

IN THE SUPREME COURT OF
FLORIDA IN RE:
AMENDMENTS TO THE
RULES REGULATING THE
FLORIDA BAR –
MISCELLANEOUS

CASE NO. SC2022-1292

COMMENT OF THE FLORIDA CIVIL LEGAL AID ASSOCIATION

I. Introduction

Pursuant to this Court's order requesting comments on The Florida Bar's Report on Implementation Status, the Florida Civil Legal Aid Association (FCLAA), files this comment. FCLAA supports the Report on Implementation Status filed by The Florida Bar and joins the Bar in requesting the Court accept the Bar's Report. The Bar's report demonstrates that the new amendments to the IOTA rule are working, and that low-income Floridians will have greater access to legal services than they have had for some time. It is a true step forward in the continuing battle to serve the legal needs of low-income Floridians. This certainly does not mean that all the legal needs of eligible Floridians are being fully met. But that discussion is for another day. All that is before the Court in this case now is what the Bar's report demonstrates and whether the Court should reconsider the rule change it already made. There is

simply no basis for revisiting the rule nor delaying its implementation. As such FCLAA further requests that the Court deny the pending motion of the Florida Bankers Association to rehear the Court's amendments to Rule Regulating The Florida Bar 5-1.1(g)(5)(B).

II. Background

FCLAA is a 501(c)(6) membership organization composed of the executive leadership of twenty-nine civil legal aid programs in Florida.¹ It represents the interests of the civil legal aid firms throughout Florida, and, by extension, the interests of the poor and at-risk Floridians served by civil legal aid. FCLAA's purpose is to promote collaboration within the legal aid community to achieve access to justice and equity in the law. All member organizations of FCLAA are also "qualified grantee organizations" as that term is defined by the IOTA Rule, Rule 5-1.1, Rules Regulating Trust Accounts.

FCLAA's membership organizations serve a wide variety of rural and urban communities, each with different needs for legal

¹ The identify of these leaders and programs is included in a table at the end of this brief.

services. For decades, low-income Floridians have relied on their civil legal aid law firms to provide legal assistance in numerous legal matters, including but not limited to:

- housing,
- family law,
- government benefit programs,
- domestic violence,
- immigration,
- veterans' rights,
- community economic development,
- consumer rights,
- employment,
- education, and
- disability rights.

Despite the varying service areas, populations, and legal needs, a commonality they all share is the scarcity of resources to meet the increasing demands of the communities they serve. The kinds of casework done by Florida's civil legal aid attorneys are difficult and complex, and often not replicated within the private bar. Our clients are, among others:

- Florida's senior citizens dealing with door-to-door scams and the electronic signatures (E-Sign) Act,

- domestic violence survivors who are victims of financial abuse,
- nursing home residents who are being evicted using a complicated administrative process, and
- veterans who are suffering from the aftereffects of their service to the nation while navigating complicated housing issues.

Most importantly, our clients form the backbone of Florida's agriculture and tourism-based economy.

III. The Scope of the Problem - Low Income Floridians

According to the United Way's Asset Limited, Income Constrained, Employed (ALICE) thresholds, in 2021, 45% of Florida's 8,533,422 households were either living below the federal poverty level or did not have sufficient income to afford the basic essentials² in the communities in which they lived. It is indisputable that most of these households are one unexpected emergency away from living in poverty. That emergency can often be a legal problem. In that case Florida's low-income residents are often forced to choose between solving a legal problem or foregoing basic day-to-day needs.

² Basics include housing, childcare, food, transportation, healthcare, and a mobile phone plan.

Almost four million households in Florida struggle week to week. The more restrictive federal poverty guidelines still place almost a third of Floridians below 200% - an astonishing number.

