

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)

AUG 13 1973
CLERK
By NEILL Deputy Clerk

COMMENT OF RICHARD V. NEILL

The undersigned would like to address three points not discussed in the Petition of The Florida Bar Foundation.

Point I

THE COST OF THE FLORIDA BAR FOUNDATION'S PROGRAMS WILL ULTIMATELY BE IMPOSED ON THE BANKS' CUSTOMERS. THE REAL BRUNT OF THAT BURDEN WILL PROBABLY FALL UPON THOSE CUSTOMERS LEAST ABLE TO AFFORD IT. THE CUSTOMERS REQUIRING AUTOMOBILE, PERSONAL AND INSTALLMENT LOANS AND THE CUSTOMERS PAYING BANK FEES FOR RETURNED CHECKS, SERVICE CHARGES, AND THE LIKE DO NOT HAVE THE BARGAINING POWER OF THE "UPSCALE" CUSTOMERS WHO MAINTAIN LARGE BALANCES AND DEAL IN CERTIFICATES OF DEPOSIT.

Point II

THE PETITION, IN ESSENCE, ASKS THE COURT TO IMPOSE A TAX ON THE PEOPLE OF THE STATE OF FLORIDA AND TO DELEGATE TO THE FLORIDA BAR FOUNDATION THE LEGISLATIVE FUNCTION OF DETERMINING THE PURPOSES FOR WHICH THE FUNDS WILL BE EXPENDED. THAT IS VIOLATIVE OF THE FUNDAMENTAL PRINCIPLE OF SEPARATION OF POWERS.

Point III

THE LAW IS INDEED AN HONORABLE PROFESSION AND ITS PRACTITIONERS ARE OBLIGATED TO MAKE LEGAL SERVICES AVAILABLE TO THE POOR. THE COST OF DOING SO SHOULD BE BORNE BY THE MEMBERS OF THE BAR.

Argument - Point I

The Petition of The Florida Bar Foundation fails to discuss a critical issue. Who will ultimately bear the cost of the programs funded by IOTA?

It is suggested that if this Court would appoint a special master to take evidence on this issue, the Court would find that the banks operating in the state of Florida are bottom-line motivated. See, for instance, financial data in Exhibit 1 reflecting remarkable profit growth by the state's largest regional bank.

The job of the bank manager is to continually increase profits. He has a computer-generated plan that tells him on a weekly, monthly and annual basis where he stands, and if he fails to "make plan", he will be replaced.

If IOTA takes twelve to twenty-five million dollars from the banks of the state of Florida, the banks will not suffer a twelve to twenty-five million dollar decrease in profits. Only a bank manager with a suicidal impulse would go to his Board of Directors and say "Our cost of funds has been increased because we now pay interest on trust accounts, and consequently profits will be lower and dividends to the stockholders will have to be reduced."

On the contrary, the bank manager will offset that additional cost of funds and maintain his profit level at or above plan if he wishes to be considered a success in his profession. His alternatives for maintaining his profit level are:

- (a) The additional cost of funds can be offset by increased interest rates.
- (b) The additional cost of funds can be offset by paying less on deposits.
- (c) The additional cost of funds can be offset by an increase in fees, such as service charges, and charges made for returned checks, etc.

The banks' affluent customers are the those who purchase certificates of deposit, borrow funds for business purposes, have a financial statement that affords them a line of credit, etc. As compared to the banks' customers who are seeking installment loans for the purchase of automobiles, home improvement loans, and personal loans, the affluent customers are in a much better position to resist any increase in charges made to them or reduction in the interest rate paid on their funds invested at the bank. Logically then, the cost of IOTA will fall on the banks' less affluent customers.

The Foundation's Petition demonstrates either a total misconception as to how the bank system operates, or else it seeks to obfuscate the issue of who will ultimately bear the expense of

IOTA. On page two of the Petition, the Petitioner states that since Florida's program was established in 1981, "over 136 million dollars have been created nationwide." That statement is ludicrous. IOTA has not and will not "create" one dollar. It will simply transfer the dollars from the banks' customers to the Petitioner.

The Petition, in Paragraph 18 says, "if public policy dictates that idle funds" (emphasis added) should be used for public purposes, then an individual lawyer should not be allowed to frustrate that public policy. Funds in non-interest bearing accounts are not "idle" in any sense of the word. Obviously, those funds are used by the bank, and the bank's cost of funds, which determines what it charges for its product, includes an average of the interest expense associated with all of its various types of accounts from non-interest bearing checking accounts to high-yielding, long-term certificates of deposit. If anything affects the cost of funds, the bank's alternatives are to increase its charges, lower its costs, or accept lower profits. An examination of Exhibit 1 demonstrates that it's not likely that the banks will opt to accept lower profits.

