

**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 BY THE NATIONAL LEGAL AID & DEFENDER  
ASSOCIATION ON PROPOSED AMENDMENTS**

The National Legal Aid & Defender Association (NLADA) respectfully submits these comments for consideration regarding proposed amendments to Rule Regulating the Florida Bar -1.1(g) (Interest on Trust Accounts (IOTA) Program). We write to provide the Court with a national perspective on the experiences and infrastructure of the access to justice community. In addition to the comments set forth herein, NLADA supports the comments submitted by the Florida Civil Legal Aid Association (FCLAA), Bay Area Legal Services, and Texas Access to Justice Foundation.

**I. The National Legal Aid & Defender Association**

Founded in 1911, NLADA is the oldest and largest national nonprofit membership organization devoting all of its resources to advocating for equal access to justice for all Americans. Our membership includes more than 800 civil legal aid and public defender program members, collectively

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representing thousands of attorneys in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. Additionally, NLADA counts among its membership representatives of the client community served by these programs, and whom the resources, organization, and coordination supporting the delivery of civil legal aid directly affects.

NLADA is a leader in the development of national standards for legal services organizations. We work with civil legal aid providers across the country, and with national partners, including the American Bar Association (ABA), Legal Services Corporation (LSC), National Center for State Courts (NCSC), and National Association of IOLTA Programs (NAIP), to discern and advance the most efficient and effective use of resources and delivery of services to increase access to justice. We do this to achieve lasting results that secure safety and stability for clients and the communities in which they live.

## **II. The Essential Role of IOTA Funding**

NLADA has worked with IOLTA funders and bar foundations since the first U.S. Interest on Trust Accounts program was founded by the Florida Supreme Court in 1981. Since its inception, IOLTA programs have played an essential role in funding and supporting legal aid systems in

every part of the United States. While each program is administered at the state level, NAIP provides invaluable coordination, support services, and best practice experiences to colleague programs. NLADA has provided an important perspective to the ABA Commission on IOLTA and NAIP for decades on how their policies affect the legal aid programs they support.

IOTA administrators have a deep history of working side-by-side with the community of service providers to set priorities and deliver justice in their states. Florida has served as a leader in the creation of IOTA, as well as the strategic statewide coordination that is now replicated across the country. In our experience, we are more effective at increasing access to justice when the administration of scarce resources is informed by needs experienced on the ground.

**III. Proposed changes to 5-1.1(g)(8) and (9) will significantly hinder the provision of critical legal services**

***A. Capping reserves limits the ability to respond to urgent and emergent needs, and sustain efficient and effective services***

NLADA shares concerns that requiring the distribution of all funds except for those used on direct expenses to grantees within six months of receipt presents a significant hindrance to the ability to provide and sustain critical services, both for the Foundation and grantee organizations. When coupled with the proposed requirement that grantees use only 10% of

funds to both cover all administrative costs *and* establish reserves, the proposed changes effectively eliminate any meaningful level of reserves. This will cause great harm to the ability to respond in emergency situations.

Moreover, with no reserves, grantees only will be able to project IOTA funding in, at most, six-month increments. This uncertainty of funding levels presents a significant barrier to recruiting and retaining high quality staff, and therefore, sustaining effective services. In our experience, civil legal aid providers must be able to project for at least one year. However, many planned projects include reliable staff support for more than two years.

Our experience supporting resources for and delivery of civil legal aid over the decades nationally has demonstrated the critical role of IOTA funding, particularly in times of emergency and uncertainty. This is especially true in states like Florida, which is experiencing an increased frequency of natural disasters. As laid out in the Report of the Legal Services Corporation's Disaster Task Force, disasters can have a disparate and devastating impact on low-income survivors and civil legal aid is a critical resource to reestablishing lives and stability.<sup>1</sup> At NLADA, we consistently have been humbled by Florida's legal aid community and their

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<sup>1</sup> Report of the LSC Disaster Task Force, Legal Services Corporation (2019) at 2, available at <https://www.lsc.gov/media-center/publications/lsc-disaster-task-force-report#bfrtoc-lsc-disaster-task-force-report> ("For low-income disaster survivors, basic subsistence and re-establishing their lives can involve months and even years of serious challenges. Law can be both a barrier and a tool as disaster survivors work to regain their lives.").

ability to step in and step up when disaster strikes low-income communities. That capacity is in no small part due to the strategic building of reserves to be available in emergency situations.

Our current context is a stark reminder how reserves can help steer legal aid programs through volatile times. As laid out by FCLAA in its earlier comments to the Task Force, the current pandemic situation also is exponentially increasing the civil legal issues faced by low-income people across the country. The Legal Services Corporation has estimated that at least \$350-500 million is needed to address the short- and long-term consequences of the pandemic on low-income Americans.<sup>2</sup>

At the same time, as interest rates continue to remain at historic lows, IOTA revenues will realize a steep drop in revenue. A recent survey completed in December 2020 by the National Association of IOLTA Programs (NAIP) found that IOLTA revenue fell \$111 million from 2019-2020 and that if IOLTA interest rates remain reduced through 2021, IOLTA revenue is expected to equal approximately 54% of the 2019 level. The reserves built by administrators across the country are serving as a lifeline.

