

**ORIGINAL**

**IN THE SUPREME COURT OF FLORIDA**

**FILED**  
THOMAS D. HALL  
APR 27 2001

CLERK, SUPREME COURT  
BY \_\_\_\_\_

CASE NO. SC01-851

**MATTER OF INTEREST ON )  
TRUST ACCOUNTS: A )  
PETITION TO AMEND )  
THE RULES REGULATING )  
THE FLORIDA BAR )**

**PETITION OF THE FLORIDA  
BAR FOUNDATION FOR MODI-  
FICATION OF THE INTEREST  
ON TRUST ACCOUNTS  
PROGRAM**

Pursuant to Rule 1 - 12.1 of the Rules Regulating The Florida Bar, the undersigned fifty (50) or more active members of The Florida Bar, on behalf of The Florida Bar Foundation (hereinafter Foundation), move for entry of an Order modifying the Rules Regulating Trust Accounts by amending Rule 5- 1.1 (e) of the Rules Regulating The Florida Bar, stating as follows:

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. Notice of the filing of this petition was given in the February 15, 2001 issue of The Florida Bar News, and a re-notice of modifications to the proposed amendments was published in the April 15, 2001 issue of The Florida Bar News, with the re-notice advising that oral argument on the proposed IOTA rule amendments has been scheduled for June 4, 2001. Copies of the notices are attached as Exhibits 1 and 2. Copies of all comments received as a result of the February 15, 2001 notice are attached as Exhibit 3.

3. As directed by the Court, copies of all comments received as a result of the February 15, 2001 notice were given to The Florida Bar Board of Governors prior to its unanimous approval of the proposed IOTA rule amendments at its meeting on March 30, 2001.

#### **A. INTRODUCTION**

4. This is a Petition to amend this Court's Interest on Trust Accounts (hereinafter IOTA) program for the purpose of increasing revenue. If adopted, the modifications would:

- Introduce competition for IOTA accounts by allowing investment companies to participate in IOTA;
- Permit use of government money market funds', together with appropriate safeguards, for IOTA funds;
- Define institutions which are eligible to hold IOTA accounts as only those institutions which pay IOTA account depositors the highest interest rate or dividend generally' available at their own institution to non-IOTA customers when IOTA accounts meet the same minimum balance or other requirements. Eligible institutions may meet the

---

<sup>1</sup>Only money market funds consisting solely of United States Government Securities (government money market funds) are proposed for IOTA accounts.

<sup>2</sup>Use of the word "generally" in the proposed IOTA rule amendments to define institutions eligible to hold IOTA accounts is intended to acknowledge that treatment of customers is defined by a variety of factors, not just the balance in a single account.

interest or dividend requirement through use of checking accounts, government money market funds with checking account features, or through an institution's standard sweep product when the investment option is a **REPO** or government money market fund.

5. If these modifications are approved by the Court, the Foundation would expect that the Court would charge it, not attorneys or law firms, with the responsibility of determining the initial and continuing eligibility of banks, savings & loan associations and investment companies to hold IOTA accounts. The Foundation also would work directly with these institutions to assist and promote their initial and continuing eligibility to participate in IOTA.

6. The requested modifications are essential to increasing annual IOTA legal aid funding which, at \$10.39 million, is the same today as in 1993. If approved by the Court, annual IOTA revenue could increase from between \$17 million and \$26 million, based on interest rates ranging **from** 3.50% to 5.00%.

7. This Court has jurisdiction pursuant to article V, section 15 of the Florida Constitution.

**B. THE PROPOSED AMENDMENTS PROVIDE THE  
OPPORTUNITY TO SECURE  
CRITICALLY NEEDED FUNDING FOR LEGAL AID**

8. Granting this Petition would provide the opportunity to secure critically needed funding to allow low-income Floridians to gain access to the courts. The Court is particularly aware of the continued crisis in funding for legal aid for the poor. In Florida Bar v. Furman, 376 So. 2d 378 (1979) this Court found that Furman’s unauthorized practice of law was the symptom of a larger problem: the unavailability of counsel to those who cannot afford legal fees in civil matters. In 1990, the Court re-emphasized its findings in Furman, declaring, “In order for this justice system to maintain credibility, we realize that it must be available and affordable to all segments of society.” In re Amendments to Rules Regulating The Florida Bar 573 So.2d 800, 806 (Fla. 1990). But, funding problems continue to plague Florida’s efforts to provide minimal access to the courts.

9. In recent years, IOTA funds have played an even more important role in Florida’s legal aid delivery system. In 1995 and 1996, federal funding for

Florida's 12 Legal Services Corporation (LSC) grantees was cut from \$17,568,138 to \$12,369,862. In addition, Congress applied new restrictions on federal funds prohibiting representation by LSC grantees, with any source of funding, of large numbers of immigrants, almost all prisoners, and in class actions and attorney's fees cases. These restrictions required the Foundation to increase IOTA funding of some non-LSC grantees, and award grants to additional organizations, in order to provide at least minimum access to those persons no longer able to be served by federally-funded programs.

10. Federal funds have not been restored to their pre-1995 levels, and IOTA legal aid funding has been reduced back to its 1993 level. Moreover, based upon conservative estimates, Florida's poverty population is expected to have grown by over 116,000 from the 1990 level to almost 2,000,000 today. Granting this petition would significantly enhance IOTA revenue, restoring IOTA legal aid funding to the equivalent of its 1990-91 level.

### **C. EARLY HISTORY AND GROWTH OF THE IOTA PROGRAM**

11. This Court, as reflected by the opinions cited above, has long

recognized that it has the duty to promote the **full** availability of legal aid. Its pioneering role in the creation of the IOTA program demonstrates that it is able to develop unique and innovative methods for funding the delivery of legal aid to the poor. On July 16, 1981, this Court issued its now landmark Opinion establishing our country's first Interest on Trust Accounts Program. In Re Interest on Trust Accounts, 402 So. 2d 398 (Fla. 1981). The Interest on Trust Accounts program was effective September 1, 1981. The Court urged all lawyers to participate. 402 So. 2d at 396-397. While participation in this Court's IOTA program got off to a good start, growth was stagnant from 1982-88. ,

12. As a result, more than 50 members of The Florida Bar filed a petition on behalf of The Florida Bar Foundation requesting this Court to convert the voluntary IOTA program to a comprehensive **program**.<sup>3</sup> On January 26, 1989, the

---

<sup>3</sup>The Foundation's petition requested a "comprehensive" IOTA program requiring investment **of all** trust funds – whenever economically practical, for the benefit of clients or third persons, and only if investment for the benefit of clients or third-persons was economically impractical, would the "nominal" or "short-term" client or third person trust funds be deposited in accounts **benefitting** the Foundation. The Court declined to require investment of all trust funds and, instead, adopted a "mandatory" IOTA program requiring all "nominal" or "short-term" client or third-person trust funds to be deposited into interest-bearing checking accounts **benefitting** the Foundation,

Court granted The Foundation's petition. Matter of Interest on Trust Accounts, 538 So. 2d 448 (Fla. 1989).

