



# THE FLORIDA BAR FOUNDATION

## Status Report – Interest on Trust Accounts (IOTA) Program

The Florida Bar Foundation (the “Foundation”) respectfully submits this status report to the Florida Supreme Court (the “Court”) regarding the Foundation’s activities as the designated IOTA fund administrator pursuant to Rule 5-1.1(g), Rules Regulating The Florida Bar (the “IOTA Rule”), as amended by the Court on June 18, 2021.<sup>1</sup>

### BACKGROUND INFORMATION

Immediately after the Court’s June 18, 2021 decision, the Foundation began working to implement the 2021 amendments to Rule 5-1.1(g), Rules Regulating the Florida Bar. Under the direction of then-President Connie Bookman, an Executive Committee Implementation Work Group (Work Group) was created to review the amendments and prepare a work plan for implementing the changes contained in the amended IOTA Rule. The committee’s initial Work Plan was approved by the Foundation’s Board of Directors (the “Board”) on November 8, 2021. Thereafter, the Work Group continued with more review, research and analysis, which included extensive input from the Foundation’s existing grantee organizations. As a result, a final Work Plan was formally adopted by the Board on October 20, 2022. See [Exhibit 1](#). The Work Plan is a work in progress and will be reviewed at least one time each year to determine if changes to it are necessary to better administer IOTA funds in accordance with the IOTA rule.

Reports from grantees regarding their initial use of IOTA collections are due in the Spring of 2024, and we look forward to reviewing those reports and promptly relaying a summary of such to the Court per (g)(10)(G) of the IOTA Rule’s directive

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<sup>1</sup> SPECIAL NOTE: Please note that IOTA funds were first distributed under the amended rule to qualified grantee organizations on or about December 23, 2022, for the grant period beginning January 1, 2023 to December 31, 2023. This was done in accordance with the amended IOTA Rule’s effective date of July 1, 2021, the first day of the Foundation’s FY 21-22. As such, qualified grantee organizations are expected to expend those funds before December 31, 2023 and prepare their first reports as required under the amended IOTA Rule in Spring 2024. The Foundation is nevertheless providing this report to inform the Court of the Foundation’s activities and efforts to date in implementing the 2021 amendments to the IOTA Rule.

shortly thereafter. Much work, time, thought and consideration went into developing the plan and Foundation staff are grateful to the many directors and other volunteers who devoted countless hours into this effort.

### **FYE June 30, 2022 (FY 21-22)**

#### IOTA Collections Received

The Foundation received \$9,498,693 in IOTA funds during the twelve-month period ending June 30, 2022 (FY 21-22). Pursuant to Rule 5-1.1(g)(8), those funds were maintained separate from other Foundation funds.

As of June 30, 2022, these funds were not invested. However, the Foundation's Investment Committee was charged with, and did in fact, create and draft an investment policy relating to the investment of IOTA collections for the benefit of qualified legal aid providers and organizations. This policy was formally adopted by the Board on October 21, 2022.<sup>2</sup> The purpose of the fixed income allocation is to invest IOTA funds in a conservative, short-term fixed income portfolio designed to meet liquidity needs every six months. The portfolio will maintain a short duration posture with maturities aligned with the anticipated distributions. Additionally, investments will be limited to the U.S. Government, its agencies, and/or Certificates of Deposit.

Funds invested for distribution to qualified grantee organizations will be segregated so that all returns on investment will inure to the benefit of the qualified grantee organizations. Similarly, "direct expenses" funds, to the extent they are invested, will be invested in the same conservative fashion with the same primary objectives and segregated accordingly.

#### IOTA Collections disbursed

The Foundation distributed a total of \$8,073,886 to qualified grantee organizations pursuant to Rule 5-1.1(g)(8). This disbursement was concluded by December 23, 2023 and represented 85% of the IOTA collections received by the Foundation in FY 21-22.

