

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS
5-1. GENERALLY
RULE 5-1.1 TRUST ACCOUNTS

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) “Foundation” means The Florida Bar Foundation, Inc. which shall serve as the designated IOTA fund administrator and shall monitor and receive IOTA funds from eligible institutions and distribute IOTA funds consistent with the obligations and directives in this rule and orders of the Florida Supreme Court.

(C) “IOTA account” means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(D) “Eligible institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least \$250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(F) A “qualified grantee organization” is a not for profit entity incorporated or chartered for the purpose of providing civil legal assistance to low-income individuals or is a not for profit entity with exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. It must also demonstrate the experience and capacity to provide Qualified Legal Services, as defined herein, by:

(1) employing qualified legal services providers to:

(i) directly provide qualified legal services, and/or

(ii) facilitate the provision of and improve the quality of qualified legal services; or

(2) facilitating qualified legal services by coordinating volunteer qualified legal service providers.

(G) “Qualified Legal Services” are legal services provided directly to low-income clients for their civil legal needs in Florida.

(H) A “Qualified Legal Services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide Qualified Legal Services in Florida.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida **B**bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider such factors as the:

(A) amount of a client’s or third person’s funds to be held by the lawyer or law firm;

(B) period of time the funds are expected to be held;

(C) likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) lawyer or law firm’s cost of establishing and maintaining an interest-bearing

account or other appropriate investment for the benefit of the client or third person;
and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short-term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) *Interest Rates and Dividends.* Eligible institutions must maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) *Determination of Interest Rates and Dividends.* In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) *Remittance and Reporting Instructions.* Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the ~~F~~foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The Foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

8) Distribution of IOTA Funds. All IOTA funds transmitted to the Foundation shall be used in a manner that gives priority consideration to funding Qualified Legal Services for low-income individuals in Florida, and shall be used only to:

(A) Support qualified grantee organizations that:

a. directly provide Qualified Legal Services, and/or

b. facilitate the provision of and improve the quality of Qualified Legal Services; or

c. facilitate Qualified Legal Services by coordinating volunteer Qualified Legal Service Providers.

(B) Fund necessary and reasonable operating expenses of the Foundation for effective operation of the IOTA program including collection, disbursement, and monitoring and reporting on efficient use of IOTA funds and pursuing the growth of IOTA and development of other sources of civil legal aid funding.

(C) Establish and maintain reasonably prudent reserves for the operations of the IOTA program as well as to promote stability in funding for (A) and (B), above.

(D) At least 80% of IOTA funds received by the Foundation shall be allocated to qualified grantee organizations in the form of grants and program-related expenses. A portion of these funds may be allocated to reserves if approved by the IOTA Funds committee of the Foundation Board.

The Foundation shall develop policies for monitoring the distribution and use of IOTA funds and those policies shall give the highest priority to ensuring the consistent provision of qualified legal services throughout the state of Florida.

(9) IOTA Oversight and Governance. The Foundation shall determine the initial and continuing eligibility of banks, savings and loan associations and investment companies to hold IOTA accounts in accordance with the criteria set forth in this rule and in *In re: Amendments to the Rules Regulating the Florida Bar 5-1.1(e)*, 797 So. 2d 551, 552, (Fla. 2001). The Foundation shall also be responsible for ensuring the efficient and effective distribution and use of IOTA funds. In order to further ensure such efficiency:

(A) The Foundation's Board of Directors will establish a standing committee on IOTA Funds. The committee shall include three members chosen by the Florida Civil Legal Aid Association, Inc. from its members. The committee shall provide feedback on the Foundation's development of a statewide plan for distribution of funds, policies for monitoring the distribution and use of IOTA funds, best practices for use of IOTA funds, and other input and oversight as directed by either the Board of Directors or the Supreme Court of Florida.

(B) The Foundation's Budget and Finance Committee shall be composed of at least four Directors appointed by the Supreme Court of Florida pursuant to the Foundation's bylaws and articles of incorporation.

(10) Reporting by Qualified Grantee Organizations. Qualified Grantee Organizations must report to the Florida Bar Foundation on or before February 15 of each year on metrics developed by the IOTA Funds Committee and approved by the Foundation Board on a regular basis designed to confirm grantee organizations are promoting access to justice on the part of low-income clients, and to ensure IOTA funds are utilized efficiently and effectively. These metrics shall include but are not limited to: the number of clients receiving Qualified Legal Services paid for or facilitated by the use of IOTA funds and other aggregate data showing the impact of civil legal aid in Florida, regardless of funding source.

(11) Reporting by the Foundation. As a condition of continued receipt of IOTA funds, the Foundation shall prepare on or before April 15 of each year a report containing

programmatic and financial analysis of the IOTA funds received and distributed by the Foundation during the previous calendar year and shall prepare an Annual Report that will be available to the public.

(A) The programmatic report shall at a minimum contain the aggregate data reported by the qualified grantee organizations detailed in the previous section. It may also contain other data that details the impact of the IOTA funds provided to the qualified grantee organizations.

(B) The financial portion of the report shall:

(i) Be prepared according to generally accepted accounting principles;

(ii) Include and identify the specific amount of IOTA funds given to the various providers, programs, and projects for the previous year;

(iii) Include and identify the total amount of funds that were awarded to build or maintain the capacity of qualified grantee organizations;

(iv) Include the total amount of IOTA funds that were set aside for reserves;

(v) Include the total amount of IOTA funds that were spent by the Foundation for operating expenses; and

(vi) Include the categories of the rates paid by participating Banks.

(C) Copies of the reports shall be provided to the Chief Justice of the Florida Supreme Court immediately upon completion of such reports, published upon the Foundation's website, and otherwise made available to others of the public upon request.