#### **D. DECLINE IN CHECKING ACCOUNT INTEREST RATES**

13. After the adoption of this Court's mandatory IOTA program in 1989, attorney participation soared and IOTA revenue grew to \$19.4 million annually in 1990-91. The next year, however, saw checking account interest rates begin to fall. The 1990s marked the end of the high checking account interest rates financial institutions had paid in the 1980s to attract depositors. The statewide average interest rate paid on IOTA checking accounts declined from just over three percent in 1990 to just over one percent today. See IOTA Income Portfolio attached as Exhibit 4. However, in order to keep the business of large customers, financial institutions began offering those customers sweep products paying market interest rates on idle checking account funds.

14. That trend is borne out by the 2000 Sweep Account Survey conducted by independent treasury management consulting firm Treasury Strategies, Inc. ("TSI"). TSI reported that, "More banks are offering sweep products, Among the



[ 114 bank holding company survey] respondents, there was a 20 percent increase in the number of banks offering sweep products and the growth rate of the number of small banks offering sweep is greater than larger banks.” The Survey also revealed that, “Sweep account revenue is on the rise. From 1998 to 1999, total annual sweep income has risen by 14 percent.”

### E. BACKGROUND TO THIS, PETITION

15. As a result of the decline in IOTA revenue and funding for legal aid, coupled with the recognition that high average balance IOTA accounts held in checking accounts would remain undervalued by banks and savings & loan associations, the Foundation petitioned the Court to allow the recruitment of attorneys and law firms with high average IOTA account balances (in excess of \$30,000) in eligible financial institutions to establish sweep accounts utilizing daily bank repurchase agreements as the higher yield investments (IOTA Sweep/REPOs). On April 24, 1997, this Court approved the Foundation’s petition for a voluntary IOTA Sweep/REPO program. Amendments to Rules Regulating The Florida Bar Rule 5- 1.1 (e) - IOTA, 696 So. 2d 18 1 (Fla. 1997).

16. In the past four years since the Court approved IOTA **Sweep/REPOs**, the Foundation has worked diligently to implement the program. The Foundation first met with chief officials at the major Florida banks which hold the majority of large-balance IOTA accounts asking that IOTA **Sweep/REPOs** be made available to their attorney and law **firm** customers. In an effort to make implementation of an IOTA **Sweep/REPO** program as easy as possible for banks, the Foundation offered banks technical assistance and even reimbursement of their reasonable **up-**front costs to modify their standard sweep/REPO product in order to remit and report **REPO** interest directly to the Foundation. Next, Foundation directors, legal aid grantees, and state and local bar leaders recruited law **firms** with IOTA account balances over \$1 00,000<sup>4</sup> to ask their banks for a higher yielding IOTA **Sweep/REPO** account.

17. Attorneys and law **firms** have been receptive to moving their IOTA

---

<sup>4</sup>**Although** some Florida banks offer sweep accounts to customers with balances as low as **\$30,00**, the typical threshold is \$50,000. The exact amount varies by account, depending on monthly analysis of checking account activity, the cost of which customers pay by maintaining a non-interest bearing compensating balance in the checking account. The Foundation focused its **Sweep/REPO** recruiting activities on the approximately 1,250 IOTA accounts with balances consistently above \$100,000.

account into a **Sweep/REPO** product, recognizing the imbalance of their IOTA account being relegated to a standard checking account product earning rates as low as .56%. But, when they asked their banks for an IOTA **Sweep/REPO**, only **two** major banks agreed. Even the initiatives by these two banks were a limited response. The other banks declined, generally giving as the reason that their existing standard **sweep/REPO** product could not remit interest and report directly to the Foundation, despite the Foundation's repeated contacts with bank officials and offers of technical and financial assistance to modify their remittance and reporting systems.

18. The multiple relationships between banks and law **firms** prevent exercise of the kind of pressure which would cause the banks to offer IOTA **Sweep/REPOs**. As a result, IOTA revenue has not appreciably increased as a result of the voluntary IOTA Sweep/REPO program and cannot realistically be expected to do so under the current IOTA rule.

19. Since the early **1990s**, the Foundation also has been working with banks across the state to increase IOTA revenue through other means. The Foundation modified its systems to accept IOTA account remittances and reports

electronically and banks have generally responded well to the Foundation's request that, as a consequence, they reduce or eliminate their per account, per month IOTA Handling Fee to report and remit IOTA account interest to the Foundation. The Foundation also has asked banks to increase the rates they pay on IOTA checking accounts either across the board, or on a tiered-rate basis, with only larger accounts earning the higher rates. All three major Florida banks, and seven smaller banks and savings and loan associations responded positively to these requests in a gesture of public spiritedness and in recognition of the high profit level IOTA accounts represent. These institutions are recognized prominently every month in issues of The Florida Bar News in the Foundation's *IOTA Bank Honor Roll*.

20. These efforts, which have resulted in approximately \$3.7 million more in annual IOTA revenue, a steady increase in the number of IOTA accounts due to growth in Bar membership, and IOTA grant reserves, which the Foundation was able to fund only from 1989 to 1990-91, enabled the Foundation to maintain IOTA legal aid grants at relatively stable levels until 1999. But checking account interest rates have continued to decline and the last of the IOTA legal aid grant reserves was awarded in 2000. Consequently, IOTA legal aid funding has been

cut 15% in the past two years. This cut in real dollars does not fully reflect how far IOTA legal aid funding has fallen behind from inflation and growth in the number of Floridians living in poverty.

## **F. EXPLANATION OF REQUESTED MODIFICATIONS**

21. With the efforts to successfully implement the voluntary IOTA Sweep/REPO program frustrated, and in light of this Court's expectation that "the Foundation continue to investigate alternative investment opportunities that would accomplish the dual goals of increasing IOTA revenues and safeguarding the trust funds," Id. at 182 n.3, in the summer of 2000, the Foundation began exploring proposed amendments to the IOTA Rule to increase IOTA revenue and offset the \$8.1 million revenue drop since 1990-9 1. After initial Foundation board consideration in October 2000, followed by study by an *ad hoc* Foundation committee and endorsement at the Foundation's December 6, 2000 Planning Retreat, the proposed IOTA Rule amendments were unanimously approved for submission to the Court by the Foundation's board of directors at its December 8, 2000 meeting. The full text of the proposed IOTA rule amendments. in legislative style, is attached as Exhibit 5.