IV. Closing the Justice Gap

The justice gap is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs. *See* (2022 LSC Justice Gap report, <https://justicegap.lsc.gov/the-report/>) (last accessed 10/26/2023)

This Court, The Florida Bar as an organization, and many of its members individually,³ have long acknowledged, studied, and attempted to close the justice gap. For example, in 1979 this Court directed the Bar to undertake a study of Florida's unmet legal needs, which resulted in a cooperative report by The Florida Bar and the University of Florida's Center for Governmental Responsibility. *See* *The Legal Needs of the Poor and Under-represented Citizens of Florida: An Overview* (1980). That led to adoption of the nation's first IOTA program. It has served as a model for other programs across the nation. In 1989 this Court

³ *See e.g.*, <https://www.floridabar.org/public/probono/probono002/> (Last accessed 10/27/2023)

followed adoption of IOTA with approval of the change from voluntary to mandatory participation in the IOTA program. That one step increased revenue to serve Florida's poor by more than 450%. Despite that huge growth in revenue, a 1993 study found that only 22% of the legal needs of Florida's low-income residents were being met. See <https://thefloridabarfoundation.org/history/>(Last accessed 10/26/2023)

In 2001, this Court amended the rule again establishing the first interest rate comparability program in the nation. See <https://thefloridabarfoundation.org/history/>(Last accessed 10/27/23) Additionally in 2006, "Chief Justice Lewis issued Administrative Order SCAO 06-54, which charged the Commission on Trial Court Performance and Accountability with various management and monitoring tasks. Specifically, the [order] mandated that the commission "make recommendations for a court-based service framework that will connect litigants with legal assistance" and "reliably provide the ministerial assistance and procedural information needed to ensure that litigants representing themselves have meaningful access to the civil justice system.'" See

<https://www.flcourts.gov/content/download/218243/file/SelfHelpFinalReport0408.pdf> (Last accessed 10/27/23)

Then in November 2014, this Court created the Florida Commission on Access to Civil Justice which continued to raise public awareness around the challenges of those that do not have access to legal representation. *See* Fla. Admin. Order AOSC14-65, Fla. Nov. 24, 2014, <https://supremecourt.flcourts.gov/content/download/240985/file/AOSC14-65.pdf> (Last accessed 10/27/2023).

In 2022, the Florida Bar's Special Committee on Greater Public Access to Legal Services submitted an extensive report to the Court for its consideration. *See* <https://www-media.floridabar.org/uploads/2023/01/12-27-22-Final-Report-Recommendations-Special-Committee-on-Greater-Public-Access-to-Legal-Services-reduced-size.pdf>(Last accessed 10/27/2023)

Finally, this Court, in this case, as the Court is fully aware, at the request of the Bar, further amended the rule and required eligible institutions to tie interest rates for IOTA accounts to specific indexed rate points, which has the potential to significantly grow the resources for the legal aid community.

This is by no means an exhaustive list of the combined efforts of both the Bar and the Court to address the justice gap, but it demonstrates the long-standing commitment and collaborative efforts to address the problems within the bounds of the law and their individual mandates.

V. The Justice Gap Continues to Grow

The additional revenue that the amended rule will bring Florida closer to narrowing the justice gap - a gap that has only increased during the pandemic. General support from the State of Florida remains at zero. Florida is one of only three states in the nation with zero general state support for civil legal aid. *See* <https://www.floridabar.org/the-florida-bar-news/foundation-prepares-to-disburse-roughly-32-million-in-legal-aid-grants-in-december/> (Last accessed 10/27/23)

Today, legal aid providers are operating in an atmosphere of increasing demand and decreasing revenue. The Legal Services Corporation's (LSC) 2022 Justice Gap report found that low-income Americans do not get any or enough legal help for 92% of their civil legal problems. *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans Report, 2022. See*

<https://justicegap.lsc.gov/>(Last accessed 10/27/2023). This unmet need is prevalent in the low-income community, as 74% of low-income households experienced at least one civil legal problem in the last year, and 62% experienced two or more in the past year.

