Module 24: From Record to Remedy

Completing the Chain of Authority

Section 1: Module Summary & History

Core Overview

Module 24 serves as the concluding synthesis of the "Chain of Authority," marking the transition from the construction of a disciplined factual record to the pursuit of lawful accountability. The central theme posits that a record is not merely a collection of correspondence or a proof of non-response; it is a preserved chronology of facts and authority designed for independent examination by a third-party decision-maker. The module emphasizes that accountability is not an act of accusation, but a procedural necessity where an established record is placed before an institution possessing the specific jurisdiction to act upon documented defects.

The structural friction exists between the original constitutional design—where government is an agent possessing only derivative, delegated power—and modern institutional practices that often rely on "circular authority." In circular systems, government actors validate their conduct by pointing to internal rules, downstream precedents, or long-standing practices rather than antecedent lawful sources. This friction is resolved through the module's specific **Firewall Question**: "From what antecedent lawful source did the governmental actor obtain authority to exercise the power shown in the record?"

Core Operational Concepts

- **The Burden Shift:** In the original baseline, the burden of proving authority rested on the government actor to show a specific delegation. In modern practice, the burden has shifted to the citizen to navigate a complex layer of inherited assumptions. The citizen must now use a disciplined record to "break the circle" by forcing the inquiry back to the antecedent Law.
- **The Operational Mechanism:** Administration normalizes drift through "Continuity of Perception." By repeating unauthorized practices across generations, the government creates familiarity. This familiarity is eventually mistaken for truth or lawful authority, allowing the institution to supply its own evidence of legitimacy based on the longevity of the practice.

Glossary of Key Terms

- **Accountability:** The final link in the chain; the process of placing a completed record before a person or institution with lawful authority to examine it and act.
- **Antecedent Source:** A source of authority (Source, Law, or Delegation) that exists prior to and independent of the governmental actor.
- **Contemporanea Expositio:** A legal maxim meaning "contemporaneous exposition is the best and strongest in the law," directing inquiry to the meaning of a text at the time it was adopted.

- **Continuity of Treason:** A structural phenomenon described by St. George Tucker where an original usurpation of power is carried forward and normalized through successive generations of practice.
- **Derivative Authority:** Power that is not original to the actor but is entrusted to them by a principal through a specific commission.
- **Jus Dicere, Non Jus Dare:** A judicial maxim meaning "to declare the law, not to give [or create] the law."
- **The Record:** A cumulative, authenticated chronology of facts, notices, and authority that identifies exactly where a claimed chain of authority failed.

Section 2: Assessment and Review

Multiple-Choice Quiz

1. **What is the primary purpose of building a record according to Module 24?** A. To create a large volume of paper to overwhelm an opponent. B. To prove that a governmental actor failed to answer a specific letter. C. To preserve facts and authority so another decision-maker can examine them. D. To provide a basis for making moral accusations against officials.
2. **According to the "Chain of Authority," where does Government sit?** A. At the Source of all Law. B. Upstream from the Constitution. C. Downstream from the Source and the Law. D. Outside the chain entirely.
3. **What does Hamilton's distinction in Federalist 78 between "judgment" and "will" signify for the judiciary?** A. Courts can create new rules if they have a strong will to do so. B. Judicial power is limited to applying antecedent Law, not originating new rules. C. A court's will is the primary source of its jurisdiction. D. Judgment and will are interchangeable terms in constitutional law.
4. **Which of Vattel's rules of ascertainment prevents an interpreter from adding to a text?** A. The rule of contemporaneous exposition. B. The rule that what is sufficiently declared must be accepted. C. The rule that if something should have been expressed but was omitted, it cannot be inserted afterward. D. The rule of private intentions of the individual framers.
5. **"Circularity" in the search for authority occurs when:** A. The chain traces back to an antecedent Law outside of government. B. A government actor justifies its power by pointing to its own rules or precedents. C. The citizen fails to provide a proof of service. D. A court uses Article III to justify its jurisdiction.
6. **What is the "Firewall Question" used to test a record?** A. Did the official follow their internal training manual? B. From what antecedent lawful source did the actor obtain the power shown in the record? C. How long has this institutional practice been in place? D. Does the citizen approve of the policy being implemented?
7. **The Massachusetts Constitution defines government officers as:** A. The original source of all political power. B. The principals of the political society. C. Substitutes and agents of the people. D. Independent actors not subject to the Constitution.
8. **According to Madison, the "key" to constitutional meaning is found in:** A. The private intentions of the individual framers. B. The preferences of modern administrative

agencies. C. The understanding of the people in the State Conventions that ratified it. D. The most recent Supreme Court decision on the matter.