22. The Foundation is convinced that any significant increase in IOTA revenue would require that institutions treat large-balance IOTA accounts fairly -- on a par with the accounts of their non-IOTA account customers. Further, based on the recruiting experiences under the voluntary IOTA **Sweep/REPO** program, the Foundation also believes that securing fair treatment of IOTA accounts should not be the sole responsibility of attorneys and law **firms**. Accordingly, this petition seeks to require that, as a condition of eligibility to hold any IOTA accounts, institutions must pay interest rates or dividends comparable to what they pay their other customers if the IOTA account meets the same minimum balance or other requirements. This approach originated with the Ohio IOLTA program, which is in the process of amending its IOLTA rules accordingly. Other IOLTA programs have expressed strong interest in following Florida's and Ohio's lead.

23. To assist institutions to comply with the proposed new interest rate and dividend requirement, this petition would further upgrade the products approved for IOTA funds beyond checking accounts and **REPOs**, to money market funds, in keeping with current trends in money management. Only money market funds registered with the Securities and Exchange Commission and which are comprised solely of United States Government Securities, are proposed, in order to

meet the Court's requirement for safeguarding of IOTA funds.<sup>5</sup> However, to further provide for the safety of IOTA funds, only government money market funds with total asset values of at least \$250 million would be eligible to participate.

### **G. IMPLEMENTATION**

24. If the Court were to grant this petition, the Foundation respectfully requests that the amended IOTA rule be effective thirty days after the date of the Court's order. However, the Foundation further requests that institutions currently holding IOTA accounts, which choose to participate in IOTA under the new "Eligible Institution" requirements of the amended IOTA rule, be provided a reasonable time period, for example six months from the effective date of the

---

<sup>5</sup>A money market fund, as described by the Securities and Exchange Commission, "...is a type of mutual fund that is required by law to invest in low-risk securities. These funds have relatively low risks compared to other mutual funds and pay dividends that generally reflect short-term interest rates. Unlike a "money market deposit account" at a bank, money market funds are not federally insured." "[money market funds] attempt to keep their net asset value (NAV) to a constant \$1 .00 per share-only the dividend yield goes up and down. But a money market's per share NAV may fall below \$1 .00 if the investments perform poorly. While investor losses in money market funds have been rare, they are possible." Currently, money market funds are limited to investing in securities with maturities of 90 days or less.

amended IOTA rule, during which to comply with the new eligibility requirements.

25. In order to avoid placing attorneys and law **firms** in the position of comparing interest rates being paid on their IOTA accounts to rates and dividends paid by their institution to non-IOTA account customers, the Foundation proposes that the Court charge it with the responsibility to determine initial and continuing compliance with the institutional eligibility requirements of the amended IOTA rule. The Foundation also will continue its efforts to assist eligible institutions by: 1) continuing its offer to defray reasonable up-front cost to modify remitting and reporting processes for IOTA; 2) providing reporting and remittance specifications, including free technical support; 3) assisting participating institutions in identifying IOTA accounts eligible for the higher interest rates or dividends; 4) notifying affected attorneys and law **firms**; and 5) facilitating completion of any new product or account sign-up forms required of attorneys or law firms.

#### **H. REQUEST FOR EXPEDITED CONSIDERATION AND SUGGESTED PROCEDURE**

26. The Court is formally requested, and the Petitioners gratefully



acknowledge the steps the Court has already taken, to expedite consideration of this matter. The Petitioners respectfully request ten days to respond to any additional comments received following conclusion of the **30-day** comment period set forth in the April 15, 2001 notice.

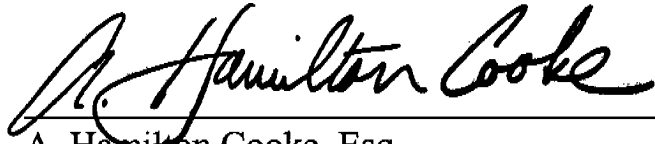
### I. CONCLUSION

Implementation of an increased revenue program such as that set forth herein offers immense benefit to the public with no loss of protection to clients and little inconvenience to members of The Florida Bar. Lawyers have a professional obligation to assist in improving the administration of justice, and to provide legal aid to those unable to pay for such aid. The adoption of the changes suggested herein is critical if this Court's IOTA program is to continue to provide meaningful funding for access to the courts by low-income Floridians. The Court is urged to adopt the requested modifications.

Respectfully submitted,  
A. Hamilton Cooke, Esquire  
President

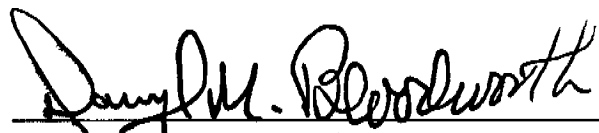
Darryl M. Bloodworth, Esquire  
President-Elect

The Florida Bar Foundation  
P.O. Box 1553  
Orlando, Florida 32802-1533  
(407) 843-0045  
(800) 541-2195  
FAX (407) 839-0287  
E-Mail: [fbf@flabarfdn.org](mailto:fbf@flabarfdn.org)



---

A. Hamilton Cooke, Esq.  
President  
Fla. Bar No. 110757



---

Darryl M. Bloodworth, Esq.  
President-Elect  
Fla. Bar No. 141258

Randall C. Berg, Jr., Esquire  
Fla. Bar No. 3 18371  
Peter M. Siegel, Esq.  
Fla. Bar No. 227862  
JoNel Newman, Esq.  
Fla. Bar No. 112320

FLORIDA JUSTICE INSTITUTE, INC.  
200 S. Biscayne Blvd.  
2870 First Union Financial Center  
Miami, Florida 33 13 1-23 10  
(305) 358-2081  
FAX (305) 358-0910  
E-Mail: [rcberg@bellsouth.net](mailto:rcberg@bellsouth.net)

of The Florida Bar:

Charles W. Abbott  
Ira Abrams  
Louie N. **Adcock**, Jr.  
Thomas D. Aitken  
James E. Alderman  
Ralph **Armstead**  
Scott L. Baena  
Michael R. Band  
Thomas H. Barkdull, Jr.  
Eunice T. Baros  
Hilarie Bass  
David Bazeran  
Randall C. Berg, Jr.  
Nora Riva Bergman  
Robert A. Bertisch  
Susan H. Bingham  
Michael D. Bimholz  
Bruce B. Blackwell  
Darryl M. Bloodworth  
Edward R. Blumberg  
Charles Shawn Boehringer  
James A. Bonaquist, Jr.  
Alan B. **Bookman**  
Donald L. **Braddock**  
Jack P. **Brandon**  
Harriet P. Brown  
Thomas W. Brown  
**Rowlett** W. Bryant  
Mark Buchbinder  
Robert J. Buonauro  
Howard M. Camerik  
Howard A. Caplan  
Matthew **Capstraw**  
John P. Cardillo  
Russell E. Carlisle  
Patrick J. Casey  
Vivian Z. Chavez

