

Exhibit "A"

Names and terms of service of each
Foundation past president

Juliette E. Lippman, Esquire (2018-2019);

Jewel White, Esquire (2017-2018);

Matthew G. Brenner, Esquire (2016-2017);

Hon. Emerson R. Thompson, Jr. (2014-2015);

John Patterson, Esquire (2013-2014);

Maria E. Henderson (2012-2013);

Michelle Kane Cummings, Esquire (2011-2012);

John A. Noland, Esquire (2010-2011);

Adele Stone, Esquire (2009-2010);

Kathleen S. McLeroy, Esquire (2008-2009);

Bruce B. Blackwell, Esquire (2007-2008);

Hon. John W. Thornton, Jr. (2006-2007);

William H. Davis, Esquire (2005-2006);

Terrence Russell, Esquire (2004-2005);

Andrew M. O'Malley, Esquire (2003-2004);

Darryl M. Bloodworth, Esquire (2001-2002);

A. Hamilton Cooke, Esquire (2000-2001);

Rene V. Murai, Esquire (1999-2000);

Neal R. Sonnett, Esquire (1997-1998);

Stephen E. Day, Esquire (1996-1997);

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Roosevelt Randolph, Esquire (1995-1996);
Hilarie Bass, Esquire (1994-1995);
Susan B. Werth, Esquire (1992-1993);
Hon. Donald M. Middlebrooks (1991-1992);
Roderick N. Petrey, Esquire (1987-1988); and
Patrick G. Emmanuel, Esquire (1972-1973).

Exhibit “B”

The Foundation past presidents’ Proposed Rule 5-1.1(g)
(Consensus Rule)

RULE 5-1.1 TRUST ACCOUNTS

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

(1) *Definitions.* As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) “Court” means the Supreme Court of Florida.

(C) “Foundation” means The Florida Bar Foundation, Inc. which serves as the designated IOTA fund administrator and monitors and receives IOTA funds from eligible institutions and distributes IOTA funds consistent with the obligations and directives in this rule.

(D) “IOTA account” means an interest or dividend-bearing trust account benefiting the Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(E) “Eligible institution” means 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, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(F) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least \$250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(G) A “qualified grantee organization” is a charitable or other nonprofit organization that facilitates or directly provides qualified legal services by qualified legal services providers and that has experience in successfully doing so.

(H) “Qualified legal services” are free legal services provided to low-income clients for their civil legal needs in Florida.

(I) A “qualified legal services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide qualified legal services.

(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 law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer must exercise good faith judgment in determining on 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 must consider such factors as the:

- (A) amount of a client's or third person's funds to be held by the lawyer or law firm;
- (B) period of time the funds are expected to be held;
- (C) likelihood of delay in the relevant transaction(s) or proceeding(s);
- (D) lawyer or law firm's cost 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 eligible institution.

The determination of whether a client's or third person's funds are nominal or short term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms must advise the Foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar 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 the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

- (A) *Interest Rates and Dividends.* Eligible institutions must maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.
- (B) *Determination of Interest Rates and Dividends.* In determining the highest interest rate or dividend generally available from the

institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) **Remittance and Reporting Instructions.** Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation;

(ii) 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 account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

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

(6) *Small 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 eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The Foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation must, on an official written

inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(8) *Distribution of IOTA Funds by the Foundation.* The Foundation shall distribute IOTA funds in a manner that gives priority consideration to funding Qualified Legal Services for low-income individuals in Florida based upon standards developed by the Foundation Board of Directors and consistent with governing documents of the Foundation, including those programs that improve the administration of justice or that promote service to the public by members of the legal profession by making public service an integral component of the law school experience.

