan. 8, 2020), <https://abovethelaw.com/2020/01/public-interest-organizations-must-use-their-surge-in-donations-to-pay-their-lawyers-a-living-wage/>.

¹⁰ Ash, *supra* note 6.

payments can be more than \$600, comparable to rent or a mortgage. The Repayment Program helps in assisting to ensure that talented, new attorneys can afford to take lower-paying jobs in the public service sector, while still meeting their financial obligations.

With overall law school enrollment dropping over 20% in the last decade,¹¹ and a reduction in the overall number of attorneys going into the public interest sector,¹² the FPBCA urges that the Repayment Program be retained to help recruit and support attorneys in the legal services arena.

Conclusion

In summary, we urge this Court to reject the Task Force's proposed amendments to Rule 5-1.1(g) in their entirety. If this Court nevertheless believes that some change is warranted, we then

¹¹ *Law School Enrollment*, Law School Transparency Data Dashboard, <https://data.lawschooltransparency.com/enrollment/all/> (last visited Feb. 1, 2021).

¹² In 2016, Florida had 0.46 civil legal aid attorneys per 10,000 people living at 200% or less of federal poverty level, compared to 0.87 per 10,000 in 2014. *Compare Number of Attorneys for People in Poverty*, The Justice Index 2016, <https://justiceindex.org/2016-findings/attorney-access/#site-navigation> (last visited Feb. 1, 2021); *with Number of Attorneys for People in Poverty*, The Justice Index 2014, <https://justiceindex2014.org/findings/attorney-access/> (last visited Feb. 1, 2021).

urge this Court to adopt the Consensus Rule proposed by the Past Presidents of The Florida Bar Foundation. In particular, we urge this Court to (1) remove “Technology and Training” from the Administrative Expense Cap in the proposed amendments, and (2) retain the Loan Repayment Assistance Program.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February 2021, a true and correct copy of the foregoing has been electronically uploaded to the Florida Supreme Court's ePortal and a copy was furnished through this Court's ePortal to all parties listed in the ePortal.

/s/ Katherine E. Giddings
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CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE

I HEREBY CERTIFY that this comment complies with the type volume limitation and font requirement set forth in Rule 9.045, Florida Rules of Appellate Procedure. This comment contains 1,985 words. It has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Bookman Old Style font.

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