Neil Chonin  
Christine A. Clark  
Kendall Coffey  
Lawrence Collins  
A. Hamilton Cooke  
Henry M. Coxe, III  
Philip Bruce Culpepper  
John P. Cunningham  
Marcia K. Cypen  
Howard L. Dale  
Talbot **D'Alemberte**  
William H. Davis  
Stephen E. Day  
Mary Anne **DePetrillo**  
Russell W. Divine  
Kathleen Dolan-Valdes  
**Mayanne** Downs  
Paul C. Doyle  
John E. Duvall  
**Rashad El-Amin**  
Stephen C. Emmanuel  
Theodore D. Estes  
**LaShan Fagan**  
Terrell Keith **Farr**  
Ladd H. Fassett  
Janet L. Findling  
Jose Fons  
John W. Frost, II  
David Fussell  
George D. Gabel, Jr.  
John Germany  
Leonard H. **Gilbert**  
Leslie A. Goller  
Lizel Gonzalez  
Barbara Goolsby  
Oliver L. Green  
Douglas M. Halsey

Amy Hamlin  
Stephen F. Hanlon  
William O.E. Henry  
J. Fraser Himes  
John Wayne Hogan  
Mark L. **Horwitz**  
Kelley C. Howard  
Arlene C. Huszar  
Christopher Jones  
Richard T. Jones  
Kevin Kenneally  
David B. King  
Theodore Klein  
Kristine E. Knab  
Warren **LaFray**  
Sharon L. Langer  
Noel G. Lawrence  
Scott A. Livingston  
Carolina **Lombardi**  
Karen Lopez  
Dominic C. MacKenzie  
R. Gavin Mackinnon  
Amelia Rea Maguire  
Bruce Marger  
Miles A. **McGrane, III**  
Shannon P. **McKenna**  
Kathleen **McLeroy**  
F. Shields **McManus**  
Christopher C. Meyer  
J. Andrew Meyer  
Joe Miklas  
Dawn K. Miller  
Gene Moore  
H. Edward Moore, Jr.  
Stephen B. Moss  
Chandler R. Muller, Sr.  
Rene V. Murai  
John A. **Noland**  
Christopher L. Nuland

Stewart O. Olson  
Andrew M. **O'Malley**  
A. L. Paoli  
Daryl D. Parks  
Natasha Per-maul  
Jean Per-win  
Lawrence J. Phalin  
Patrice J. Pilate  
Sylvia Ponce de Leon  
Michelle A. Prescott  
Bette Ellen Quiat  
Kelly V. **Rauch**  
Gene Reibman  
Andrea L. Reino  
Gerald F. **Richman**  
Janet R. Riley  
James C. Rinaman, Jr.  
Mary Anne Robertson  
Bruce Rogow  
Robin L. Rosenberg  
Scott C. Rowland  
James M. Russ  
Marsha G. Rydberg  
Vance E. Salter  
John C. Schaible  
L. David Shear  
John **Phillip Short**  
Glenn A. **Shuman**  
Peter M. Siegel  
Scott Simkins  
William **Reece Smith, Jr.**  
Robert M. Sondak  
Robert F. **Spohrer**  
Kent R. Spuhler  
C. L. Stagg  
Charles R. Stepter, Jr.  
Eli H. **Subin**  
Daniel Turner  
John W. Thornton, Jr.

Kent R. Spuhler  
C. L. Stagg  
Charles R. Stepter, Jr.  
Eli H. Subin  
Daniel Turner  
John W. Thornton, Jr.  
Virginia B. Townes  
Russell Troutman  
Mark L. Van Valkenburgh  
Lynn E. Wagner  
Sylvia H. Walbolt  
Kelly A. Wiener  
Richard C. Woltmann  
Cynthia D. Woodward  
Donald E. Yates

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing and all attachments have been furnished to John F. Harkness, Jr., Esq., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 by U.S. Mail this 26<sup>th</sup> day of April, 2001.

A handwritten signature in cursive script that reads "A. Hamilton Cooke". The signature is written in black ink and is positioned above a horizontal line.

A. Hamilton Cooke

# Notice

## Comments sought on proposed IOTA rule

The Florida Bar Foundation will petition the Supreme Court to amend the IOTA rule to allow institutions other than banks to hold IOTA accounts and require those holding the trust accounts to pay interest rates or dividends commensurate with those offered to their non-IOTA depositors. Prior to filing the petition, the proposed amendments will be brought before The Florida Bar's Board of Governors at its March meeting. All interested persons are invited to comment on the proposed amendments, which are reproduced in full below.

Comments should be directed to **John F. Harkness, Jr.**, Executive Director, The Florida Bar, 660 Apalachee Parkway, Tallahassee 32399-2300, on or before March 20. Any comments received will be filed with the Supreme Court at the time the petition to amend the IOTA rule is filed.

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

(1) **Definitions.** As used herein, the term:

(A) "nominal or short-term" describes funds of a client or third person that, pursuant to subdivision (7)(3), below, the lawyer has determined cannot practicably be placed at interest invested for the benefit of the client or third person;

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

(C) "IOTA account" means an interest or dividend-bearing trust account described in subdivision (2) below benefitting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

(D) "Daily Financial Institution Repurchase Agreement" means an overnight investment of IOTA funds described in subdivision (4), below, in a financial institution eligible to enter into a Daily Repurchase Agreement described in subdivision (3), below (3) "Eligible Financial Institution" means any bank, savings and loan association, or credit union 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, National Credit Union Administration 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 subsection (5) below. The funds covered by this rule shall be subject to withdrawal upon request and without delay. A daily financial institution repurchase agreement, described in subdivision (1)(D), above, may be established only with an eligible financial institution which is deemed to be "well capitalized" or "adequately capitalized" as defined in applicable federal statutes and regulations.

(E) "Interest or dividend-bearing trust account" means insured checking accounts, and investment products, including daily financial institution repurchase agreements and short-term money market funds in which the underlying securities consist solely of direct obligations of, or obligations guaranteed as to principal and interest by, the United States. A daily financial institution repurchase agreement may be established only with an eligible institution which is deemed to be "well capitalized" or "adequately capitalized" as defined in applicable federal statutes and regulations. A short-term money market fund must

meet the requirements of the Investment Company Act of 1940 and applicable federal regulations and have total assets of at least \$100,000,000.00. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(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 shall be deposited into one or more interest-bearing trust checking IOTA 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 this rule.