(9) *IOTA Oversight and Governance.*

- (A) The Foundation shall determine the initial and continuing eligibility of banks, savings and loan associations, and investment companies to hold IOTA accounts in accordance with the criteria set forth in this rule and in *In re: Amendments to the Rules Regulating The Florida Bar 5-1.1(e)*, 797 So.2d 551, 552 (Fla. 2001).
- (B) In order to ensure that IOTA funds are utilized efficiently, no later than 60 days before the commencement of its fiscal year, the Foundation shall forward to the Court a copy of its proposed budget for the coming fiscal year. In the event that the Court provides no comment upon the budget to the Foundation within 30 days, the Foundation Board of Directors may proceed in accordance with the budget. In the event the Court affirmatively disapproves of the entire proposed Foundation budget, the Foundation will proceed operating in accordance with the existing operating budget in place at that time until a revised budget is presented and approved by the Court. If the Court disapproves of a particular activity or expense in a proposed budget, the Foundation will not engage in such activity or incur such expense until a revised proposal related to such activity(s) or expense(s) is submitted to the Court for further consideration. The Foundation will proceed with the remainder of the proposed budget as submitted and not disapproved of by the Court. If the Court provides no comment upon the proposed revised budget, budget activities and/or expenses within 30 days

of receipt of same, the Foundation may proceed in accordance with the proposed revisions. In the event of an amendment to the budget during the operating year that does not exceed 5 percent increase in spending, then the Foundation shall provide the amended budget to the Court. In the event of an amendment to the budget during the operating year that does exceed 5 percent, then the Foundation shall refrain from acting on the amendment until 30 days have passed from the delivery of the amended budget to the Court.

(10) *Reporting by the Foundation.* In addition to providing the Court with a copy of the annual audit of IOTA funds, the Foundation must annually certify to the Court its compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

- (A) the amount of IOTA funds received;
- (B) a detailed breakdown of direct expenses required to administer the IOTA funds;
- (C) the name of each qualified grantee organization to which distributions were made;
- (D) the amount of distribution received by each qualified grantee organization;
- (E) a description of the process for determining eligibility and selection of each qualified grantee organization, including the objective standards developed for that purpose;
- (F) the total amount received from sources other than IOTA funds;
- (G) a detailed summary of the information provided to the Foundation from qualified grantee organizations as required by subdivision (11) of this rule; and
- (H) any other information the Court determines is relevant.

(11) *Reporting by Qualified Grantee Organizations.* Qualified grantee organizations must annually certify to the Foundation their compliance with this rule's requirements on the use of IOTA funds. This certification must include data designed to provide the Foundation with accurate use of IOTA funds for either the

grantee's previous fiscal year or the previous grant year and shall include the following as is consistent with the grantee's current reporting capacity:

- (A) the number of qualified legal services providers compensated or facilitated by the use of IOTA funds;
- (B) the number of clients receiving qualified legal services paid for or facilitated by the use of IOTA funds;
- (C) the number of low-income Floridians who, while not directly represented, are nevertheless impacted by qualified legal services paid for or facilitated by the use of IOTA funds;
- (D) the types of matters for which clients received qualified legal services paid for or facilitated by the use of IOTA funds;
- (E) a reporting on the use of IOTA funds, including budget worksheet for completed grants; and
- (F) the IRS Form 990 and annual independent audit report.

(12) *Required Review.* The Court will cause a review of these amendments to be conducted to advise the Court regarding their overall efficacy 2 years after their effective date. The scope of this review may also include any other matters related to the IOTA program.

(13) *Effective Date and Transitional Rule.* This amended rule becomes effective on July 1 following the date of the final adoption of these rules.

Comment

Foundation's provision of training and technology.

While the Foundation may use IOTA funds to provide training and technology to qualified grantee organizations, and qualified grantee organizations may use disbursed IOTA funds to pay the Foundation for that training and technology, the Foundation may not condition a grant on payment for these, or any, services provided by the Foundation to the qualified grantee organization. For instance, the Foundation may arrange for bulk purchasing of technology which can then be provided to a qualified grantee organization at a lower cost than would be otherwise

available to the qualified grantee organization, but the Foundation may not, as a grant condition, require the grantee to pay the Foundation for such services. A qualified grantee organization should, but is not required to, receive funds from sources other than IOTA funds to support its overall mission.

Foundation’s funding of legal services to exonerate the wrongfully convicted.

