



July 10, 2020

Submitted via email: eto@flabar.org

Task Force on Distribution of IOTA Funds
% Elizabeth Tarbert
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

RE: Proposed changes to Chapter 5 of the Rules Regulating the Florida Bar (Trust Accounts)

Dear Task Force Members:

The National Legal Aid & Defender Association (NLADA) respectfully submits for your consideration this letter in support of the proposed changes to Chapter 5 of the Rules Regulating the Florida Bar submitted jointly by the Florida Civil Legal Aid Association (FCLAA) and the Florida Bar Foundation (Foundation).

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. Our membership includes more than 800 civil legal aid and public defender program members, collectively 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.

NLADA has worked with IOLTA funders and bar foundations since the Florida Supreme Court founded the first U.S. Interest on Trust Accounts program 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. For decades, NLADA has provided an important perspective to the ABA Commission on IOLTA and NAIP on how their policies affect the legal aid programs they support.



We commend the Task Force for engaging in the difficult work of examining the current administration of Interest on Trust Accounts (IOTA) used for legal aid funding, asking the challenging questions of how best to improve it, and engaging feedback and input from the community of civil legal aid providers throughout your process. 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 faced by clients and providers on the ground. It is based on this experience that we express our support for the specific proposals to revise Rule 5 proffered by the FCLAA and the Foundation, as described below.

Utilizing a Single Administrator of IOTA Funds

In our experience, designating a single administrator to oversee and coordinate the distribution of Interest on Trust Account funds not only provides for efficient administration, but also the strategic coordination of support to services across a state, ensuring that resources are allocated to meet and advance set priorities.

We are aware of only one state that utilizes more than one IOLTA administrator. We believe that the near consensus around a single administrator likely is due to a general understanding that multiple fund administrators increase the chance for inefficiency, inconsistency, and increased workload. Designating multiple administrators has the potential to create confusion in a number of aspects. This includes, among other things, determining how to allocate IOTA funds across administrators, discord in whether a provider may receive funds from multiple administrators, and, if so, the burden of reporting to multiple administrators. It also increases challenges to oversight by the Court, which would be required to receive and review multiple reports from the various administrators, rather than one streamlined report on the use of funds. A single administrator can facilitate reporting from grantees, develop uniform metrics, and provide a comprehensive report to the Florida Supreme Court.

Most importantly, however, a single administrator has the ability, and perhaps the obligation, to determine how best to allocate resources across a state in a way that achieves the greatest advances toward access to justice. Examples of this effective statewide administration and coordination across numerous and diverse civil legal aid providers include, among many others, the Legal Services Corporation of Virginia and the Texas Access to Justice Foundation.

Flexibility and Accountability in Determining Reserves and Administrative Needs

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, and relatedly, the importance of building reserves for these times. This is especially true in states like Florida, which, as you know, 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.¹ At NLADA, we consistently have been humbled by Florida’s legal aid community and their ability to step in and step up time and time again when disaster strikes low-income communities. This response has always included the ability of the Florida Bar Foundation to step in and provide resources strategically and efficiently. This activation and coordination repeatedly serves as a model for states across the country. This capacity and effectiveness 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 of how reserves can help steer legal aid and ensure they are able to deliver critical services through volatile times. As laid out by FCLAA in its earlier comments, 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 \$100 million is needed to address increased civil legal issues.² This does not account for the sheer increase in the number of people and families thrust into poverty, which makes the need for resources much greater. At the same time, as interest rates dropped to zero, IOTA revenues will realize a steep drop. In a recent survey conducted by the National Association of IOLTA Programs (NAIP), NAIP’s US members projected a loss of \$157.4 million in 2020 revenue available for civil legal aid.³ This could be worse if rates remain at or near zero for an extended period. The reserves built by administrators across the country are serving as a lifeline during this time.

The ability of an IOTA administrator to determine, strategically and based on evidence, if and how to build reserves not only is good practice, but also is important to supporting and maintaining the infrastructure for delivering civil legal aid. We believe that strategies and policies informed by the particular circumstances in each state, including policies to ensure these strategies are in accordance with responsible fiscal analysis, provide both the necessary flexibility discussed above, as well as the important assurance of accountability.

The vulnerability of IOTA revenues to interest rate fluctuations also leads us to be wary of enshrining in a rule strict limitations to administrative costs. Doing so undermines the ability to recruit and retain reliable staff, which is extremely important not just for consistent administration of standing programs, but also the ability to act nimbly to develop strategies to respond to disasters and unforeseen emergencies. While some decreases in revenues may be predictable, the current context also shows us that interest rates can drop very quickly and quite unexpectedly. Hard limitations on overhead and/or indirect costs can, at times, hamstring administrators and programs alike. Similar to the issue of reserves, sound policies, guiding principles, and responsible oversight are a more appropriate tool for ensuring maximum efficiency.

¹ 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.”).

² March 26, 2020 press release from the Legal Services Corporation, “Legal Services Corporation Will Receive \$50 Million in Coronavirus Stimulus Bill,” available at <https://www.lsc.gov/media-center/press-releases/2020/legal-services-corporation-will-receive-50-million-coronavirus>.

³ May 29, 2020 press release from the National Association of IOLTA Programs, available at <http://www.iolta.org/images/NAIP-Press-Release-5-29-20.pdf>.



We believe that the proposals set forward by the FCLAA and the Foundation, and described above, are defining characteristics that underlie the important role not just of IOTA funding, but also of the administrators of that funding, in advancing access to justice.

Again, thank you for your consideration of these important issues. If you have any further questions about our positions or wish to discuss further, we are available to you.

Respectfully submitted,

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Christopher Buerger, Counsel, Civil Legal Services

cc: Monica Vignes-Pitan, FCLAA President, Legal Services of Greater Miami
Donny MacKenzie, Executive Director, The Florida Bar Foundation