(7)(3) 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 eligible 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.

(6) (4) Notice to Foundation. Lawyers or law firms shall advise the Foundation, at Post Office Box 1653, Orlando, Florida 32802-99191553, 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 eligible institution; the name of the lawyer or law firm on the IOTA account; the financial eligible institution name; the financial eligible 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 the IOTA account. Lawyers or law firms shall provide to the Foundation advance notice of their intent to establish a daily financial institution repurchase agreement. Such advance notice shall include: the IOTA account number, the name of the lawyer or law firm on the IOTA account, the financial institution name, and the financial institution address.

(4) Interest Rates. The rate of interest on funds covered by this rule shall not be less than the rate paid by the financial institution 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 ob-

tained by a lawyer or law firm for IOTA accounts on some or all of the deposited funds through use of eligible financial institution daily repurchase agreements in which the underlying security consists solely of direct obligations of the United States Government of 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 Eligible Institution Participation in IOTA. Participation in the IOTA program is voluntary for banks, savings and loan associations, credit unions and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions shall pay on IOTA accounts 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 requirements;

(B) ~~Remittance and Reporting Instructions.~~ Eligible institutions shall:

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

(B)(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 eligible 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

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

(6) ~~Small Fund Amounts.~~ The Foundation may establish procedure<sup>8</sup> 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 eligible institution service charges or fees.

(7) ~~Confidentiality.~~ The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule.

# Notice

## Comments sought on revised IOTA rule amendments

As published in the February 16 News, The Florida Bar Foundation gave notice that it would petition the Supreme Court to amend the Interest on Trust Accounts (IOTA) rule 5-1.7(e) Rules Regulating The Florida Bar for purposes of increasing IOTA revenue. The noticed amendments would allow institutions other than banks and savings and loan associations - investment companies and credit unions - to offer IOTA accounts, to require institutions which choose to participate in IOTA to place IOTA accounts in higher-paying product & if available to other customers, when IOTA accounts meet the same minimum balance or other requirements, and to permit use of [short-term government] money market funds for IOTA accounts.

Subsequent to publishing notice in the February 16 News, the Foundation modified provisions of the proposed IOTA rule amendments as follows: 1) removed language permitting credit unions to offer IOTA accounts; 2) increased the minimum total asset level of a [short-term government] money market fund from \$100,000,000 to \$250,000,000; and 3) made minor language changes for the purpose of clarity. All interested Persons are invited to comment on the proposed amendments which are reproduced in full below (the changes from the February 16, 2001 notice, appear in "bold.")

Comments should be directed to Thomas D. Hall, Clerk, Florida Supreme Court, 500 South Duval Street, Tallahassee 32399-1925. Copies of comments should be served on John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee 32399-2300, and Jane Elizabeth Curran, Executive Director, The Florida Bar Foundation, 109 East Church Street, Suits 405, Orlando 32801, on or before May 15, 2001.

The court will hold oral argument on the proposed amendments on June 4, 2001 at 9:00 a.m.

**THE FLORIDA BAR FOUNDATION  
PROPOSED AMENDMENTS TO THE IOTA RULE  
WITH "BOLDING" TO COMPARE AMENDMENTS AS "NOTICED" IN  
THE FEBRUARY 16 ISSUE OF BAR NEWS  
WITH AMENDMENTS AS THEY WILL BE SUBMITTED TO THE COURT**

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

**(1) Definitions. As used herein, the term:**

(A) "nominal or short term" describes funds of a client or third person that, pursuant to subdivision (7E), below, the lawyer has determined cannot practicably be placed at interest invested for the benefit of the client or third person;

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

(C) "IOTA account" means an interest or dividend-bearing trust account described in subdivision (2) below benefitting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

(D) "Daily Financial Institution Repurchase Agreement" means an overnight investment of IOTA funds described in subdivision (4), below, in a financial institution eligible to enter into a Daily Repurchase Agreement described in subdivision (3), below. (9) "Eligible Financial Institutions" An IOTA Account shall be established with means any bank or savings and loan association, or credit union 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, National Credit Union Administration 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. The funds covered by this rule shall be subject to withdrawal upon request and without delay. A daily financial institution repurchase agreement, described in subdivision (1)(D), above, may be established only with an eligible financial institution which is deemed to be "well-capitalized" or "adequately capitalized" as defined in applicable federal statutes and regulations.

(E) "Interest or dividend-bearing trust account" means a federally insured checking accounts, and or investment products, including a daily financial institution repurchase agreements and short-term or a money market funds in which the underlying securities consist solely of direct obligations of or obligations guaranteed as to principal and interest by the United States. A daily financial institution repurchase agreement must be fully collateralized by, and a 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. A short-term money market fund must meet the requirements of 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 \$100,000,000.00 \$250,000,000.00. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(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 shall be deposited into one or more interest-bearing trust checking IOTA 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 this rule.



(7)(3) **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 eligible 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.

(4) **Notice to Foundation.** Lawyers or law firms shall advise the Foundation, at Post Office Box 1558, Orlando, Florida 32802-9949-1558, 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 eligible institution; the name of the lawyer or law firm on the IOTA account; the financial eligible institution name; the financial eligible 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 the IOTA account. Lawyers or law firms shall provide to the Foundation advance notice of their intent to establish a daily financial institution repurchase agreement. Such advance notice shall include the IOTA account number, the name of the lawyer or law firm on the IOTA account, the financial institution name, and the financial institution address.

(4) **Interest Rates.** The rate of interest on funds covered by this rule shall not be less than the rate paid by the financial institution 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 daily 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 Eligible Institution Participation in IOTA. Participation in the IOTA program is voluntary for banks, savings and loan associations, credit unions and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) **Interest Rates and Dividends.** Eligible institutions shall pay on IOTA accounts 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 requirements.

(B) **Remittance and Reporting Instructions.** Eligible institutions shall:  
(A)(a) to calculate and remit interest or dividends on the balance of the deposited funds in accordance with the financial institution's standard practice for non-IOTA account depositors; customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation;

(B)(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 eligible 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

(B)(c) to transmit to the depositing lawyer or law firm, for each remittance, a report statement showing the amount of interest or dividend paid to the Foundation, the rate of interest applied, and the period for which the report 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 financial eligible institution service charges or fees.

(7) **Confidentiality.** The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule.