The remaining 15% of the amount collected was not spent by the Foundation to offset any of its direct expenses in FY 21-22. Instead, those monies were kept

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<sup>2</sup>The primary objectives of this investment portfolio include a) preserving capital and protecting principal, b) protecting funds and investments, c) producing current income consistent with low volatility of principal, and d) structuring the portfolio to meet liquidity requirements provided and updated by The Florida Bar Foundation.

separately pending the Foundation's final determination of a reasonable methodology for assessing and allocating direct expenses as defined under the amended IOTA Rule.

#### Auditor review

The Foundation engaged its independent auditor, Carr, Riggs & Ingram, LLC ("CRI"), to perform an agreed upon procedures engagement regarding the Foundation's IOTA administrator activities for FY 21-22.

An Agreed Upon Procedures worklist of procedures to be performed was developed and CRI thereafter performed such work, which verified that the Foundation:

- Collected \$9,498,693 in IOTA collections for the twelve-month period ending June 30, 2022 (FY 21-22);
- Kept all IOTA collections collected in FY 21-22 in a separate bank account for the twelve-month period ended June 30, 2022 without exception;
- Did not invest the IOTA funds collected in FY 21-22, but instead maintained such funds in a separate bank account;
- Distributed at least 85% of the IOTA funds collected in FY 21-22 to qualified grantee organizations;
- Did not spend any amount of IOTA funds collected in FY 21-22 for direct expenses to administer IOTA funds, as of March 28, 2023, the date of its report.

CRI's Agreed Upon Procedures Report is attached as [Exhibit 2](#).<sup>3</sup>

#### Direct expenses have not yet been applied to offset Foundation expenditures

A detailed breakdown of direct expenses required to administer the IOTA funds is not available at this time because the Foundation has not yet adopted a methodology for determining a reasonable allocation of direct expenses attributable to its administration of the IOTA rule. The Foundation retained an independent firm to conduct an assessment and recommend a specific methodology. This effort is currently in process and will be finalized as soon as possible.

To date, the Foundation has not used any IOTA collections received after the amended IOTA Rule came into effect (July 1, 2021) to pay any of its operating expenses. Instead, as referenced above, 15% of all IOTA collections received to date have been placed into a separate bank or investment account pending a final determination of a reasonable and appropriate methodology. Once determined, the Foundation will prepare and report the breakdown of direct expenses required to

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<sup>3</sup> A copy of the Foundation's Annual Audit for FYE 6.30.22 is attached as [Exhibit 3](#).

administer IOTA funds received and its calculated reimbursement amounts for the affected fiscal years.

#### FY 21-22 Distribution Data

Regarding the \$8,073,886 of IOTA collections that was distributed by December 23, 2022 to qualified grantee organizations, the name of each qualified grantee organization, along with the amount, to which IOTA general distributions were made, is attached as [Exhibit 4](#). A sample copy of the IOTA general distribution grants contract is attached as [Exhibit 5](#).

A listing of Loan Repayment Assistance Program (LRAP) recipients by employer (individual name redacted for privacy purposes) and the amounts loaned using FY 21-22 IOTA collections is attached as [Exhibit 6](#).

#### Eligibility Determination and Selection of Qualified Grantee Organizations - Objective Standards

The Foundation used the amended IOTA Rule as the basic construct of an objective standard for selecting recipients of IOTA collections for three reasons. First, the IOTA Rule defines a qualified grantee as “a charitable or other nonprofit organization that facilitates or directly provides qualified legal services by qualified legal services providers and that has experience in successfully doing so.”<sup>4</sup> Secondly, the IOTA Rule’s definition of a qualified grantee encompasses two more material terms, “qualified legal services”<sup>5</sup> and “qualified legal services providers.”<sup>6</sup>

Lastly, Section (g)(8) of the amended IOTA Rule provides, “[t]he standards must require that IOTA funds be used to facilitate or directly provide qualified legal services by qualified legal services providers....”