The term “civil” in subdivision (1)(H) includes services provided to low-income clients by a qualified grantee organization in post-conviction representation, including those for wrongful conviction. The Foundation has provided grants to the Innocence Project of Florida, Inc. to assist in the delivery of these services for many years, and no change in the ability of the Foundation to make such grants is made by the inclusion of the word “civil” to describe the “legal needs” to be served by IOTA funds. *See Woodford v. Ngo*, 548 U.S. 81, 91 n.2 (2006) (alternations in original) (“[H]abeas corpus [is] an original . . . civil remedy for the enforcement of the right to personal liberty, rather than . . . a stage of the state criminal proceedings . . . or as an appeal therefrom.”); *accord Darling v. State*, 45 So. 3d 444, 450 (Fla. 2010) (habeas corpus is at least “technically civil in nature”); *State ex rel. Lee v. Buchanan*, 191 So. 2d 33, 34 (Fla. 1966) (“proceeding in habeas corpus is civil rather than criminal in nature, even though sought in behalf of one charged with or convicted of a crime”).

Exhibit “C”

The Foundation past presidents’ Proposed Consensus Rule 5-1.1(g)
(compared to the Task Force’s Proposed Rule 5-1.1(g))

RULE 5-1.1 TRUST ACCOUNTS

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

(1) *Definitions.* As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

~~(B)~~ (B) “Court” means the Supreme Court of Florida.

~~(C)~~ (C) “Foundation” means The Florida Bar Foundation, Inc., which serves as the designated IOTA fund administrator and monitors and receives IOTA funds from eligible institutions and distributes IOTA funds consistent with the obligations and directives in this rule.

~~(D)~~ (D) “IOTA account” means an interest or dividend-bearing trust account benefiting ~~The Florida Bar~~ the Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

~~(E)~~ (E) “Eligible institution” means 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, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(EF) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least \$250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(EG) A “qualified grantee organization” is a charitable or other nonprofit organization that facilitates or directly provides qualified legal services by qualified legal services providers and that has experience in successfully doing so.

(GH) “Qualified legal services” are free legal services provided ~~directly~~ to low-income clients for their civil legal needs in Florida.

(HI) A “qualified legal services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide qualified legal services.

~~(I) — “Direct expenses required to administer the IOTA funds” means those actual costs directly incurred by the foundation in performing the obligations imposed by this rule. Direct expenses required to administer the IOTA funds must not exceed 15% of collected IOTA funds in any fiscal year without the court’s prior approval. These costs include preparation of the foundation’s annual audit on IOTA funds, compensation of staff who exclusively perform the required collection, distribution, and reporting obligations imposed by this rule and overhead expenses of the foundation directly related to fulfilling its obligations under this rule. These overhead expenses also include:~~

~~(i) — actual costs and expenses incurred by the foundation to increase the amount of IOTA funds available for distribution;~~

~~(ii) funding of reserves deemed by the foundation to be reasonably prudent to promote stability in distribution of IOTA funds to qualified grantee organizations; and~~

~~(iii) direct costs related to providing training and technology to qualified grantee organizations, as specified below.~~

~~(J) “The court” means the Florida Supreme Court.~~

(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 law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer must exercise good faith judgment in determining on 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 must consider such factors as the:

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

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

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

(D) lawyer or law firm’s cost 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 eligible institution.

The determination of whether a client’s or third person’s funds are nominal or short term rests in the sound judgment of the lawyer or law firm. No lawyer will be

charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms must advise the ~~foundation~~Foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar 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 the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) *Interest Rates and Dividends.* Eligible institutions must maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) *Determination of Interest Rates and Dividends.* In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) *Remittance and Reporting Instructions.* Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable

service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the ~~foundation~~Foundation;

(ii) transmit with each remittance to the ~~foundation~~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 account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

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

(6) *Small Fund Amounts.* The ~~foundation~~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 eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The ~~foundation~~Foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the ~~foundation~~Foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(8) *Distribution of IOTA Funds by the Foundation.* ~~Within 6 months of receipt, the foundation must distribute to 1 or more qualified grantee organizations all collected IOTA funds except for direct expenses required to administer the IOTA funds. Prior to distribution, the foundation must maintain IOTA funds separate from other foundation funds. The foundation may not condition distribution of IOTA funds to a qualified grantee organization on payment to the foundation for any purpose, including training, or technology. The foundation must select qualified grantee organizations based on objective standards it develops. When adopted, the~~

~~foundation must provide those standards to both The Florida Bar and the court and also prominently publish those standards on the foundation's website. The standards must require that IOTA funds be used to provide qualified legal services and, to ensure fair distribution of IOTA funds across Florida, must consider relevant data, including:~~The Foundation shall distribute IOTA funds in a manner that gives priority consideration to funding Qualified Legal Services for low-income individuals in Florida based upon standards developed by the Foundation Board of Directors and consistent with governing documents of the Foundation, including those programs that improve the administration of justice or that promote service to the public by members of the legal profession by making public service an integral component of the law school experience.