Argument - Point II

Without engaging in a legalistic argument, the undersigned simply submits that the proposed mandatory IOTA program would in fact constitute a tax upon customers of banks in the state of Florida. Obviously, that function is reserved to the Legislature of this state. Of equal importance, the purposes for which public funds should be spent is reserved to the Legislature and, to a lesser extent, the Executive Branch.

Attached as Exhibit 2 is a publication of The Florida Bar Foundation arguing the reasons for mandatory IOTA. The legislative nature of The Foundation's activities is directly reflected in the contents of this brochure. For instance, on the second page of this brochure, it is stated:

"A recent Bar Foundation survey, and recognition of the increased call for intervention in the lives of children and families by the courts, led The Bar Foundation to select a juvenile justice area as one in which IOTA improvements in the administration of justice funds could make an important and lasting impact."

Is there really a recognition of an increased call for intervention by the courts in the lives of children and families? By whom is this call recognized?

If there is a need for increasing intervention by the courts in the lives of children and families, why has this need not been recognized and addressed by the Legislature? Should not the elected representatives of the people of the state of Florida be the persons to determine whether we need increasing intervention by the courts in the lives of children and families?

The next subject addressed by The Bar Foundation's brochure is the use of IOTA funds to provide financial aid to students at Florida law schools. Probably most citizens of the state of Florida, if polled, would reply that we already have too damn many lawyers and would certainly object to their funds being used to support law students. If we are concerned about the welfare of children, perhaps we should be supporting scholarships for pediatricians? Are these not legislative decisions to be made by elected representatives as opposed to members of The Florida Bar Foundation?

Argument - Point III

A quote from one of the recent letters published in "The Florida Bar News" reads:

"It is past time for attorneys to recognize that with privilege comes responsibility, and that the oath we took upon admission to the Bar obligates us to assist those in need of legal services, regardless of economic status. Those who resist that obligation contribute to the demise of the law as an honorable profession."

The undersigned has no quarrel whatever with that sentiment expressed by Florida Bar member David L. Sobel of Washington, D. C.

On the other hand, I think it likely that many members of the Bar would quarrel with the proposition that there is an "increasing call for intervention by the courts in the lives of

children and families." Many members of the Bar would quarrel with an obligation to fund scholarships for law students who do that "public service work" selected by The Florida Bar Foundation.

If the Bar indeed does have an obligation to furnish legal aid to the needy citizens of the state Florida, then the Bar should live up to its obligation and this Court should impose a sufficient dues increase on the members of the Bar to fund the legitimate needs of our legal aid programs.

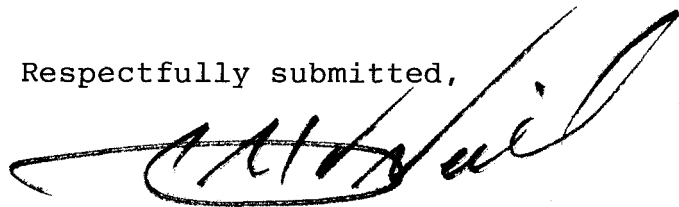
Many members of The Florida Bar Foundation who have joined in the petition seeking mandatory IOTA have boastfully published financial data relative to their law firms reflecting gross income routinely exceeding \$250,000 per lawyer per year, and indeed one firm boasted of income exceeding one million dollars per lawyer, per year.

It is submitted, with those resources, the Bar should be able to fund its own obligations.

CONCLUSION

In The Elements of the Common Law, Bacon states, "I hold every man a debtor to his profession." The lawyers of Florida should be required by this court to honor their debt to their profession and not pass it on to the customers of the banks of this state. Accordingly, the Petition of The Florida Bar Foundation should be denied.

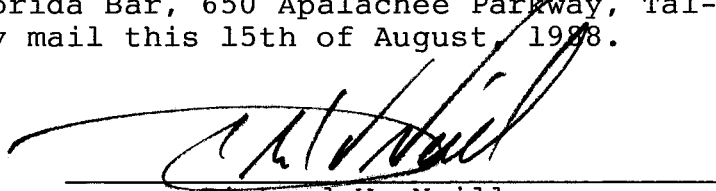
Respectfully submitted,



RICHARD V. NEILL of
NEILL GRIFFIN JEFFRIES & LLOYD CHARTERED
Post Office Box 1270
Fort Pierce, Fl 34954
(407) 464-8200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served upon WILLIAM O.E. HENRY, ESQ., The Florida Bar Foundation, 880 No. Orange Ave., Suite 102, Orlando, Fl 32801, RODERICK N. PETREY, Esq., The Florida Bar Foundation, 3400 One Biscayne Tower, 2 So. Biscayne Blvd, Miami, Fl 33131, and JACK HARKNESS, JR., ESQ., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl 32399-2300, by mail this 15th of August, 1988.



Richard V. Neill