

097

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

DEC 18 1996

THE FLORIDA BAR FOUNDATION RE)
PETITION TO AMEND RULES)
REGULATING THE FLORIDA BAR)

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk
CASE NO.

89,552

PETITION TO AMEND RULES REGULATING THE FLORIDA BAR

THE FLORIDA BAR FOUNDATION, having fully complied with all conditions precedent to a filing pursuant to Rules Regulating The Florida Bar 1-12.1(f), petitions this Court for an order amending Rule 5-1.2(e) [the IOTA Rule], Rules Regulating The Florida Bar, and, in support states:

1. This petition has been authorized by the board of directors of The Florida Bar Foundation as the administrator of the Interest on Trust Accounts Program. The Foundation is joined in filing this petition by more than 50 members in good standing of The Florida Bar.

2. The proposed amendments to the IOTA Rule were approved by the board of governors of The Florida Bar at its meeting on November 1, 1996.

3. Notice of the filing of this petition was given in the

November 15, 1996 issue of The Florida Bar News. A copy of the notice is attached as Exhibit 1.

4. The purpose of the proposed amended IOTA rule is to clarify that higher interest rates offered by eligible financial institutions through investment in daily bank repurchase agreements may, on a voluntary basis, be obtained by attorneys and law firms for nominal or short-term trust funds described in the IOTA rule.

5. Under a daily bank repurchase agreement, a financial institution sells to the customer an interest in securities, the market value of which is at least equal to the amount of the customer's invested funds. The securities are direct obligations of, or fully guaranteed as to principal and interest by, the United States Government or a United States Government Agency. The customer's interest in the securities is repurchased by the financial institution at the start of the next business day.

6. The collateral for a daily bank repurchase agreement typically ranges from 100% to 103% of the invested funds. Funds invested in daily bank repurchase agreements are required by Florida statute to be segregated from assets of the bank. The use of a daily bank repurchase agreement provides greater protection than federal deposit insurance if a short-term trust deposit exceeds \$100,000.00, the maximum amount of federal

insurance provided a single depositor (the client or third-party owner of the trust funds), or, if the trust fund owner also has additional funds on deposit at the same financial institution which, in the aggregate, exceed \$100,000.00.

7. Approval by the Court of the proposed amended IOTA Rule would allow The Foundation to implement a *Voluntary IOTA Sweep Account Program*, modeled after successful programs operating in other states. The Foundation would recruit attorneys and law firms with high average balance IOTA accounts held in eligible financial institutions to establish sweep accounts¹ utilizing daily bank repurchase agreements as the higher yield investment. Successful implementation of the *Program* would generate significant, additional revenue for IOTA's charitable purposes of funding free civil legal services to the poor, improvements in the administration of justice, and loans and scholarships for law students.²

¹ A sweep account is an existing financial institution cash management product to generate higher yields on checking accounts. At the end of each business day after all deposits, checks and charges have cleared against an account, the financial institution electronically transfers the excess funds out of the checking account into a higher yield investment. At the start of the next business day, the financial institution electronically returns the excess funds to the checking account and posts the interest earned.

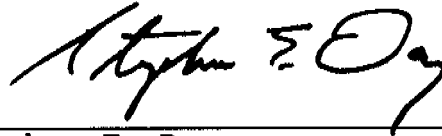
² The *Program* has the potential to increase annual IOTA revenue, net of reasonable bank service charges and fees, by up to \$7.5 million (an increase from \$10.06 million to \$17.53 million). That assumes that the Foundation could successfully recruit all 5,000 IOTA accounts with balances high enough (in excess of \$30,000) to justify

8. The full text of the proposed amendments to the IOTA Rule is attached as Exhibit 2.

9. The Foundation requests leave to participate at Oral Argument in the event this Court deems Oral Argument necessary and beneficial.

WHEREFORE, The Florida Bar Foundation, together with more than 50 members in good standing of The Florida Bar, request the Court to enter an order amending the Rules Regulating The Florida Bar in the manner sought herein.