~~(A)—demographic data provided by an appropriate governmental agency, such as the U.S. Bureau of Labor Statistics; and~~

~~(B)—data provided by the qualified grantee organization on the use of any IOTA funds previously received.~~

~~(9)—Use of IOTA Funds by Qualified Grantee Organizations.~~

~~A qualified grantee organization must expend at least 90% of the IOTA funds received to facilitate qualified legal service providers providing qualified legal services. A qualified grantee organization must expend no more than 10% of the IOTA funds received for administrative expenses and establishing reserves. Administrative expenses include rent, training, and technology. Expenditures to facilitate qualified legal service providers providing qualified legal services are limited to:~~

~~(A)—compensation paid to qualified legal service providers;~~

~~(B)—compensation paid to support staff who are directly assisting qualified legal services providers, such as paralegals;~~

~~(C)—compensation paid to staff necessary for coordinating volunteer qualified legal service providers; or~~

~~(D)—expenses that otherwise directly facilitate providing qualified legal services.~~

~~Compensation includes benefits such as health insurance and bar membership fees.~~

(9) IOTA Oversight and Governance.

- (A) The Foundation shall determine the initial and continuing eligibility of banks, savings and loan associations, and investment companies to hold IOTA accounts in accordance with the criteria set forth in this rule and in *In re: Amendments to the Rules Regulating The Florida Bar 5-1.1(e)*, 797 So.2d 551, 552 (Fla. 2001).
- (B) In order to ensure that IOTA funds are utilized efficiently, no later than 60 days before the commencement of its fiscal year, the Foundation shall forward to the Court a copy of its proposed budget for the coming fiscal year. In the event that the Court provides no comment upon the budget to the Foundation within 30 days, the Foundation Board of Directors may proceed in accordance with the budget. In the event the Court affirmatively disapproves of the entire proposed Foundation budget, the Foundation will proceed operating in accordance with the existing operating budget in place at that time until a revised budget is presented and approved by the Court. If the Court disapproves of a particular activity or expense in a proposed budget, the Foundation will not engage in such activity or incur such expense until a revised proposal related to such activity(s) or expense(s) is submitted to the Court for further consideration. The Foundation will proceed with the remainder of the proposed budget as submitted and not disapproved of by the Court. If the Court provides no comment upon the proposed revised budget, budget activities and/or expenses within 30 days of receipt of same, the Foundation may proceed in accordance with the proposed revisions. In the event of an amendment to the budget during the operating year that does not exceed 5 percent increase in spending, then the Foundation shall provide the amended budget to the Court. In the event of an amendment to the budget during the operating year that does exceed 5 percent, then the Foundation shall refrain from acting on the amendment until 30 days have passed from the delivery of the amended budget to the Court.

(10) *Reporting by the Foundation.* In addition to providing the ~~court~~Court with a copy of the annual audit of IOTA funds, the ~~foundation~~Foundation must annually certify to the ~~court~~Court its compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

- (A) the amount of IOTA funds received;
- (B) a detailed breakdown of direct expenses required to administer the IOTA funds;
- (C) the name of each qualified grantee organization to which distributions were made;
- (D) the amount of distribution received by each qualified grantee organization;
- (E) a description of the process for determining eligibility and selection of each qualified grantee organization, including the objective standards developed for that purpose;
- (F) the total amount received from sources other than IOTA funds;
- (G) a detailed summary of the information provided to the ~~foundation~~Foundation from qualified grantee organizations as required by ~~section~~subdivision (11) of this rule; and
- (H) any other information the ~~court~~Court determines is relevant.

