

Florida Civil Legal Aid Association

Ensuring Access to Justice for Floridians

June 11, 2020

Sent Via Email

Task Force on Distribution of IOTA Funds

% Elizabeth Tarbert

The Florida Bar

Dear Task Force Members:

The Florida Civil Legal Aid Association (FCLAA) is extremely grateful to the Task Force members for their receptiveness and consideration of the feedback we provided in our letter of May 15, 2020. The Revised Combined Recommendations of the Subcommittee dated June 12, 2020, takes a comprehensive view on the administration of legal assistance to the poor. The new descriptions for Qualified Grantee Organizations, Qualified Legal Service and Qualified Provider all better reflect the reality of how programs operate and put us in a much stronger position to meet the community's legal needs. We appreciate the Task Force's willingness to address these concerns.

Today, FCLAA is writing to respectfully ask that the Task Force consider requesting an extension of time in which to finalize its final recommendations. In the alternative, FCLAA requests that the recommendations be amended to allow for only one IOTA Fund Administrator sufficiently funded to effectively execute collection, disbursement and leveraging of IOTA funds.

Extending Time for Final Recommendations. FCLAA is aware that the September 15, 2020 deadline is set in the Florida Supreme Court's Administrative Order and does not make this request lightly. Legal aid organizations are accustomed to responding to communities in crisis under challenging circumstances. Devastating hurricanes like Andrew, Wilma, Irma, and Michael, and the Great Recession demonstrated our ability to educate, counsel, assist and advocate for individuals and communities in crisis with extremely limited resources. Today however, legal aid organizations around the country operate under some of the most challenging circumstances we have ever experienced - a pandemic, the worst economy since the Great Depression, and a racial justice crisis decades in the making - all of which disproportionately impact the low-income community. Again, Florida's economy is heavily supported by the low and moderate income workers we represent, and any significant changes would impact our ability to serve them.

In the coming months, our organizations will experience unprecedented demand for services, and our teams will need to respond under very challenging personal circumstances. These challenges are heightened by the significant decrease in private fundraising for most (if not all) legal aid organizations. If adopted, the Task Force's current recommendations would constitute a radical departure from our existing funding structure, without some very important details. It would be the equivalent to building the plane as you fly it – except in this case we are also in a storm.

Given the high level of uncertainty, FCLAA is requesting that the Task Force request an extension to the filing of its final recommendations to better determine the implications of some of its IOTA Fund Administrator recommendations.

Sufficiently Funded Single IOTA Fund Administrator. FCLAA requests that the Task Force amend the recommendation to provide for a single IOTA Fund Administrator sufficiently funded to effectively execute collection, disbursement, and leveraging of IOTA funds. Since the program's inception, Florida has had a single IOTA Fund Administrator. A single IOTA Fund Administrator, allows for effectiveness in:

- negotiating and working with financial institutions on IOTA funds;
- negotiating volume discounts and efficiencies with vendors of critical services such as case management and online legal research programs;
- investing and supporting statewide legal training and other state-wide programs focused on the legal issues specific to low-income individuals and families;
- administering a Loan Repayment Assistance Program (LRAP) which improves retention and bolsters the racial and economic diversity of legal aid attorneys;
- ensuring gaps in services are addressed through a comprehensive monitoring of needs and services; and
- securing additional resources such as statewide grants from large national foundations.

The Florida Bar Foundation has served as the single IOTA Fund Administrator for over 40 years and has historically served all these functions for our state. As passionate advocates serving very different parts of a diverse, complex state, FCLAA members and the Foundation have at times disagreed on specific strategies, yet we have worked through these growing pains to continue growing an effective legal aid response. There is no question that we have shared values, commitment, and a history of successfully collaborating to develop effective strategies to provide greater access to justice.

After carefully reviewing the June 12 recommendations, FCLAA is concerned about the uncertainty of the proposal that the Fund Administrator(s) should distribute funds "using objective standards it develops." These recommendations do not articulate whether the standards ensure that resources will be distributed evenly throughout the state or even within Regions. Also, it is unclear whether programs would be automatically entitled to funds if eligibility criteria is met. If so, that could significantly dilute limited funds between new programs that may qualify, without any assessment as to the quality or effectiveness of their advocacy.

Additionally, more than one IOTA Fund Administrator would be burdensome for programs that would be required to apply for funding, report to, and collaborate with potentially multiple IOTA Fund Administrators.

The current recommendations require disbursement of 95% of IOTA funds – leaving only 5% for administrative expenses directly related to the collection and use of IOTA funds and any enforcement of the compulsory IOTA program. Administration of the IOTA program requires fiscal oversight and reporting with financial institutions as well as ensuring that programs receiving IOTA funds utilize them consistent with best practices and the provision of high quality legal advocacy. A minimum level of staff is required to execute these objectives.

Given the volatility of IOTA funds, it is uncertain whether a single Fund Administrator would have sufficient resources to effectively administer the IOTA program.

Further, the Task Force’s current recommendations, which instruct the IOTA Fund Administrator to spend 95% of IOTA funds each year, ignore the need to manage these funds so that some are available in times of high need and low interest rates. In other words, when the economy is bad, and there are more Floridians in need of help, IOTA funds are low, making it even more critical that the Fund Administrator have IOTA reserves on hand, saved during times of high trust balances and interest rates, to support the system - exactly as the Foundation has done in the past.

FCLAA members and the FBF have a long history of working collaboratively and effectively to best meet legal needs of low-income Floridians. FCLAA is confident that the FBF could serve as the single IOTA Fund Administrator for the state and meet the objective of the Committee’s recommendations – to “give priority consideration to the need for funding direct legal services for low-income litigants.”¹

Conclusion. We understand that the Task Force was charged with providing recommendations by the stated deadline. However, these are unprecedented times for legal aid and the communities we serve. The level of need coupled with the financial uncertainty in which we are operating are a perfect storm, and a drastic change to the administration of IOTA at this time could impede our effectiveness. Thus we are asking that the Task Force consider requesting an extension on the deadline. In the alternative, we recommend that the rule should provide for a single IOTA Fund Administrator, and we believe the Florida Bar Foundation could effectively serve in that role.

Respectfully Submitted,

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¹ In its recent report, the Task Force states that the, “the Foundation is simply outside of the task force’s scope.” The FCLAA disagrees. The Task Force is tasked with determining whether rule 5-1.1(g) should be amended. The rule currently explicitly lists the Florida Bar Foundation and the current proposed changes would remove the Foundation as the recipient of the funds.

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