(Id.) The most common legal problems were in the areas of family law, including domestic violence matters, consumer issues, healthcare, income maintenance and housing. *(Id.)* Additionally, the legal problems related to housing disproportionately impacted renter households. *(Id.)* In many instances, the inability to address a legal problem led to the exacerbation of another legal problem.

(Id.)

This is consistent with what low-income Floridians are experiencing. Without question, Florida has unique challenges such as:

- skyrocketing cost of living expenses exceeding federal increases, and
- a large population of senior citizens often living on fixed incomes, and
- an ongoing housing affordability crisis.

The housing crisis hits low-income Floridians the hardest and has destabilizing effects that last months and even years after an

eviction or foreclosure. These areas of need and increasing demand is consistent with FCLAA members' experiences, particularly in certain areas of greatest need:

- The Legal Aid Foundation of Tallahassee reported an 80.15% increase in cases from 2020-2023, which does not even include those individuals only provided with information and resources or referred to other legal providers due to the organization's limited resources. This significant increase in cases and clients was only possible due to supplemental COVID funding the agency received - funding that ended in September 2023.
- Coast to Coast Legal Aid reported that evictions are a major problem and housing insecurity is further exacerbated in Broward due to the large populations of fixed income Seniors who own their homes but are unable to afford increasing property insurance and tax rates. These increases leave them vulnerable to scams and foreclosures, both of which often require the intervention of a legal aid attorney. Without legal assistance, they are at risk of losing their homes.
- The number of requests for assistance with family law issues relating to domestic violence received by Brevard County Legal Aid (BCLA) has doubled in recent years, especially since the pandemic struck. BCLA has been forced to significantly increase the number of clinics aiding survivors of domestic violence.
- In the last year, Legal Services of Greater Miami's Tenants Rights' unit has increased the number of tenants provided with full legal representation by 91%. Yet, despite this growth, it regularly turns away eligible tenants for assistance due to its limited resources.

- Florida’s veterans are increasingly at risk in this State from the burgeoning affordable housing crisis. Legal Services of North Florida (LSNF) has seen an increase in those who are or are at risk of homelessness, including the Veterans we serve. In 2023, LSNF has already seen a 40% increase in the number of veteran clients who report as homeless, in a shelter, unhoused, or living with friends. The causes are numerous – increased rents, loss of Social Security or VA benefits, family issues, domestic violence, hurricane-damaged homes, and challenges accessing both physical and mental health services. LSNF works with local homeless shelters and others to help those who served us return to housing and stability. COVID-related funding helped LSNF to expand this work, but this funding ended in September 2023. It is a sad fact that those who served their nation are caught up in this ever-increasing downward spiral of poverty.
- In the area of disaster relief, Three Rivers Legal Services, Inc. (TRLS), which already had waitlists for services, is now providing disaster relief services related to Hurricane Idalia, as nine of TRLS’ seventeen counties have been designated disaster areas by FEMA and is attempting to provide services in landlord/tenant, probate, and FEMA application assistance matters, all without any additional funding.
- Since 2019, Jacksonville Area Legal Aid has experienced a 161% increase in eviction prevention legal assistance requests. This demand is consistent with the increasing eviction filings in its service which are exceeding pre-pandemic levels and are projected to be 14% higher this year than last year.

Florida’s civil legal aid system employs more than five hundred attorneys providing direct legal services. In recent years, many legal aid programs have grown to meet the increasing and evolving

legal needs of Florida's low-income community; however, programs are facing funding elimination and reductions from several funding sources:

- Termination of all federal COVID related funding sources;
- Reduction of Victims of Crime Act (VOCA) grants, with the Attorney General's Office forecasting a drop from \$106.7 million to \$66.7 million for fiscal 2024-2025 - an astonishing decrease of \$40 million dollars;
- Possible Legal Services Corporation funding reduction;
- Termination of community economic development grants that were funded with Paycheck Protection Program (PPP) loan fees;
- Decreases in United Way funding, a historical source for local legal aid programs. The Legal Aid Society of Palm Beach County has been recently informed by their local United Way program that allocations to partner agencies for 2024-2025 will be reduced by 50%, with similar trends forecast by United Way agencies across the state.

