

O/A 11-7-88

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August 11, 1988

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To The Supreme Court of Florida  
Supreme Court Building  
Tallahassee, Florida 32399-1927

Subject: MANDATORY INTEREST ON TRUST ACCOUNTS - PROPOSED  
CHANGE OF RULE 5-1.1 (d). Case No. 72-671

To The Honorable Judges of the Supreme Court.

1. I am SAMUEL W. HARRIS, a practicing attorney in St. Petersburg, Florida; Florida Bar Number 034031, admitted to practice in February 1948.

2. I urge this Honorable Court not to adopt the proposed change in the rule, which intends to make Interest on Trust Accounts mandatory and to pay the interest either to The Florida Bar or to the clients, for the following reasons:

A. The current voluntary program is wrong in that the consent of the client is not required. We are told: "you can get the client's consent, if you think you should."

Even with the consent of the client, the program must be voluntary for the client - not mandatory. The client must have the right to choose whether interest is to be paid or not - and if paid, to whom.

B. Mandatory Interest On Trust Accounts is an intrusion on the Attorney-Client relationship.

C. The current proposal for Mandatory Interest On Trust Accounts is inherently wrong because:

1. It seeks to take what does not belong to The Florida Bar.

2. It is, therefore, an improper taking - without due process and without compensation. The result is theft, or embezzlement.

3. In view of 1. and 2. above, even the Voluntary program is actually theft or embezzlement also, except in any instances where the client consents first.

D. The merit of the intended use of the funds is not denied. The merit of the intended use does not make a wrong act right.

The use of interest on a trust account by an individual attorney would subject the attorney to discipline - even if he used the funds only for recognized charities.

The Florida Bar is in no better position than its individual members in the use of interest earned on trust accounts.

E. As presented, the proposal would require, as the only alternative, that attorneys pay interest to the client, if it is not paid to The Florida Bar. This is merely a "strong arm" tactic to insure that interest is payable to The Florida Bar.

This would be a horrendous burden to every office - sole practitioner, small office or large office, but more particularly on the solo practitioner and the small office.

F. The attorneys and their clients are entitled to have no interest paid on trust account deposits, if the client chooses.

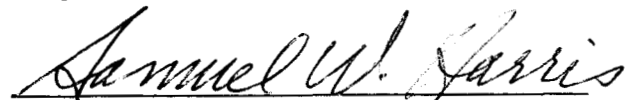
G. Proponents of the Interest on Trust Accounts program argue: "It is only interest on small short term deposits." This fact is immaterial. The principle is the same. There is no such thing as a little bit of sin.

H. It has been suggested that Mandatory Interest on Trust Accounts is, in effect, a tax. Only the Legislature has the power to levy a tax.

I. I urge this Honorable Court to disapprove the proposed rule change to require Mandatory Interest On Trust Accounts because it will constitute a taking of money without due process and without compensation, because the consent of the client is not required, and the right of the client to agree to No Interest is specifically left out.

A voluntary program that requires the consent of the client, and which eliminates the requirement of paying interest to the client, and allowing the client to choose no interest would be acceptable. We are, after all, dealing with the client's money.

Respectfully submitted,



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Hon. Sid White, Clerk  
Supreme Court of Florida  
Tallahassee, Florida 32399-1927

Re: Mandatory Interest On Trust Accounts  
Proposed Change of Rule 5-1.1 (d).  
Case No. 72-671

Dear Mr. White:

Pursuant to the Official Notice in the August 1, 1988 issue of The Florida Bar News, I submit my letter with seven copies setting forth my objection to Mandatory Interest on Trust Accounts.

Please file these in this case.

Yours very truly,

*Samuel W. Harris*  
SAMUEL W. HARRIS

SWH;jmb  
Enclosures:8