**Exhibit 3**

**COMMENTS RECEIVED AS A RESULT OF  
FEBRUARY 15, 2001 FLORIDA BAR NEWS NOTICE**

CLARK **D. LOCHRIDGE**  
ATTORNEY AT LAW

2601 WELLS AVENUE, SUITE 121  
FERN PARK, FLORIDA 32730

(407) 332-7100  
FAX (407) 834-1798

March 27, 2001

**Mr. John F. Harkness Jr.**  
Executive Director  
The Florida Bar  
650 **Apalachee** Parkway  
Tallahassee, **Fla** 32302-2300

RE: **IOTA** rule amendments

Dear Mr. **Harkness**:

Because of the forethought and initiative of our local Seminole County Legal Aid Society, I have had the opportunity to review proposed changes to the **RULES REGARDING THE FLORIDA BAR**, Chapter 5, IOTA Program sponsored by the Florida Bar Foundation.

These proposals deal **with fairly** applying interest calculations, eligible **account** criteria and therefore, potentially **higher** interest **status** to IOTA trust accounts. These changes allow **IOTA** accounts to take advantage of sweep/repurchase **agreements** already utilized by **Non-IOTA** customers.

The total assets of attorney **IOTA** accounts throughout Florida is **extraordinary** and the level of fund deposits certainly are worthy of **the** banking communities attention.

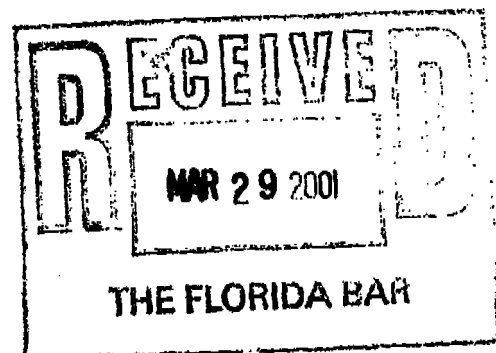
I would **unequivocally** support the FOUNDATIONS proposed **changes and** encourage adoption of the new rules as soon as possible.

Sincerely,

CLARK D. LOCHRIDGE

/lrr

cc: Silvia Ponce de Leon, Esq.  
Sem Cty Legal Aid Society



## The Gamot Law Firm, P.L.

ALBERT J. GAMOT, JR., P.A.<sup>1</sup>  
MELINDA PENNEY GAMOT, P.A.<sup>2</sup>  
N. NICOLE GAMOT, P.A.

<sup>1</sup>ALSO ADMITTED IN MISSISSIPPI  
<sup>2</sup>BOARD CERTIFIED IN MARITAL AND FAMILY LAW  
BOARD CERTIFIED CIVIL TRIAL LAWYER  
FELLOW, AMERICAN ACADEMY OF  
MATRIMONIAL LAWYERS

315 FIFTH STREET  
WEST PALM BEACH, FLORIDA 33401

TELEPHONE (561) 832-5500  
FACSIMILE (561) 832-5944

PARALEGAL STAFF  
SHERRI R. SLACK, C.L.A.

March 23, 2001

John F. Harkness, Jr., Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32302-2300

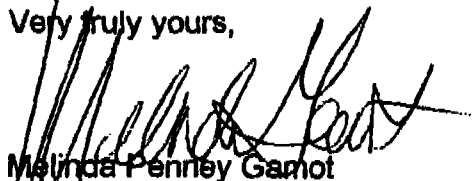
Re: Proposed IOTA Rule Amendments

Dear Mr. Harkness:

I write to support the proposed IOTA Rule Amendments. There is no reason that IOTA accounts should not receive the same general benefit as other bank customers.

If I can offer my labor or time to help implement this Rule please advise.

Very truly yours,



Melinda Penney Gamot

MPG/srs

LAW OFFICES  
**JANE KREUSLER - WALSH, P.A.**  
SUITE 803, FLAGLER CENTER  
801 SOUTH FLAGLER DRIVE  
WEST PALM BEACH, FLORIDA 33401

JANE KREUSLER - WALSH\*  
REBECCA J. MERCIER  
\* BOARD CERTIFIED APPELLATE LAWYER

TELEPHONE (561) 858-8455  
FACSIMILE (561) 820-8762

March 26, 2001

John F. **Harkness, Jr.**, Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, FL 32302-2300

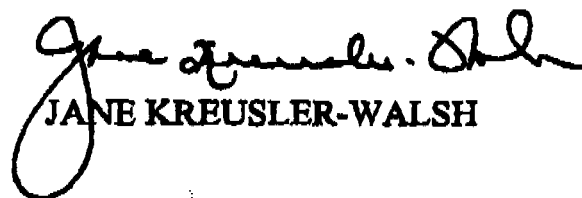
Dear Mr.  **Harkness**:

I am writing to express **my** strong support for the Florida **Bar Foundation's** proposal to reform Florida's IOTA program in an amendment to Rule **Regulating the** Florida Bar **5-1.1(e)**. As the Resident of **the Board** of Directors of the Legal Aid Society of Palm Beach County, I know all too well how critical these **reforms** are to the continued vitality of **legal services programs** across **the** state,

As **you** know, the amendment will **make two** major changes. First, the amendment will **ensure** that **institutions offer** IOTA **accounts** an inter& rate equal to that offered to non-IOTA accounts, as long **as** the IOTA account **meets** the **same requirements**, such as **a** minimum **balance**. Second, the amendment will encourage competition for IOTA accounts by allowing **credit unions** and **investment** companies an opportunity to offer IOTA accounts.

These changes, **while** laudable, will only **increase** legal **services funding** to the equivalent of 1990 levels. As such, they are sorely **needed** to ensure that all **segments** of our population continue to have access to legal **services**.

Sincerely,

  
JANE KREUSLER-WALSH

JKW/gc

cc: Robert A. **Bertisch**  
**Ham** Cooke

**DALE, BALD, SHOWALTER & MERCIER**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

HOWARD L. DALE  
WILLIAM A. BALD  
RUSSELL H. SHOWALTER, JR.  
LEE F. MERCIER  
MICHAEL A. CANDETO  
JULIE SAIEG

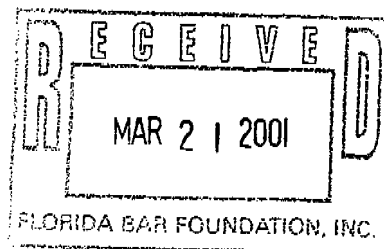
• ALSO ADMITTED IN GEORGIA

(904) 355-1155

200 WEST FORSYTH STREET, SUITE 1100  
JACKSONVILLE, FLORIDA 32202-4308

FACSIMILE (904) 355-1520  
E-MAIL: DaleBaldFL@aol.com

March 14, 2001



Mr. John F. Harness, Jr.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32302-2300

Re: The Florida Bar Foundation

**Dear Mr. Harness:**

- I am writing- to express my support for the Florida Bar Foundation's efforts in proposing changes in the IOTA rule, changes which intend to insure that banks will not discriminate against IOTA accounts. Instead, IOTA accounts should receive the same return as other customers with similar balances.