Increased funding would give programs the critical funding to attempt to hold steady and sustain the growth they have accomplished in recent years with federal pandemic-related funds.

The increase in IOTA funding forecast by The Florida Bar⁴ as a

⁴ On page 2 of the Bar report the Bar references a threshold of 125% of the federal poverty level as threshold level for qualifying for legal aid. While that standard does exist in certain circumstances, the threshold number varies based on a number of variables, including the type of case, the age of the person needing aid, etc. Rule 5-1.1(g)(G) specially provides: "Qualified legal services"

result of this rule change will enable legal aid law firms to retain talented attorneys that now have several years' experience serving the low-income client community, while they turn their attention to the emerging legal needs of Florida's large at-risk population. In order for us to continue to form the foundation of access to justice in Florida, we need the resources for necessary technology and professional development opportunities to compete in today's evolving labor market.

VI. Conclusion

The Florida Civil Legal Aid Association supports the Report on Implementation Status filed by The Florida Bar and joins the Bar in requesting the Court accept The Bar's Report and deny the pending motion for rehearing of the Florida Bankers Association.

Respectfully submitted,

/s/Thomas D. Hall

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are free legal services provided directly to **low-income clients** for their civil legal needs in Florida. (Emphasis added)

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CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this petition is typed in 14-point Bookman Old Style font.

/s/Thomas D. Hall
Thomas D. Hall
Florida Bar Number 310751

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2023, the foregoing was filed and served via the State of Florida's E-Filing Portal to all counsel of record.

/s/Thomas D. Hall
Thomas D. Hall
Florida Bar Number 310751

FLORIDA LEGAL AID ASSOCIATION		
Organization	Title	Name
Americans for Immigrant Justice	Executive Director	Shalyn Fluharty
Bay Area Legal Services	Chief Executive Officer	Richard "Dick" Woltmann
Brevard County Legal Aid	Executive Director	Robert L. Johnson, Jnr
Catholic Legal Services	Executive Director	Randolph McGrorty
Center for Children's Rights	Executive Director	Betsy Dobbins
Coast to Coast Legal aid of South Florida	Executive Director	Lisa G. Goldberg
Community Justice Project	Director	Alana Greer
Community Law Program	Executive Director	Kimberly Rodgers
Community Legal Services of Mid-Florida	Chief Executive Officer	Jeffrey Harvey
Florida's Children First	Executive Director	Geori Berman Seldine
Florida Health Justice Project	Executive Director	Alison Yager
Florida Legal Services	Executive Director	Christopher Jones
Florida Justice Institute	Executive Director	Dante P. Trevisani
Florida Rural Legal Services	Executive Director	Jaffe S. Pickett
Gulfcoast Legal Services	Chief Executive Officer	Theresa Prichard
Heart of Florida Legal Aid Society	Executive Director	Sonya C. Davis
Jacksonville Area Legal Aid	President & CEO	Jim Kowalski, Jr.
Legal Aid of Manasota	Executive Director	Linda Harradine

Legal Aid Service of Broward	Executive Director	Brent Thompson
Legal Aid Society Dade County Bar Assn.	Executive Director	Karen Ladis
Legal Aid Society of the Orange County Bar Assn.	Executive Director	Bethanie Barber
Legal Aid Society of Palm Beach County	Executive Director	Robert Bertisch
Legal Services of Greater Miami	Chief Executive Officer	Monica Vignes-Pitan
Legal Services of North Florida	Executive Director	Leslie Powell Boudreaux
Northwest Florida Legal Services	Executive Director	W. Douglas White
Seminole County Bar Assn. Legal Aid Society	Executive Director	Silvia McLain
Southern Legal Counsel	Executive Director	Jodi Siegel
The Legal Aid Foundation of Tallahassee	Executive Director	Lauren Stafford
Three Rivers Legal Services	Interim Executive Director	Donna MacRae