

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL

MAY 15 2001

CLERK, SUPREME COURT
BY _____

IN RE: Interest on Trust Accounts (IOTA) Rule
5-1.1(e), Rules Regulating The Florida Bar

SC01-851

Comments in Support of the Proposed IOTA Rule Change

The Florida Project Directors Association (PDA) fully supports the proposed IOTA rule change which provides expanded opportunities for financial institutions to participate in the IOTA Program and requires fair and equal treatment of IOTA accounts. The projected increased revenue for legal assistance to the poor, improvements in the administration of justice, and law student assistance is critically needed to improve the delivery of legal services to the poor and working poor in Florida.

The PDA is composed of the executive directors of the thirty-two (32) legal assistance to the poor provider program grantees of The Florida Bar Foundation (Foundation). Our network of programs provides legal assistance annually to more than one hundred thousand (100,000) needy low-income residents of Florida. Working with local bar associations, PDA provider programs administer and support the major organized pro bono programs in Florida. Working with the local courts, many of the PDA programs provide forms and advice to the growing number of pro se litigants in our court system. The collective mission of PDA staff and programs is to reach out to low income individuals and communities to empower them through education, to protect them against abuse and injustice through representation, and to promote their fair and equal treatment through advocacy.

With the estimated number of people living below the federal poverty level in Florida growing to almost two million (2,000,000), and an additional large number of families living just above the poverty level who cannot afford legal assistance when they need it, carrying out this mission of service is increasingly a daunting task. In real dollar terms, the resources to provide needed legal assistance to the poor has diminished in the last five (5) years. In 1996, the largest single funder of the delivery system, the federal Legal Services Corporation (LSC), cut its funding to Florida by almost thirty percent (30%). In the last two years, the second largest single funder of the delivery system, the Foundation, has reduced its funding by fifteen percent (15%). The result of increasing numbers of low income Floridians coupled with diminishing resources has been the painful reduction of service to families with critical needs. Elderly couples are losing their homes through home improvement fraud, victims of domestic violence continue to live with the daily fear of severe harm and possibly death, children are denied a stable home where they can thrive, and immigrants are prevented from fulfilling their dreams to become U.S. citizens all because legal assistance has not been available to them when they needed it. These are just a few examples of critical needs faced by our client community.

As demonstrated by the following actual case examples, legal assistance often makes life changing differences for low income families:

- Ms. T is a **72-year-old** retired woman with some dementia who owned her home free and clear of debt. A home repair “contractor” came to her door to see if she needed any work done. Mrs. T replied “no” but agreed to have her popcorn ceilings painted as the contractor told her expense would be covered by a government program, Ms. T signed blank documents. When she left the house for a few hours, the “contractor”, without her approval, installed new cabinets and

started putting on a new roof. Neither job was necessary. The blank documents were filled in to provide a \$35,000 mortgage with payments higher than Ms. T's income. Ms. T came to Bay Area Legal Services and Bay Area filed a lawsuit against the contractor and the bank alleging violations of the Truth in Lending Act and the Homeownership Equity Act and also alleging RICO violations. The end result was that the \$35,000 mortgage was written off and the home of Mrs. T was saved.

Sarah sought the assistance of Brevard County Legal Aid, Inc. (BCLA) after her twelve-year-old daughter reported that her stepfather, Sarah's husband, had been sexually molesting her. The Department of Children and Families and law enforcement had initiated an investigation and referred Sarah to BCLA for help in filing an Injunction for Protection against the stepfather. The girl and her four-year-old brother both reported that they had suffered physical abuse for years at the hands of their stepfather, usually while their mother was at work. Sarah was represented by a BCLA "Freedom from Violence" project attorney. At the hearing, a permanent injunction was granted awarding Sarah and her children possession of the marital home, prohibiting the abuser from going near the home and from having any contact with the children. Sarah was further assisted by a BCLA staff attorney with a dissolution of marriage, Sarah and her children were referred and utilized the partnership counseling program through the Women's Center.

A pro bono attorney from Texas requested help in representing a woman she had interviewed regarding getting the client's late husband's pension from the St. Petersburg Police Department. The police denied the client's claim for the pension based on the fact that her husband had divorced her many years earlier. Although the client and her son lived in Texas for many years without the husband, the woman, as far as she knew, was never divorced. Because the

“divorce” happened in another circuit, Community Law Program referred the case to Three Rivers Legal Services. Since the husband knew where the mother and son were living and had paid for the son’s medical insurance, a volunteer attorney was able to have the divorce overturned, and the woman was then able to collect on the husband’s pension. She received a lump sum of \$25,000 and now receives direct deposit payments.

A worker, prior to his incarceration, fell from a roof, causing serious injury to his right heel and foot. He experienced severe pain. An x-ray disclosed a piece of metal in his right heel. The prison physician recommended evaluation by a specialist. It did not occur. An Informal Grievance requested an evaluation. Finally, he saw a physician who, despite the x-ray results, refused him a low bunk pass, and rejected a request for orthopedic shoes to alleviate the pain. Despite being recommended for a general surgery consultation the recommended surgery consultation was canceled. The inmate was in extreme pain. He could not engage in many activities. The only “help” the prison provided was Ibuprofen. The Florida Justice Institute filed a lawsuit and moved for a preliminary injunction, The client got to see a specialist.

