

In The Supreme Court of Florida,

FILED  
APR 22 1999  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

Matter of Interest on Trust  
Accounts: A Petition To  
Amend The Rules Regulating  
The Florida Bar

Case No. 72,671

Re: Proposed Amendments to The Rules  
Regulating The Florida Bar

Comments by Respondent  
Joseph W. Little

Joseph W. Little  
3731 N.W. 13th Place  
Gainesville, FL 32605

## Commentary

### I. Proposed Amended Rules

Respondent Joseph W. Little submits this commentary on Proposed Amended Rule 5-1.1(d) of the Rules Regulating The Florida Bar presented to the Court by The Florida Bar Foundation, Inc. on March 29, 1989.

The changes proposed herein by Respondent are incorporated to the Foundation's Exhibit A in the attached appendix.

#### A. The Rule Should Permit A Choice as To Beneficiaries.

The Foundation's proposed rule makes the Foundation the sole beneficiary of the interest from "nominal or short-term" fund accounts that would be mandated by the rule. As the Court knows, many members of the Bar object to being required to assist the Foundation in this manner and believe that many of their clients would. Accordingly, Respondent proposes that the rule be drafted to permit lawyers (and their clients) some degree of choice. Specifically, Respondent proposes that the rule permit members of the Bar to petition the Court to establish other funds that may be named as beneficiaries of trust accounts. Hence, the Rule should acknowledge that the Court may authorize alternative trusts or funds to receive the interest from trust accounts to be used for purposes approved by the Court. One example would be support of local legal aid efforts. The rule should permit any lawyer to set up an interest bearing trust account for the benefit of each approved fund to assure that each lawyer and each client has a reasonable degree of choice.

## B. The Role of the Foundation

The proposed rule prescribes numerous functions to be performed by the Foundation, at least one of which is wholly inappropriate. Proposed section 5-1.1(d)(8) Small IOTA Accounts (p.4), begins, "The Foundation may establish procedures for a lawyer . . . to be authorized to maintain an interest-free trust account for client and third-person funds which are nominal or short term." (e.s.) This proposed provision plainly puts the Foundation in a regulatory role over members of the Bar.

Although the Foundation may be authorized to propose procedures to the Court, it should not be permitted to impose them. Such a power plainly places the interests of the Foundation and lawyers in conflict. Accordingly, Respondent proposes that the words "Foundation may" be deleted in this subsection and be replaced with "The Florida Bar may petition the Court to."

## II. Proposed Amended Articles of Incorporation

Respondent notes that proposed Article 6.3 provides that 1/3 of the Foundation's non-ex-officio directors are to be selected by the Foundation, 1/3 by the Florida Bar and 1/3 by the Supreme Court. Under the proposal, the Supreme Court's selections will be confined to candidates proposed by a nominating committee selected by the Foundation and the Bar, whereas the selections of the Foundation and the Florida Bar are not similarly restricted.

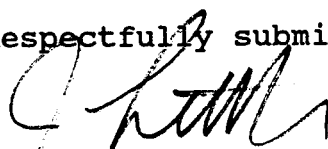
This selection process carefully excludes from the Court's consideration all lawyers of the Florida Bar who do not receive the prior approval of the Foundation and the Florida Bar.

Respondent submits that this is an unwarranted restriction on the discretion of the Court and opportunities of the members of the Bar and urges the Court to insist that the Court's appointment be unrestricted by prior screening of the Bar and the Foundation.

In Conclusion

In making these comments and proposals Respondent does not recede from or abandon his objections to the mandatory IOTA program that have been registered with the Court in previous proceedings. Nevertheless, if a rule is to be adopted, Respondent urges the Court to adopt the substance of the suggestions made herein.

Respectfully submitted,



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4/19/89