Consequently, the Foundation determined that grantees must satisfy these minimum requirements in order to be considered for selection as a qualified grantee organization.

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<sup>4</sup> See Section (g)(1)(F) of the amended rule.

<sup>5</sup> “Qualified legal services” are free legal services provided directly to low-income clients for their civil legal needs in Florida, and includes post-conviction representation, programs that assist low-income clients in navigating legal processes, and the publication of legal forms or other legal resources for use by pro se litigants. *Id.* at (G).

<sup>6</sup> 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. *Id.* at (H).

In addition, all grantees who meet these minimum requirements are eligible for IOTA funding consideration, provided they:

1. Agree to fully comply with the amended IOTA Rule;
2. Have a primary mission to provide, or facilitate the provision of, qualified legal services by qualified legal services providers;
3. Are able to demonstrate at least five full years of experience in providing qualified legal services;
4. Agree to adhere to Foundation policies, grant assurances, procedures, and performance requirements; and
5. Show upon request:
  - a. Satisfactory proof of financial stability and independence apart from Foundation funding;
  - b. Satisfactory proof of proper governance and internal controls; and
  - c. Satisfactory proof of subject matter expertise and competency required for a particular grant, award or project.

The Foundation also expressed a preference for programs excelling in results, efficiency, timeliness, collaboration, cooperation, and uniqueness of services provided.

While not required, extended services, as defined by The Legal Services Corporation<sup>7</sup> and commonly understood by existing Foundation grantees and Florida Civil Legal Aid Association (FCLAA) members, will be preferred over other services directly provided.

The Foundation intends to keep the existing legal service-provider network intact as much as possible pending further review and analysis of the outcomes and results obtained through its funding going forward. It is also open to expanding the network as much as reasonably possible to other qualified organizations so as to increase the provision of qualified legal services to more people in need.

Previous receipt of IOTA funds is not a prerequisite for consideration of IOTA funding, provided a grantee meets the requirements stated herein.

After each year's distribution of IOTA funding under the amended IOTA Rule, additional data will be requested from grantees. This data will seek information reflecting:

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<sup>7</sup> See Chapter VIII, Section 8.3, CSR Handbook 2017, Legal Services Corporation which can be found here: <https://www.lsc.gov/i-am-grantee/lsc-reporting-requirements/case-service-reporting/csr-handbook-2017>

- a. Reporting metrics required by the Florida Supreme Court;
- b. Results;
- c. Efficiencies;
- d. Collaboration and cooperation;
- e. Timely performance and reporting; and
- f. Uniqueness of services provided.

### Fair Distribution Plan – Basic Elements

Section (g)(8) of the amended rule requires the Foundation to consider data from appropriate governmental agencies and grantees before developing a fair distribution plan regarding IOTA collections.<sup>8</sup>

Consequently, the Foundation reviewed multiple sources including, U.S. Bureau of Labor Statistics and data, information and input provided by the American Bar Association Commission on IOLTA, other IOTA programs, members of the National Association of IOLTA programs, and the United Way. It also reviewed all data provided by FCLAA and other Foundation grantees submitted to the Foundation per its request and surveys to all grantees and FCLAA.<sup>9</sup>

The Foundation identified several approaches available for distributing IOTA funds to qualified grantees (See pages 8 -12 of Work Plan). Notwithstanding the options, IOTA funds collected in FY 21-22 were used only for LRAP loan payments (made in October 2022) and general distribution contracts (executed and paid for in December 2022).

LRAP loan payments were made in accordance with the existing requirements of the LRAP program. The total amount distributed under the Loan Repayment Program Assistance Program using FY21-22 distributions was \$387,500 and 157 qualified legal services providers received distributions. See [Exhibit 6](#), referenced above.