(11) *Reporting by Qualified Grantee Organizations.* Qualified grantee organizations must annually certify to the ~~foundation~~Foundation their compliance with this rule's requirements on the use of IOTA funds. This certification must include, ~~but not be limited to~~ data designed to provide the Foundation with accurate use of IOTA funds for either the grantee's previous fiscal year or the previous grant year and shall include the following as is consistent with the grantee's current reporting capacity:

- (A) the number of qualified legal services providers compensated or facilitated by the use of IOTA funds;
- (B) the number of clients receiving qualified legal services paid for or facilitated by the use of IOTA funds;

(C) the number of low-income Floridians who, while not directly represented, are nevertheless impacted by qualified legal services paid for or facilitated by the use of IOTA funds;

~~(D) the number of hours expended delivering qualified legal services paid for or facilitated by the use of IOTA funds;~~

~~(E)~~(D) the types of matters for which clients received qualified legal services paid for or facilitated by the use of IOTA funds;

~~(F) an accounting of~~(E) a reporting on the use of IOTA funds, including the amount used to establish reserves and pay~~budget worksheet for overhead~~completed grants; and

(F) the IRS Form 990 and administrative expenses; annual independent audit report.

~~(G) the total amount received from sources other than IOTA funds by the qualified grantee organization; and~~

~~(H) any other information the court determines is relevant.~~

(12) *Required Review.* The ~~court~~Court will cause a review of these amendments to be conducted to advise the ~~court~~Court regarding their overall efficacy 2 years after their effective date. The scope of this review may also include any other matters related to the IOTA program.

(13) *Effective Date and Transitional Rule.* This amended rule becomes effective on July 1 following the date of the final adoption of these rules. ~~During the fiscal year beginning on that July 1, the foundation must apply these rules not only to funds that will be received prospectively, but also to funds that were received during the prior fiscal year and not yet distributed to grantees.~~

Comment

Foundation's provision of training and technology.

While the ~~foundation~~Foundation may use IOTA funds to provide training and technology to qualified grantee organizations, and qualified grantee organizations may use disbursed IOTA funds to pay the ~~foundation~~Foundation for that training and technology, the ~~foundation~~Foundation may not condition a grant on payment for these, or any, services provided by the ~~foundation~~Foundation to the qualified grantee organization. For instance, the ~~foundation~~Foundation may arrange for bulk purchasing of technology which can then be provided to a qualified grantee organization at a lower cost than would be otherwise available to the qualified grantee organization, but the ~~foundation~~Foundation may not, as a grant condition, require the grantee to pay the ~~foundation~~Foundation for such services. A qualified grantee organization should, but is not required to, receive funds from sources other than IOTA funds to support its overall mission.

Foundation’s funding of legal services to exonerate the wrongfully convicted.

The term “civil” in subdivision (1)(H) includes services provided to low-income clients by a qualified grantee organization in post-conviction representation, including those for wrongful conviction. The Foundation has provided grants to the Innocence Project of Florida, Inc. to assist in the delivery of these services for many years, and no change in the ability of the Foundation to make such grants is made by the inclusion of the word “civil” to describe the “legal needs” to be served by IOTA funds. See *Woodford v. Ngo*, 548 U.S. 81, 91 n.2 (2006) (alternations in original) (“[H]abeas corpus [is] an original . . . civil remedy for the enforcement of the right to personal liberty, rather than . . . a stage of the state criminal proceedings . . . or as an appeal therefrom.”); accord *Darling v. State*, 45 So. 3d 444, 450 (Fla. 2010) (habeas corpus is at least “technically civil in nature”); *State ex rel. Lee v. Buchanan*, 191 So. 2d 33, 34 (Fla. 1966) (“proceeding in habeas corpus is civil rather than criminal in nature, even though sought in behalf of one charged with or convicted of a crime”).

Exhibit “D”

List of stakeholders endorsing the
Foundation past presidents’ proposed Rule 5-1.1(g)

Bay Area Legal Services

Business Law Section of The Florida Bar

Pro Bono Legal Services Committee of The Florida Bar

Florida’s Children First, Inc

Florida Civil Legal Aid Association (FCLAA) (28 civil legal aid organizations)

Innocence Project of Florida, Inc.

Past Presidents of The Florida Bar (34 past presidents)

Past Presidents of The Florida Bar Foundation (26 past presidents)

Public Interest Law Section of The Florida Bar

Southern Legal Counsel, Inc.

The Florida Bar Foundation

The Florida Bar Pro Bono Coordinators Association