Thank you for considering my opinion.

Very truly yours,

A handwritten signature in black ink that reads "Howard L. Dale". The signature is fluid and cursive.

Howard L. Dale

sbt

## COSTELLO, SIMS & ROYSTON

ATTORNEYS AT LAW  
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS  
Voice (941) 939-2222 • Facsimile (941) 939-2280

Truman J. Costello, P.A.  
Board Certified Wills, Trusts and Estates Lawyer

L. David Sims, P.A.  
Board Certified Marital and Family Law Lawyer,  
Florida Supreme Court Certified Family Mediator

Robert D. Royston, Jr., P.A.  
Florida Supreme Court Certified Circuit Mediator

Brittany Professional Centre  
12670 New Brittany Blvd., Suite 101  
Fort Myers, FL 33907

Mailing Address  
Post Office Drawer 60205  
Fort Myers, FL 33906-6205

February 19, 2001

John F. Harkness, Jr., Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, FL 32399-2300

Sent By:  
Regular U.S. mail

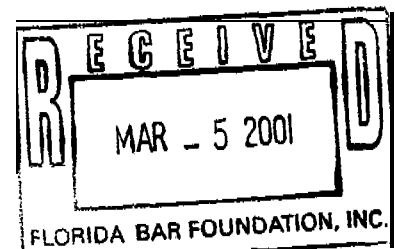
**Re: Proposed IOTA Rules**

Dear Mr. Harkness:

Please be advised that I am opposed to any Rule which would limit or constrain my choice of bank at which I maintain my IOTA account, based on the interest rate return being "more competitive" with accounts offered to other depositors.

I am in business to provide efficient and accurate legal services to my clients, not to raise money for Florida Bar programs, no matter how meritorious the program. I need a bank that can provide personal service to make sure international wire orders are not hung up at a New York intermediary, a bank that will call and confirm the originality of cashier's checks or other instruments every time I ask, and a bank which always has a live officer available to make the tough decisions and provide the information that is needed on a daily and immediate basis to make deals happen, and to prevent mistakes or losses from occurring. I can think of no other account that requires a higher level of services from a bank than does an attorney's trust account.

It does not take an MBA to know that if you cut a bank's margin of profit, it is going to cut services. I can not afford a cut in the level of banking services I am currently receiving in my practice, and neither can my clients. Banks are free to compete and if I can find a bank that provides a higher rate of return to the Bar, and still provide the services I need, I will gladly switch. However, banks that can offer the level of services a transactional attorney at a small firm needs are few and far between. Please do not hamper the small firm's ability to get the services their clients need, let the free market do its work. If anything the Bar could help by identifying banks that offer real service and pay a good rate, I do not recall ever receiving such helpful information. I had to find out by trial and error. Error is not a word with which an attorney finds comfort.

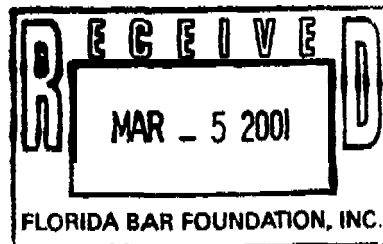


Very Truly Yours

Robert D. Royston, Jr.  
for the Firm

Direct Dial: (941) 939-2222 ext. 205

E-mail: [rroyston@csrlaw.com](mailto:rroyston@csrlaw.com)





## Profile:

**IOTA Income Portfolio**

Data Current Through February, 2007 Earning Period

**I. Overview**

<b>A. Number of Accounts</b>	<b>20,799</b>
<b>B. Principal Balance</b>	
1. Total, all accounts	\$1.53 Billion
2. Total, accounts >\$100,000	\$1.26 Billion
3. Average <b>account</b>	<b>\$74,000</b>
<b>C. Income</b>	
1. Per month, net of bank service charges	\$0.68 Million
2. Annualized	<b>\$11.47 Million</b>
<b>D. Bank service charges(net of amounts waived)</b>	
1. <b>Per month</b>	<b>\$329,800</b>
2. Annualized	\$4.29 Million
3. Average per account, per month (weighted average of all accounts)	<b>\$15.86</b>
4. Service charges as percent of gross interest,	<b>27%</b>
5. Number (percent) of banks which assess service charges	<b>110(37%)</b>
6. Number (percent) of banks which assess IOTA handling/administrative fees	<b>87 (29%)</b>
<b>E. interest rate earned on IOTA accounts</b>	
1. Gross interest rate (weighted)	<b>1.03%</b>
2. Net yield, after bank service charges (weighted)	<b>0.75%</b>
<b>F. Lawyer Participation</b>	
1. Lawyers participating	<b>26,445</b>
2. Participation rate (out of 37,756 eligible attorneys)	<b>70%</b>
3. Firms actively participating	15,752
<b>G. Bank Participation</b>	
Number of remitting banks	298

**II. Interest Rates**

A. Gross interest rates	Weighted Average	Median	Range	
			Minimum*	Maximum*
1. All remitting IOTA banks	<b>1.03%</b>	<b>1.49%</b>	<b>0.25%</b>	4.94%
2. <b>18</b> Banks holding 75 percent of IOTA principal balances	0.99%	<b>1.00%</b>	<b>0.40%</b>	<b>2.00%</b>
<b>B. Net yields, after bank service charges</b>				
1. All remitting IOTA banks	<b>0.75%</b>	<b>1.22%</b>	<b>0.00%</b>	<b>4.50%</b>
2. <b>18</b> Banks holding 75 percent of IOTA principal balances	<b>0.70%</b>	<b>0.70%</b>	<b>0.03%</b>	<b>1.81%</b>

**III. Bank Service Charges**

All banks	Average, per account per month			
	Mean	Median	Minimum*	Maximum*
1. Total service charges	<b>\$7.36</b>	<b>\$3.09</b>	<b>\$0.00</b>	<b>\$60.22</b>
2. Service Charges as percent of gross interest	12%	<b>5%</b>	<b>0%</b>	<b>101%</b>
3. Breakdown by type of charge				
a. <i>IOTA handling/administrative fee</i>	<b>\$3.26</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$50.00</b>
b. <i>Maintenance fee</i>	<b>\$2.60</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$24.23</b>
c. <i>Activity fees</i>	<b>\$1.50</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$34.64</b>

\*NOTE: Banks with less than ten IOTA accounts excluded from computation of min/max figures.