Respectfully submitted,

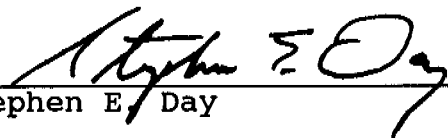


Stephen E. Day
President
The Florida Bar Foundation
Florida Bar Number 110905

payment by The Foundation of the additional service charges assessed by financial institutions for a sweep account, and a daily bank repurchase agreement interest rate of 4% (the current range is from 3.50% to 5.50%).

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition to Amend Rules Regulating The Florida Bar and all attached documents have been furnished to John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, by first-class United States Mail on December 17, 1996.



Stephen E. Day

On Behalf of the Following Members of The Florida Bar

William H. Abbuehl
Ira Abrams
Adam G. Adams, III
Louis N. Adcock, Jr.
Ralph Armstead
Michael R. Barnes
Hilarie Bass
James A. Baxter
Frank M. Bedell
Randall C. Berg, Jr.
Robert A. Bertisch
Bruce B. Blackwell
Darryl M. Bloodworth
Glen M. Boecher
Alan B. Bookman
Donald L. Braddock
R. Wesley Bradshaw
Charles L. Brown
Michael Bruyere
Mark Buchbinder
Russell E. Carlisle
Susan Cary
Marshall R. Cassedy
Neil B. Chonin
Ursula Cochran

Kendall B. Coffey
Geena D. Cohen
Howard Coleman Coker
Matthew J. Comisky
A. Hamilton Cooke
Henry M. Coxe, III
Thomas A. Culmo
John P. Cunningham
Marcia K. Cypen
Talbot D'Alembert
Howard L. Dale
D. Patrick Dalton
John A. DeVault, III
William H. Davis
Mary Anne De Petrillo
Victor M. Diaz, Jr.
Jesse H. Diner
Kathleen Dolan-Valdez
W. Dexter Douglass
Paul C. Doyle
Raymond Ehrlich
Rashad Haqq El-Amin
Arthur J. England, Jr.
Robert R. Feagin, III
John Edwin Fisher

John Edwin Fisher
Martin Lee Garcia
Donald A. Gifford
Leonard H. Gilbert
John Dudley Goodlette
William S. Graessle
Christopher L. Griffin
Lynn H. Groseclose
Stephen F. Hanlon
William O.E. Henry
Virginia Herrero
Benjamin H. Hill, III
Troy W. Holland
Arlene C. Huszar
Sanjeeta Dass Jayee
Christopher M. Jones
Matthew L. Jones
Anthony J. Karrat
Sally D. M. Kest
Gretchen Klingelfuss Klayman
Theodore Klein
Kristine Knab
Adam J. Kohl
Sharon L. Langer
Seth R. Leach
Cheryl A.E. Little
Barbara A. Llewellyn
J. Christopher Lombardo
William Howard McBride
Craig Alan McCarthy
Miles A. McGrane, III
Silvia McLain
F. Shield McManus
Michael J. McNerney
Joe F. Miklas
Manuel R. Morales, Jr.
Rene V. Murai
Alice K. Nelson
John A. Noland
Michael E. O'Conner
Sean S. O'Conner
Andrew M. O'Malley
Benjamin Ochshorn
Hans Ottinot
Peter Russell Pancoast
Andrew G. Pattillo, Jr.
Darrell Payne
Thomas G. Pelham
Nastasha W. Permaul
Roderick N. Petrey
Lawrence J. Phalin
Gregory A. Presnell

Gary L. Printy
Stuart N. Ratzan
Robert R. Reynolds, IV
Gerald F. Richman
James C. Rinaman, Jr.
Florence Snyder Rivas
Robert Rivas
Jacqueline Roman
Robert V. Romani
Alex Rosenthal
James M. Russ
Terrence Russell
Vance E. Salter
Marybeth Savary
John C. Schaible
Mary S. Scriven
L. David Shear
John Phillip Short
Glenn A. Shuman
Jodi Siegel
Peter M. Siegel
Peter Sleasman
Lora J. Smeltzy
Chesterfield H. Smith
D. Culver Smith, III
Samuel S. Smith
William Reece Smith, Jr.
Gregory Dean Snell
Neal R. Sonnett
Kent R. Spuhler
Michael P. Stafford
Charles R. Stepter, Jr.
Janet R. Studley
Eli H. Subin
Alan C. Sundberg
William L. Thompson, Jr.
John W. Thorton, Jr.
James A. Urban
Louis B. Vocelle, Jr.
Sylvia H. Walbolt
Vernetta L. Walker
Susan B. Werth
Robert A. Williams
Richard C. Woltmann
Burton Young
Julius James Zschau

