

IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,671

MATTER OF INTEREST ON TRUST
ACCOUNTS: A PETITION TO AMEND
THE RULES REGULATING THE
FLORIDA BAR

FILED
SID J. WHITE
APR 24 1989
CLERK, SUPREME COURT
By _____
Deputy Clerk

COMMENTS OF HARVEY M. ALPER ON
PROPOSED AMENDMENTS TO THE RULES REGULATING
THE FLORIDA BAR - INTEREST ON TRUST ACCOUNTS PROGRAM

COMES NOW, Harvey M. Alper, a member of The Florida Bar, and files these his Comments on the proposed rules change to the Rules Regulating The Florida Bar, proposed Amended Rule 5-1.1(d) and says:

1. This Court, in its decision concerning the IOTA program, stated on page 8 of its decision

As under the current program, the determination of whether a client's funds are nominal in amount or to be held for a short period of time will rest in the sound judgment of the attorney or law firm. No attorney shall be charged with ethical impropriety or other breach of professional conduct based on the exercise of judgment in this regard. See 402 So.2d at 394.

2. The Rule proposed by The Florida Bar does not track such decision adequately. As proposed, The Florida Bar Rule provides as follows:

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

3. The Florida Bar Foundation has now provided a new measure of attorney action in such regard. The Florida Bar requires "good faith" judgment, thus involving questions of scienter, where this Court has prescribed that a lawyer shall be engaged in the "exercise of judgment" in this regard.

4. Further, the Rule as proposed by The Florida Bar now involves persons other than clients; the Supreme Court's decision

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states clearly that "the determination of whether a client's funds are nominal in amount or to be held for a short period of time will rest in the sound judgment of the attorney or law firm." The Florida Bar Foundation now has attorneys making determinations as to "third person's funds." Thus, individuals who have no contract or professional relationship with a particular attorney may now have their funds held for the benefit of The Florida Bar Foundation by a lawyer exercising "sound judgment" as to a "third person's funds."

5. Without belaboring issues previously argued to this Court, it would appear that The Florida Bar Foundation has now gone well beyond the parameters laid down by this Court in its recent decision in that it has now prescribed an interest on trust accounts program which applies not only to clients, but also to "third parties." Said third parties are persons concerning whom the effect of an interest on trust accounts program was never considered by this Court. Thus, the proposed Rule constitutes an expansion, without authorization from this Court, of an interest on trust accounts program into an area neither briefed nor argued to the Court.

In consideration of the foregoing, the undersigned respectfully prays that the interest on trust accounts Rule be amended to provided that only client funds will be held at interest and that no lawyer will be charged with ethical impropriety in the exercise of his "judgment in this regard."

Respectfully submitted,

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