**Exhibit 5**

**PROPOSED AMENDED IOTA RULE 5-1.1(e)**

**RULES REGULATING THE FLORIDA BAR**

(Additions underscored, deletions struck through)

THE FLORIDA BAR FOUNDATION  
PROPOSED AMENDMENTS TO THE IOTA RULE-  
LEGISLATIVE: STYLE

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

(1) Definitions. As used herein, the term:

(A) "nominal or short term" describes funds of a client or third person that, pursuant to subdivision (73), below, the lawyer has determined cannot practicably be ~~placed at interest~~ invested for the benefit of the client or third person;

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

(C) "IOTA account" means an interest or dividend-bearing trust account described in subdivision (2) below benefitting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

(D) ~~"Daily Financial Institution Repurchase Agreement" means an overnight investment of IOTA funds described in subdivision (4), below, in a financial institution eligible to enter into a Daily Repurchase Agreement described in subdivision (3), below. (3) "Eligible Financial Institutions" An IOTA Account shall be established with~~ 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, the Federal Savings and Loan Corporation, 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). The funds covered ~~will be subject to withdrawal upon request and without delay. A daily financial institution repurchase agreement, described~~

41 ~~in subdivision (1)(D), above, may be established only with an eligible financial~~  
42 ~~institution which is deemed to be “well capitalized” or “adequately capitalized” as~~  
43 ~~defined in applicable federal statutes and regulations.~~  
44

45 (E) “Interest or dividend-bearing trust account” means a federally  
46 insured checking account or investment product, including a daily financial  
47 institution repurchase agreement or a money market fund. A daily financial  
48 institution repurchase agreement must be fully collateralized by, and an open end  
49 money market fund must consist solely of, Udi States Government Securities.  
50 A daily financial institution repurchase agreement may be established only with an  
51 eligible institution that is deemed to be “well capitalized” or “adequately  
52 capitalized” as defined by applicable federal statutes and regulations. An open  
53 end money market fund must hold itself out as a money market fund as defined by  
54 applicable federal statutes and regulations under the Investment Company Act of  
55 1940, and have total assets of at least \$250,000,000.00. The funds covered by this  
56 rule shall be subject to withdrawal upon request and without delay,  
57

58 (2) Required Participation, All nominal or short-term funds belonging to  
59 clients or third persons that are placed in trust with any member of The Florida  
60 Bar practicing law from an office or other business location within the state of  
61 Florida shall be deposited into one or more ~~interest-bearing trust checking~~ IOTA  
62 ~~accounts in an eligible financial institution for the benefit of the Foundation,~~  
63 except as provided in rule 4- 1.15 with respect to funds maintained other than in a  
64 bank account, or as provided in rule 5-1.2(a). Only trust funds that are nominal or  
65 short-term shall be deposited into an IOTA account. The member shall certify  
66 annually, in writing, that the member is in compliance with, or is exempt from, the  
67 provisions of this rule.  
68

69 ~~(7)~~(3) Determination of Nominal or Short-Term Funds. The lawyer shall  
70 exercise good faith judgment in determining upon receipt whether the funds of a  
71 client or third person are nominal or short-term. In the exercise of this good faith  
72 judgment, the lawyer shall consider such factors as:  
73

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

76 (B) the period of time such funds are expected to be held;  
77  
78

117           (5) ~~Remittance Instructions. Lawyers or law firms shall direct the~~  
118 ~~financial institution.~~ Eligible Institution Participation in IOTA. Participation in  
119 the IOTA program is voluntary for banks, savings and loan associations, and  
120 investment companies. Institutions that choose to offer and maintain IOTA  
121 accounts must meet the following requirements;

122  
123           (A) Interest Rates and Dividends. Eligible institutions shall pay  
124 on IOTA accounts the highest interest rate or dividend generally available from  
125 the institution to its non-IOTA account customers when IOTA accounts meet or  
126 exceed the same minimum balance or other requirements;

127  
128           (B) Remittance and Reporting Instructions. Eligible institutions  
129 shall:

130  
131           ~~(A)~~(a)       to calculate and remit interest or dividends on the  
132 balance of the deposited funds in accordance with the ~~financial~~ institution's  
133 standard practice for non-IOTA account ~~depositors~~ customers, less reasonable  
134 service charges or fees, if any, in connection with the deposited funds, at least  
135 quarterly, to the Foundation;

136  
137           ~~(B)~~(b)       to transmit with each remittance to the Foundation a  
138 statement showing the name of the lawyer or law ~~firm~~ from whose IOTA account  
139 the remittance is sent, the lawyer's or law firm's IOTA ~~trust~~ account number as  
140 assigned by the ~~financial~~ institution, the rate of interest applied, the period for  
141 which the remittance is made, the total interest or dividend earned during the  
142 remittance period, the amount and description of any service charges or fees  
143 assessed during the remittance period, and the net amount of interest or dividend  
144 remitted for the period; and

145  
146           ~~(C)~~(c)       to transmit to the depositing lawyer or law ~~firm~~, for each  
147 remittance, a report statement showing the amount of interest or dividend paid to  
148 the Foundation, the rate of interest applied, and the period for which the ~~report~~  
149 statement is made.

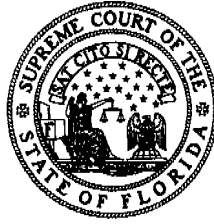
150  
151           ~~(8)~~ (6) Small Fund Amounts. The Foundation may establish procedures for  
152 a lawyer or law ~~firm~~ to maintain an interest-free trust account for client and ~~third-~~  
153 person funds that are nominal or short term when their nominal or short-term trust  
154 funds cannot reasonably be expected to produce or have not produced interest

155 income net of reasonable ~~financial~~ eligible institution service charges or fees.

156  
157 (9) (7) Confidentiality. The Foundation shall protect the  
158 confidentiality of information regarding a lawyer's or law firm's trust account  
159 obtained by virtue of this rule.

160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192

April 2, 2001



# Supreme Court of Florida

Office of the Clerk  
500 South Duval Street  
Tallahassee, Florida 32399-1927

THOMAS D. HALL  
CLERK  
DEBBIE CAUSSEUX  
CHIEF DEPUTY CLERK

PHONE NUMBER (850) 488-0125  
[www.flcourts.org/clerk.html](http://www.flcourts.org/clerk.html)

## ACKNOWLEDGMENT OF NEW CASE

April 30, 2001

RE: AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR -  
RULE 5-1.1(E) - IOTA

CASE NUMBER: SC01-85 1

The Florida Supreme Court has received the following documents reflecting a filing date of 4/27/2001.

Petition of the Florida Bar Foundation for Modification of the Interest on Trust  
Accounts Program (Original & 7)

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts, if any, enclosed with this acknowledgment.

bhp

cc:

DARRYL M. BLOODWORTH  
A. HAMILTON COOKE  
RANDALL C. BERG, JR.  
PETER M. SIEGEL  
JONEL NEWMAN  
JOHN ANTHONY BOGGS  
JOHN F. HARKNESS, JR.