Official Notice

Bar Foundation petitions court for sweep accounts

The Florida Bar Foundation will petition the Florida Supreme Court to amend Rule 5-1.1(e) of the Rules Regulating The Florida Bar (IOTA Rule). The text of the proposed Rule amendment follows.

The purpose of the proposed Rule change is to increase revenue generated by the Florida Supreme Court's IOTA program. The amendment would authorize use of daily bank repurchase agreements for nominal or short-term trust funds as defined by the existing IOTA Rule. Use of repurchase agreements in the IOTA Sweep Account Program would be on a voluntary basis by individual attorneys and law firms with high average balance IOTA accounts.

The Florida Bar Foundation, administrator of IOTA, would be responsible for recruiting attorneys and law firms to participate in the program and for paying the additional financial institution service charges. Only those Florida financial institutions offering daily repurchase agreements which are fully collateralized by direct obligations of the United States Government or its agencies would be eligible to participate in the program.

The petition to amend the IOTA Rule will be filed December 16, 1996. Comments or objections to the proposed Rule amendment must be filed by January 13, 1997. A copy of all comments or objections shall be served on the executive director of the Florida Bar Foundation at Suite 405, 106 East Church Street, Orlando 32801 and on the executive director of The Florida Bar, at 650 Apalachee Parkway, Tallahassee 32399-2300.

Following is the proposed rule amendment, with new language underscored and replaced language struck through:

Rule 5-1.1

(e) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in Rule 5-1.1(e) the term:

(A) "nominal or short term" describes funds of a client or third person that, pursuant to rule 5-1.1(e)(7), the lawyer has determined cannot practicably be placed at interest for the benefit of the client or third person;

(B) "Foundation" means The Florida Bar Foundation, Inc.;

(C) "IOTA account" means a trust account described in rule 5-1.1(e)(2).

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing from an office or other business location within the state of Florida shall be deposited into one or more interest-bearing trust accounts in an eligible financial institution for the benefit of the Foundation, except as provided in rule 4-1.15 with respect to funds maintained other than in a bank account, or as provided in rule 5-1.2(a). Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of rule 5-1.1(de).

(3) *Eligible Financial Institutions.* An IOTA account shall be established with any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws. The funds in each IOTA account covered by this Rule shall be subject to withdrawal upon request and without delay.

(4) *Interest Rates.* The rate of interest on any IOTA account funds covered by this Rule shall not be less than the rate paid by the financial institution to on funds of non-IOTA account depositors. Higher rates offered by the financial institution to customers whose deposits exceed certain time or quantity minimums may be obtained by a lawyer or law firm for IOTA accounts on some or all of the deposited funds through use of eligible financial institution repurchase agreements in which the underlying security consists solely of direct obligations of the United States Government or agency thereof so long as there is no impairment of the right to immediately withdraw or transfer principal.

(5) *Remittance Instructions.* Lawyers or law firms shall direct the financial institution:

(A) to remit interest on the balance in the IOTA account of the deposited funds, in accordance with the financial institution's standard practice for non-IOTA account depositors, less reasonable service charges or fees, if any, in connection with the IOTA account by funds covered by this rule, at least quarterly, to the Foundation;

(B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account funds the remittance is sent, the lawyer's or law firm's IOTA trust account number as assigned by the financial institution, the rate of interest applied, the period for which the remittance is made, the total interest earned during the remittance period, the amount of any service charges or fees assessed during the remittance period, and the net amount of interest remitted for the period; and

(C) to transmit to the depositing lawyer or law firm, for each remittance, a report showing the amount paid to the Foundation, the rate of interest applied, and the period for which the report is made.