The ability to determine, strategically and based on evidence, if and

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<sup>2</sup> February 9, 2021 press release from the Legal Services Corporation, "LSC Requests Funding to Address Surge in Demand for Legal Aid Amid COVID-19," available at <https://lsc.gov/media-center/press-releases/2021/lsc-requests-funding-address-surge-demand-legal-aid-amid-covid-19>.

how to build reserves not only is good practice, but also is important to supporting and maintaining the infrastructure for delivering civil legal aid. For this reason, the proposed six-month disbursement requirement and the 10% cap on grantees' administrative costs, which includes building reserves, should be rejected.

***B. Restricting and enumerating administrative costs creates barriers to both quality and efficiency in the delivery of legal services***

The proposed imposition of a strict 10% cap on the utilization of IOTA funds for administrative expenses is unusually restrictive. Moreover, the inclusion of training and technology as administrative costs is inconsistent with the manner in which civil legal services are provided. Taken together, these proposals are unusual and inhibiting.

Actual indirect cost rates are much higher than the 10 percent *de minimus* rate.<sup>3</sup> This is true both for nonprofits and the for profit sector. Indeed, for this reason, many civil legal aid organizations have negotiated rates for government grants that exceed 20 percent.

Moreover, training and technology generally are understood as direct costs in the provision of legal services, and, accordingly, considered as

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<sup>3</sup> See, e.g., The Bridgespan Group, "Pay-What-It-Takes Philanthropy," May 15, 2016. Available at: <https://www.bridgespan.org/insights/library/pay-what-it-takes/pay-what-it-takes-philanthropy> (2016 survey finds median indirect cost rate of 40 percent).

such in grants funding these services. This is, in part, because specialists requiring unique training provide legal services, and technology has become a specialized tool in doing so. For example, grants funding emergency legal services train specialists not only in laws and regulations that govern natural disasters, but also in the processes and procedures for engaging with emergency management officials. Grants funding services for older adults, victims of crime, or veterans provide specialized training for addressing consumer fraud or elder abuse, or navigating the intricacies of family law or the Veterans Administration.

Likewise, grants might include the provision of laptops and mobile technology to ensure that legal services staff can reach and serve people in temporary shelters after a hurricane, older adults in rural locations, or veterans at a stand-down.

It is unmanageable to encompass the varied training and technology necessary for a fully functional legal aid office in indirect costs; it is virtually impossible to do so under a 10% cap on all administrative costs. For this reason, the 10% cap on administrative costs should be rejected, and training and technology should not be included as administrative costs.

**IV. The proposal to eliminate the Loan Repayment Assistance Program (LRAP) will have an immediate and lasting effect on recruiting and retaining high quality staff**

We agree with and support the comments submitted by Bay Area Legal Services that disrupting the LRAP for even a brief period would result in immediate and significant harm.

NLADA has conducted two surveys, in 2015 and again in 2017,<sup>4</sup> of the civil legal aid community to determine the importance of programs that alleviate the burden of high student debt relative to the incomes earned by legal aid lawyers and staff. Each survey was consistent in finding that these relief programs played a large role in the ability to accept positions in legal aid, and that any threat to these programs would immediately affect the ability for recipients to remain in their positions or accept similar positions.

When asked about the federal Public Service Loan Forgiveness program, 70% in 2015 responded that the program was a significant factor in accepting their position; 81% reported the same in 2017. In 2017, more than half of respondents reported that they would very likely leave their positions if the program did not exist.

Moreover, our 2015 survey included inquiry about the John R. Justice Loan Repayment Assistant Program, which, similar to the Florida Bar Foundation LRAP, provides recipients moderate funds to pay their student

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<sup>4</sup> NLADA's 2015 survey, "The Critical Role of Public Service Loan Forgiveness in Access to Counsel and Equal Justice," is available at: [http://www.nlada.org/sites/default/files/NLADA\\_Importance\\_of\\_PSLF\\_0-2.pdf](http://www.nlada.org/sites/default/files/NLADA_Importance_of_PSLF_0-2.pdf); NLADA's 2017 survey, "Public Service Loan Forgiveness and the Justice System," is available at: <http://www.nlada.org/pslf-and-justice>.

loans. Notably, more than a quarter of respondents reported that they likely would leave their position if the program was eliminated.

Elimination, or even a pause, in the provision of LRAP would create a degree of uncertainty that would immediately and negatively affect the recruitment of new staff and the retention of experienced staff.

### **Conclusion**

For the foregoing reasons, the Court should reject the proposed changes to Rule 5-1.1(g)(8) and (9). NLADA and the national access to justice community has learned much from Florida's leadership in the coordination and administration of IOTA funds. Imposing these restrictions on funding would hinder the ability not only to respond quickly and effectively, but the ability to sustain critical legal services. NLADA is grateful for the opportunity to submit these comments and is available to provide additional information as the Court or Task Force may deem useful.

Respectfully submitted,

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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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