

IN THE SUPREME COURT OF FLORIDA

CASE NO. 72-671

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

JUN 1 1988

CLERK, SUPREME COURT

WILLIAMS, PARKER, HARRISON, DIETZ & GETZEN
COMMENT ON THE FLORIDA BAR FOUNDATION PETITION

Williams, Parker, Harrison, Dietz & Getzen, a Professional Association comprised of active members of The Florida Bar, files this comment regarding the petition of The Florida Bar Foundation, Inc. (the "Foundation"), to amend Rule 5-1.1(d) of the Rules Regulating The Florida Bar (the "Rules") (Case No. 72-671).

I. Introduction

Williams, Parker, Harrison, Dietz & Getzen supports the Foundation's proposed amendments to rule 5-1.1(d) of the Rules. The purpose of this comment is to address the application of IOTA to third party funds held by an attorney in trust and to reiterate other changes to chapter 5 of the Rules that should be made for clarification and consistency. The additional changes are attached as Appendix 1.

II. Typographical Errors

Rules 5-1.1(a) and (b), as published in the Rules Regulating The Florida Bar, 494 So.2d 977, 1079 (Fla. 1986), contain typographical errors referencing the reader to an inapplicable rule--namely, rule 4-1.5. Each reference should be to rule 4-1.15. See Appendix 1 for the necessary corrections.

III. Third Party Funds

Rule 4-1.15 provides that "[a] lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation" (emphasis added). Chapter 5, however, refers repeatedly to "client funds" only, without any reference to "third party funds." It is as if the authors of chapter 5 completely forgot that rule 4-1.15 authorizes attorneys to hold in trust funds of non-client third parties.¹

To conform chapter 5 to rule 4-1.15, the references in chapter 5 to funds of "clients" should be expanded to include funds of "third parties".² Appendix 1 sets forth the changes that should be made to chapter 5 (other than rule 5-1.1(d), which is covered by the Foundation's proposed amendments) to accomplish this end.

IV. IOTA Application to Third Party Funds

The comment of Harvey M. Alper questions the propriety of making IOTA applicable to third party trust funds. Mr. Alper gives no rationale for distinguishing third party funds from client funds, other than his belief that the Court's January 26, 1989, opinion did not intend to make IOTA applicable to third party funds.

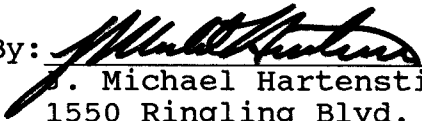
¹Real estate attorneys, for example, frequently hold earnest money deposits in trust pending closings. If the attorney is representing the seller, the buyer's deposit constitutes third party funds--not client funds.

²An exception is the first paragraph of rule 5-1.1 concerning the application of client trust funds to the payment of attorney fees. Presumably attorney fees would not be payable by non-client third parties.

Without arguing what the Court may or may not have intended by the language of its opinion, Williams, Parker, Harrison, Dietz & Getzen urges the Court to make IOTA equally applicable to client and third party funds. One of the goals of the IOTA program is to minimize the burden on attorneys in participating in the program, a goal which is promoted by treating client and third party funds identically. If the Court distinguishes third party funds from client funds, not only must an attorney make a determination as to the "nominal" or "short term" character of trust funds, the attorney must also adopt procedures to determine and separate third party funds from client funds. Furthermore, segregating third party funds and client funds would necessitate maintenance of two checking accounts, even though the funds at issue would be nominal or short term.

In the absence of a valid distinction between client funds and third party funds, IOTA should be made applicable to both categories as set forth in the Foundation's proposed amendments to Rule 5-1.1(d).

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished to each of the following persons by U. S. mail this 30th day of May 1989.

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