(6) *Notice to Foundation.* Lawyers or law firms shall advise the Foundation at Post Office Box 1553, Orlando, Florida 32802-9919, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the financial institution; the name of the lawyer or law firm on the IOTA account; the financial institution name; the financial institution address; and the name and Florida Bar attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established an IOTA the account.

(7) *Determination of Nominal or Short-Term Funds.* The lawyer shall exercise good faith judgment in determining upon receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer shall consider such factors as:

(A) the amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) the period of time such funds are expected to be held;

(C) the likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) the cost to the lawyer or law firm of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements and/or service charges or fees imposed by the financial institution.

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.

(8) *Small IOTA Accounts Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonable be expected to produce or have not produced interest income net of reasonable financial institution service charges or fees.

(9) *Confidentiality.* The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of rule 5-1.1(e).

PROPOSED AMENDED IOTA RULE 5-1.1(e)

RULES REGULATING THE FLORIDA BAR

(Additions underscored, deletions struck through)

(e) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in rule 5-1.1(e), the term:

(A) "nominal or short term" describes funds of a client or third person that, pursuant to rule 5-1.1(e)(7), the lawyer has determined cannot practicably be placed at interest for the benefit of the client or third person;

(B) "Foundation" means The Florida Bar Foundation, Inc.;

(C) "IOTA account" means a trust account described in rule 5-1.1(e)(2).

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing from an office or other business location within the state of Florida shall be deposited into one or more interest-bearing trust accounts in an eligible financial institution for the benefit of the Foundation, except as provided in rule 4-1.15 with respect to funds maintained other than in a bank account, or as provided in rule 5-1.2(a). Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of rule 5-1.1(~~e~~).

(3) *Eligible Financial Institutions.* An IOTA account shall be established with any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws. The funds ~~in~~ each IOTA account covered by this Rule shall be subject to withdrawal upon request and without delay.

(4) *Interest Rates.* The rate of interest on ~~any IOTA account~~ funds covered by this Rule shall not be less than the rate paid by the financial institution ~~to~~ on funds of non-IOTA account depositors. Higher rates offered by the financial institution to customers whose deposits exceed certain time or quantity minimums may be obtained by a lawyer or law firm for IOTA accounts on some or all of the deposited funds through use of eligible financial institution repurchase agreements in which the underlying security consists solely of direct obligations of the United States Government or agency thereof so long as there is no impairment of the right to immediately withdraw or transfer principal.

(5) *Remittance Instructions.* Lawyers or law firms shall direct the financial institution:

(a) to remit interest on the balance ~~in the IOTA~~ account of the deposited funds, in accordance with the financial

institution's standard practice for non-IOTA account depositors, less reasonable service charges or fees, if any, in connection with the deposited funds IOTA account, at least quarterly, to the Foundation;

(B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA trust account number as assigned by the financial institution, the rate of interest applied, the period for which the remittance is made, the total interest earned during the remittance period, the amount of any service charges or fees assessed during the remittance period, and the net amount of interest remitted for the period; and

(C) to transmit to the depositing lawyer or law firm, for each remittance, a report showing the amount paid to the Foundation, the rate of interest applied, and the period for which the report is made.

(6) *Notice to Foundation.* Lawyers or law firms shall advise the Foundation at Post Office Box 1553, Orlando, Florida 32802-9919, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the financial institution; the name of the lawyer or law firm on the IOTA account; the financial institution name; the financial institution address; and the name and Florida Bar

attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established an ~~IOTA~~ the account.

(7) *Determination of Nominal or Short-Term Funds.* The lawyer shall exercise good faith judgment in determining upon receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer shall consider such factors as:

(A) the amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) the period of time such funds are expected to be held;

(C) the likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) the cost to the lawyer or law firm of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements and/or service charges or fees imposed by the financial institution.

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.

(8) *Small ~~IOPA~~ Accounts Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable financial institution service charges or fees.

(9) *Confidentiality.* The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of rule 5-1.1(e).