General distribution payments were made to fund the direct provision of qualified legal services by qualified legal services providers in order to increase access to the justice system to protect and preserve individual rights relating to one or more of the following civil legal issues:

- Health and Shelter

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<sup>8</sup> “[t]o ensure fair distribution of IOTA funds across Florida, must consider relevant data, including: (A) demographic data provided by an appropriate governmental agency, such as the U.S. Bureau of Labor Statistics; and (B) data provided by the qualified grantee organization on the use of any IOTA funds previously received.” Id. at (g)(8).

<sup>9</sup> Attached as [Exhibit 7](#) is a compilation of some of the data sources reviewed and considered.

- Personal Safety
- Protective and Corrective Security
- Family, Community and Legal Stability

Qualified grantees received pro rata distribution of available IOTA funds based on 1) a regional basis<sup>10</sup> 2) using both poverty and working poor populations; 3) based on current grantee FTE attorney capacity weighted by size to reflect regional need and/or dependence on Foundation funding and to promote overall sustainability of the delivery model (existing network) with special attention to percentage of poverty and working poor population in region/service area and availability of other resources.

This distribution formula is subject to change on a periodic basis to reflect updates in available data and information. Grantee-reported attorney capacities were used, and weighting was established by type and size of grantee organizations. The final worksheet showing such data points, and resulting distributions is attached as [Exhibit 9](#).

In addition, the terms and conditions in each general distribution contract incorporated the amended rule's requirements. A sample contract is previously attached as [Exhibit 5](#).

#### Amounts received from sources other than IOTA funds

The total amount received by the Foundation from sources other than IOTA funds for FY 21-22 was \$2,584,711. See [Exhibit 10](#) for a detailed listing of such amounts

#### **FYE June 30, 2023 (FY 22-23)**

As the Court is aware, FY 22-23 recently ended on June 30, 2023. As such, it is not possible to provide the same types of information as reported for FY21-22 at this time. With that said, preliminary review reveals that \$45,547,391 in IOTA collections have been received in FYE June 30, 2023.

On August 2, 2023, the Foundation sent all of its grantees its annual public notice regarding its receipt of FY 22-23 IOTA collections. This public notice is attached as [Exhibit 11](#). Grantees were also advised that in addition to a general distribution – most likely to be made during the first week of December 2023, the Foundation is considering a separate distribution dedicated to *pro bono* efforts. A decision regarding this distribution will be made at the Foundation's September Board meeting and announced shortly thereafter.

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<sup>10</sup> Seven regions, as established by The Legal Services Corporation for Florida were used. See [Exhibit 8](#).

### Spending and Reserve Policy considerations

The Foundation adopted a Spending and Reserve Policy in December 2019, applicable to its grants allocation process in effect at that time. This policy is not functional following the 2021 amendments to the IOTA rule. The Foundation is therefore developing a proposed Spending and Reserve Policy applicable to IOTA collections that is compatible with the amended rule. The purpose of the policy would be to provide greater economic stability to the Foundation's qualified grantee organizations and instill a more consistent and predictable IOTA distribution process. It would also modulate spending, provide greater transparency and more notice of expected IOTA distributions from the Foundation allowing grantees more time for planning, budgeting and building a more robust and efficient infrastructure in a measured manner. If adopted by the Board, it will not be implemented until presented and approved by the Court.

The Foundation has sent several surveys to the grantees inquiring about their capacities and budgeting plans but does not at this time foresee requesting a reserve with respect to the upcoming IOTA distributions collected in FY 22-23. Depending on the data it expects to receive shortly, along with other data previously gathered, the Foundation may revisit the need for requesting a reserve this year.

### **CONCLUSION**

The Foundation certifies that it has complied with the IOTA Rule's requirements on the use of IOTA funds to the best of its abilities and that the information contained herein is true and correct to the best of its knowledge and belief. It hopes this report provides the Court the information it wants and needs. Should the Court need anything further, please do not hesitate to let us know. Thank you.

Respectfully submitted,



Hon. Suzanne Van Wyk, Chair



Dominic C. MacKenzie, Executive Director