

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

NOV 4 1988

CLERK, SUPREME COURT

By

Deputy Clerk

REPLY OF THE NATIONAL ASSOCIATION OF IOLTA PROGRAMS, INC.
AMICUS CURIAE TO THE COMMENTS OF THE FLORIDA BAR IN RESPONSE
TO PETITION OF THE FLORIDA BAR FOUNDATION FOR MODIFICATION
OF THE INTEREST ON TRUST ACCOUNTS PROGRAM

The Reply of the National Association of IOLTA Programs, Inc. Amicus Curiae to the Comments of The Florida Bar in Response to Petition of The Florida Bar Foundation for Modification of the Interest on Trust Accounts Program respectfully shows unto the Court the following.

That the National Association of IOLTA Programs, Inc. is the national organization of interest on trust account programs representing the 48 states and the District of Columbia which have such programs. The Association has previously been granted permission to and has filed a Response and Brief in these proceedings.

NEED

The comments of The Florida Bar suggest that the Supreme Court adopt an "opt out" version of the Interest on Trust Accounts Program. The comments of The Florida Bar do support the need for change in the Interest on Trust Accounts Program as it presently exists in Florida. The need is the fact that the program does not presently generate sufficient revenue to meet the needs of the poor and the administration of justice. The reason for this is that participation is only 20% of all attorneys having trust accounts.

Both The Florida Bar and the Florida Bar Foundation recognize the need for additional revenues and the need to change the program. Thus, the question before the Court is how should the program be changed.

COMPARISON

The Foundation recommends a comprehensive program with exemption for nonqualifying accounts. The Bar recommends an opt out program. The opt out program was devised by Justice Moore on the Supreme Court of Delaware. It provides that all attorneys having trust accounts must participate unless they elect not to participate and communicate this fact to the administrator of the program. The nine opt out jurisdictions with operating programs are Rhode Island, Delaware, South Carolina, Alabama, New Jersey, Montana, Washington D.C., and Utah. The 70% participation rate in Delaware is achieved by personal efforts of Justice Moore and the other members of the Delaware Supreme Court. After Delaware, the participation drops rapidly to 50%, then to 28%, with a low of 16% in New Jersey.

The national experience clearly demonstrates that opt out is reasonably effective in small jurisdictions with few lawyers. It does not appear to be effective in larger jurisdictions.

The Florida Bar Foundation's proposal is for a comprehensive program. The National Association of IOLTA Programs, Inc. amicus curiae urges that The Florida Bar Foundation's position be adopted by this Court. The reasons for the support of this amicus curiae are fully discussed in its Response and Brief heretofore filed in these proceedings. However, to summarize the Foundation's proposal is best because:

1. It will ensure maximum participation.
2. It will treat all trust deposits the same.
3. It will substantially increase revenues.
4. It will eliminate the expense and administrative costs of recruiting.
5. It will eliminate banking problems which have pervaded the program.
6. It will promote the administration of justice in Florida.

CONCLUSION

Therefore, the National Association of IOLTA Programs, Inc. requests the Court to grant the Petition of the Florida Bar

Foundation for modification of the Florida program and amend the rules regulating the Florida Bar as set forth in the Petition of the Florida Bar Foundation.

I HEREBY CERTIFY that a copy of the foregoing has been delivered by mail to THE FLORIDA BAR, Florida Bar Center, Tallahassee, Florida 32301; FLORIDA LEGAL SERVICES, Sun Federal Place, 345 South Magnolia Drive, Suite A-27, Tallahassee, Florida 32301 and FLORIDA BAR FOUNDATION, 880 North Orange Avenue, Suite 102, Orlando, Florida 32801-1023 this 3rd day of November, 1988.

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By



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