“Jane” is 15 years old and was in the Juvenile Detention Center for fighting in school and hitting the school’s police officer - it was her first offense. She was also charged with running away from home detention. Through the new Team Child project, funded by the Florida Bar Foundation, Legal Aid Service of Broward County advocated for her before the Delinquency Court and with the State Attorney and Public Defender, From her history and from her psychological evaluation, Team Child was able to inform the court that Jane had been a victim of sexual assault and was in need of Post Traumatic Stress Disorder therapy; she was acting out her anger and emotional turmoil. The child was in need of a therapeutic setting rather than a

behavioral modification setting. The Court agreed with Team Child and Jane is now receiving the therapy she needs.

. Teresa had been raised in a lovely home on an island in the South Pacific. When an American serviceman asked to marry her, he assured her family that he would take care of her. After they were transferred to the states, the beatings began, For the next four years Teresa lived in fear. After she found out she was pregnant, she fled. Her husband eventually tracked her down, When she came to Tallahassee, she felt she and her son were safe. Then the call came from the daycare center that her husband had kidnaped her son. The Legal Services of North Florida attorney quickly tracked down the child in California and had the child returned to Tallahassee. After a hearing, Teresa and her three-year-old son walked out of the Leon County Courthouse hand-in-hand, ready for a new life without fear being separated again.

. A single mother of five small children works full-time as a waitress and receives food stamp benefits to help feed her children. She came to Northwest Florida Legal Services with an emotional plea for help. The Department of Education had caused the client's tax refund of \$3,429 to be seized for payment on a delinquent student loan. It appears the client had signed up for a student loan in 1989 for a secretarial school. The school had obtained approval on the loan application by falsely certifying the client's ability to benefit from the program. The client did not have a high school diploma or a GED and the school did no testing to determine the client's ability to benefit from the schooling. Once the information was presented to the Department of Education, they discharged the student loan and returned the client's much needed tax refund

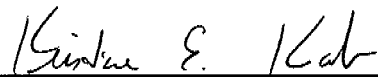
These examples show how the provision of legal services makes a real difference in the lives of our clients. The ability to make equal access to justice a reality for these and thousands of

other low income Florida residents, depends on committed, dedicated and high quality staff that is adequately supported in the provider programs. It is recognized that in a legal world where graduating law students are commanding salaries in the eighty thousand (**80,000**), ninety thousand (90,000) and even the one hundred thousand (100,000) dollar range from law **firms**, that substantial sacrifices are called for to become a lawyer for those who have the least among us. However, a recent survey by the Foundation documents the salary structure crisis facing the delivery system that will severely reduce the capacity for and quality of legal assistance unless it is addressed promptly. The median starting annual salary for an attorney in a legal assistance program is only thirty thousand dollars (\$30,000). Also, the median annual salary after five years of experience only rises to thirty-nine thousand dollars (\$39,000). To compound the sacrifice being called for, more and more young lawyers carry increasingly high college and law school debt loads. The Foundation survey revealed that out of sixty-five (65) attorneys in the provider programs with less than three (3) years of experience, fifty-nine (59) of the young attorneys had substantial student debt, The average debt load is a staggering seventy-one thousand, three hundred and fifty-five dollars (\$71,355). Eleven (11) of these dedicated new attorneys have debt loads in excess of one hundred thousand dollars (**\$ 100,000**). Without substantial new funds to address this crisis, the only available response for provider programs is to reduce the number of attorneys on staff, and therefore available legal assistance, so that a minimally adequate salary structure can be implemented.

The Foundation, through the IOTA Program, is the only **funder** of comprehensive equal access to justice in Florida. Other funding is limited by geography (for example can only be used to serve residents in one county), by type of service (for example can only be used to represent

fair housing clients), or by category of needy person (for example victims of domestic violence). The LSC denies representation to entire categories of people like undocumented immigrants and prisoners, eliminates areas of representation like welfare reform and eviction defense for a public housing tenant charged with a drug offense, and removes advocacy tools available to all other attorneys like class actions and attorney's fees, As this court stated in 1993 and reiterated in 1997: "Justice is not truly justice if only the rich can afford counsel and gain access to the courts." *Amendments to Rules Regulating The Florida Bar-I-S.3 (a)*, 630 So.2d 501,502 (Fla. 1993); *Amendments to Rule 4-6.1 of the Rules Regulating The Florida Bar*, 696 So.2d 734,735 (Fla. 1997). The increase in IOTA revenue that will result from the implementation of the proposed rule change is critically needed to maintain and strengthen the backbone of the Florida delivery system for legal assistance to the poor. Without additional support from the Foundation for the full range of civil legal assistance needed by low income residents of Florida, we will move further away from the ideal of equal justice for all.

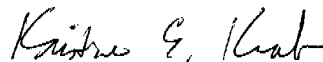
Respectfully Submitted



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Comments in Support of the Proposed IOTA Rule Change has been furnished to John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 and to Jane Elizabeth Curran, Executive Director, The Florida Bar Foundation, 109 East Church Street, Suite 405, Orlando, Florida 32801 by U.S. mail on this 15th day of May, 2001.



Kristine E. Knab, President PDA