

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
RULES REGULATING THE
FLORIDA BAR - MISCELLANEOUS**

CASE NO. SC2022-1292

**THE FLORIDA BAR'S
REPORT ON IMPLEMENTATION STATUS - CORRECTED**

As directed by this Court on August 4, 2023, The Florida Bar (the Bar) respectfully files this report on the status of the implementation of the amended version of Rule Regulating The Florida Bar 5-1.1(g)(5)(B). The Bar gratefully acknowledges assistance from the Florida Bar Foundation (the Foundation) in making this report. The Foundation's September 11, 2023 letter responding to the Bar's request for information with attachments (bank names redacted from all documents) is provided with this report as Exhibit A. The information in this report summarizes key points from the full information provided by the Foundation. This corrected report is identical to the original except for the title, this sentence, the footer, and the electronic signatures added to the end of the document.

Amendments to rule 5-1.1(g)(5)(B) went into effect on May 15, 2023. Those amendments are working as this Court and the Bar envisioned; the playing field has been leveled. It is important to note that the rule does not regulate banks. The rule regulates lawyer conduct in maintaining lawyer trust accounts, in which the funds held are short-term or nominal, and the interest earned on these accounts (IOTA accounts) are remitted to the Foundation. Once these funds are distributed by the Foundation, they are used to assist the ultimate beneficiaries of IOTA funds: indigent Florida citizens in need of legal representation who are 125% of the poverty line or below.

Because most lawyers in Florida operate as solo or small firm practitioners and do not themselves benefit from the use of these funds, until now there has been little, if any, incentive for lawyers to negotiate with banks for the best possible terms. The amendments were designed to change that situation and enable lawyers to obtain the highest possible interest rate for IOTA accounts in a free market. Banks now have an incentive to offer a higher yield, if they want to continue to benefit from the billions of dollars held in IOTA

trust accounts. Information obtained from the Foundation indicates that, at least in the early stages of implementation, the rule is working exactly as designed.

Currently, approximately 161 banks in Florida hold IOTA accounts totaling nearly 9 billion dollars. By July 2023, nearly 92% of the total aggregate balance of funds in Florida IOTA accounts yielded a compliant minimum interest rate. Eighty percent of participating banks holding these funds were substantially compliant with the new minimum interest rate (substantial compliance ranged from 74.5% in May to 79.8% in July).

In June 2023, banks remitted over \$15 million to the Foundation. Because remittances are received in arrears, June was the first month in which remittances were made after the rule went into effect; the rule was in effect for only half of May. Even the amount received for May was more than three times the amount received in April. Remittances in July, collecting interest from the first full month the rule was in effect, were over \$23 million. Remittances for August were just under \$23 million. To put this in perspective, in 2 and ½ months under the new rule, the

remittances are at approximately \$61 million to assist the ultimate beneficiaries of IOTA funds: indigent Florida citizens in need of legal representation.

By way of comparison, total annual remittances for the four years beginning in 2018 were:

2018-2019 – \$12,711,423.48

2019-2020 – \$16,233,686.58

2020-2021 – \$ 7,742,737.56

2021-2022 – \$ 9,498,632.93

Remittances for all of fiscal year 2022-23 were higher than prior years due to increased interest rates even before the new rule went into effect on May 15, 2023. Nevertheless, remittances for June, accounting for the first 2 weeks the new rule was in effect, totaled 31.6% of remittances for the entire fiscal year of 2022-23.

The vast majority of banks continue to waive activity and handling fees. The Foundation noted to the Bar that, of the 20.1% of banks (32) with remittances that fell below the minimum yield for July 2023, 1 bank charged substantially higher activity or handling fees than before the adoption of the amended version of the rule.

That bank charged a total of \$461,972.69 in handling fees, which unfortunately accounted for 68.8% of the gross remittance of \$671,442.40 from that bank. This same bank's remittances for June showed a large increase in activity fees (\$455,817.24 in activity fees and \$10,854 in handling fees out of the gross remittance of \$635,969.46); for May, the bank's handling fees were \$212,166.56 with maintenance fees of \$10,818.00 and activity fees of \$3,503.44 subtracted from the gross remittance of \$344,770.21. This same bank's handling fees for April, before the rule went into effect, was \$7,188.00. Another bank, whose remittance for July was not yet received, had higher fees for May and June. The Bar is optimistic that lawyers will be sensitive to any such large increases in activity and handling fees in their IOTA accounts, and that the market will supply other banks willing to compete concerning these fees.

Of the approximately 161 banks that held IOTA accounts when the amended rule went into effect, only 3 have stopped providing IOTA accounts, and 1 additional bank has indicated that it intends to stop providing IOTA accounts by November 2023. That

is 2.5% of the participating banks. The total funds held in IOTA accounts by those 4 banks is only \$880,572.01, or 0.1% of the total aggregated funds held in IOTA accounts in Florida.

There are 2 banks that recently have enrolled with the Foundation to hold IOTA accounts, and the Foundation recently received another inquiry from a different bank. The Bar is also aware that there are banks that have indicated a desire to increase their IOTA accounts. For example, Flagship Bank recently sent an email to all Clearwater Bar Association members stating its commitment to complying with the new rule and offering new accounts at their 6 locations, attached as Exhibit B.

The Bar has engaged in discussions concerning the new rule with representatives of the Florida Bankers Association. Those discussions have not caused the Bar to believe that a substantive change in the amended rule is warranted at this time, as the rule is working exactly as designed.

Accordingly, the Bar requests that this Court accept this report and deny the pending motion of the Florida Bankers Association.

Respectfully submitted,

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CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this petition is typed in 14-point Bookman Old Style type.

/s/ Elizabeth Clark Tarbert

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Director, Lawyer Regulation Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2023, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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