

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC22-1292

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**COMMENT REGARDING THE
FLORIDA BAR'S OCTOBER 2, 2023 REPORT**

Pursuant to this Court's Order dated August 4, 2023, the undersigned member of The Florida Bar files the attached comment of Joseph Hudgins, a 40 plus year banker.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing and attached comment of Joseph Hudgins was served on this 31st day of October 2023, via electronic transmission through the Florida courts e-filing portal to all counsel of record.

/s/ Thomas H. Dart
1515 Ringling Blvd.
Suite 700
Sarasota, FL 34236
Attorney for Joseph Hudgins

JOSEPH D. HUDGINS' COMMENT
REGARDING THE FLORIDA BAR'S OCTOBER 2, 2023 REPORT

As a 40 plus year banker, I submit my thoughts and comments on the Bar's report to the Court and as it relates to IOTA accounts in Florida. Please understand I write this response as a banker in my personal capacity and not as a representative of The Florida Bar.

A bit of background might be helpful for this submission.

- I have been the President and CEO of three Florida Banks.
- I have taught at the Florida Bankers Association (FBA) school of banking for thirty years.

- I have been the emcee of the FBA Bank Directors Conference for the last fifteen years.

- I have taught at the Graduate School of Banking at LSU for the last seventeen years, having served as president of the school for three years.

- I have provided training videos to the Federal Reserve Banks in their Supervision and Regulation division on operating a bank in difficult economic times.

- Finally, I was the finalist for the Commissioner of Banking for the State of Florida Office of Financial Regulation (OFR) only to decline the offer when other factors arose.

It is based upon my background and experience that I submit these comments.

The language for the rule change was designed to create a commercially reasonable change for how interest rates are determined for banks participating in the program while increasing

IOTA revenues to better support civil legal assistance in Florida. Heretofore, interest rates were determined by participating banks with little or no input from the law firms that placed the deposits with their banks. Thus, the participating banks had carte blanche authority to pay the lowest possible rate regardless of market conditions.

The beneficiaries of the interest paid were not able to negotiate with the banks for better rates and the law firms had little incentive to negotiate the rate, as their primary concern was the efficient management of the accounts by the banks. With no participation from law firms on how this rate was determined, banks gradually lowered their rates below market rates. As a result, the very individuals in Florida the IOTA program was set up to assist, low to moderate income individuals and families in need of civil legal aid, were being adversely impacted by the banks.

Therefore, the rule change was proposed to ensure the interest rate paid by banks was driven by market conditions and was commercially reasonable to both parties. There is a broad variety of rules and guidelines the banks must abide by that were instituted to ensure that communities and individuals were fairly served and equitably treated. These include the Community Reinvestment Act, numerous Fair Lending Guidelines, and UDAAP. Should the regulatory agencies choose to closely examine the way these rates are currently set, banks could be criticized for putting their interests ahead of the beneficiaries of the IOTA program that, as previously stated, have no ability to advocate for themselves.

Tracking an indexed rate tied to a market benchmark rate was done to ensure the resulting rate being paid in all market scenarios was still beneficial for banks in Florida to participate in the IOTA program while at the same time being commercially reasonable to the beneficiaries. Much has been said as to the index chosen - the Wall Street Journal (WSJ) prime rate versus the target Federal Funds rate. The FBA member banks concur there is almost always a 300-basis point spread between the WSJ prime rate and the targeted Federal Funds rate. Since the targeted Federal Funds rate is not easily obtained by the average consumer and can vary at different times of the month, and since the WSJ prime is generally static during a month and is the better-known and understood interest rate, the WSJ prime rate was chosen as the indexed rate. Additionally, using the WSJ prime rate as the indexed rate allows bankers and attorneys to efficiently match up funding costs on IOTA accounts with loans based on the WSJ prime rate. Most, if not all banks participating in the program, will have more dollars of loans indexed to the WSJ prime rate than IOTA balances, thus always assuring the banks the IOTA funds are being employed profitably. Currently this spread is over 510 basis points (5.10%), leaving a sufficient margin to pay related operating costs to administer the IOTA program and contribute to the net income of the bank. Historically the spread between the earning asset rate and the interest-bearing liabilities to fund earning assets is 300 basis points (3.00%), providing further reason to consider the interest rate methodology commercially reasonable. With the current 510 basis point spread now being

enjoyed by participating Florida banks, this is certainly proof the interest rate methodology is commercially reasonable to the banks at the current requirements of the rule change.

Another intentional addition to the rule is the requirement that the final yield (interest rate paid on IOTA deposits net of all fees) must be the lower of 40% of the WSJ prime rate or the WSJ prime rate minus 300 basis points). Most participating banks in Florida have complied with this rule, however a few banks (those with high concentrations of IOTA deposits in their funding sources) have raised their fees and service charges over ten-fold to offset the interest rate requirement of the amended rule. This effectively places those banks in non-compliance with the amended rule as their final yield remitted is exceedingly below the rule's yield requirement. The above practice was anticipated in some Florida banks, so the amended rule requires all remittances to be net of all fees. The changes to the rule have proven to be helpful to Florida's IOTA Program and, consequently, the people served by it. Those changes have proven to be a fair and attractive funding source for participating Florida banks. This assertion is further bolstered by the fact that several large and regional banks have inquired and stated they would like to increase their IOTA holdings if there are banks that withdraw from the program.

The motivation behind this rule change is to provide greater access to justice for low to moderate income citizens of Florida. This rule change accomplishes that with certainty using a rate that is fair and equitable to all.

Respectively submitted,

Joseph D. Hudgins

1220 Bay Road

Sarasota, FL 34239

jodyhudgins@comcast.net

941.356.1220