9. **What defines "Accountability" in the context of Module 24?** A. Declaring victory immediately after a default. B. Identifying the break in the chain and placing the record before a forum with jurisdiction. C. Sending a complaint to every available government office. D. Forcing a government actor to admit they were wrong.
10. **What is the relationship between "Application" and "Alteration"?** A. Application and alteration are the same when circumstances change. B. Application applies existing rules to new facts; alteration changes or enlarges the rule. C. Technology changes automatically result in the alteration of delegated power. D. Alteration is the lawful way government applies its commission to new facts.

Answer Key and Explanations Table

Question	Answer	Explanation
1	C	The record's purpose is to allow a third party to independently verify facts and authority.
2	C	Government exercises derivative power and is positioned downstream from the Source and Law.
3	B	Judgment operates on antecedent Law; Will originates the rule based on the actor's preference.
4	C	Vattel's rules emphasize that omitted items cannot be supplied by the interpreter.
5	B	Circularity exists when the search for authority remains inside the institution being tested.
6	B	This is the specific test to determine if the chain of authority reaches an antecedent source.
7	C	This defines the principal-agent relationship inherent in the American structure.
8	C	Ratification by the people is what gives the Constitution its legal authority.
9	B	Accountability requires matching the record to the correct lawful vehicle and jurisdiction.
10	B	Changed circumstances may require new application but never authorize the alteration of the grant.

Essay Format Questions

1. **The Architecture of Circularity:** Analyze how "Continuity of Practice" can create a circular chain of authority. Explain how institutional repetition can be mistaken for lawful delegation and what role the "Record" plays in exposing this defect.
2. **The Principal-Agent Relationship:** Compare the roles of the "State" (body politic) and the "Government" (machinery). How does the Constitution function as a "Commission," and what are the consequences when the "Agent" attempts to redefine the terms of that commission?

3. **From Record Construction to Accountability:** Describe the transition that occurs in Module 24. Why must a student "read the record as if it belonged to someone else" before choosing an accountability vehicle, and what three questions must a strong accountability packet answer?

Section 3: Exemplars Summary and Relevance

Exemplar	Summary	Relevance to Material
Massachusetts Constitution	Declares power resides in the people; labels officers as "substitutes and agents."	Establishes the foundational principal-agent relationship and the derivative nature of governmental power.
Vattel's Rules of Ascertainment	Five rules for interpreting instruments, emphasizing clear declarations and original meaning.	Provides the "Method of Ascertainment" to prevent government from enlarging its grant through self-interpretation.
Federalist 78 (Hamilton)	Describes the judiciary as possessing "merely judgment" rather than "will."	Distinguishes between the lawful application of antecedent Law and the unauthorized creation of law by the judiciary.

Section 4: Expanded Homework Assignment and Practical Application Exercise

Case File / Background

An administrative agency has issued a "Final Determination" and initiated "Lawful Execution" (seizure or penalty) against a citizen. The citizen has built a record consisting of:

1. A Notice of Inquiry demanding the Source of authority for the specific regulation used.
2. The Agency's response pointing only to its own internal "Manual of Procedure."
3. An Affidavit of Fact documenting the lack of a clear legislative delegation.
4. Proof of Service and a Notice of Default.

The chain appears to break at **Delegation**, as the agency cannot point to a Source antecedent to itself.

Procedural Review Assignment

Step One: Read the Record. Review the cumulative documents as a neutral third party. Separate your beliefs about the agency from what the documents actually prove. **Step Two: Identify the Break.** Pinpoint exactly which link in the chain (Source → Law → Delegation → Due Process → Jurisdiction → Judgment → Lawful Execution) is unsupported by the evidence. **Step Three: Match the Authority.** Identify which forum (e.g., Inspector General, Attorney General, specific Court) has jurisdiction over the documented defect (e.g., failure of official duty or lack of delegation). **Step Four: Preserve the Process.** Document the act of submission to the accountability forum to extend the record's chronology.

Required Document Preparation: The Accountability Packet

Draft the formal **Accountability Packet**. The document must record and preserve:

1. **A Concise Chronology:** A timeline of the acts, notices, and responses.
2. **The Governing Law:** The specific constitutional or statutory limits relevant to the act.
3. **The Documented Defect:** A precise statement of where the chain broke (e.g., "The record establishes that no delegation of power from [Source] was produced").
4. **The Evidence Index:** An organized list of supporting exhibits (affidavits, notices, proofs of service) that allows the recipient to verify the claim independently.

Final Review Question

Upon completion of the packet, the student must answer: **"Does this submission permit a third-party decision-maker to trace the claimed authority to an antecedent source, or does the record prove the chain terminates within the government actor itself?"**

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Sep 21 2026
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9402 8118 9876 5597 3830 47

Federal Bureau of Investigation
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September 21, 2026

SUBMITTED SIMULTANEOUSLY TO:

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Pensacola Resident Agency
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United States Department of Justice
Civil Rights Division, Criminal Section
950 Pennsylvania Avenue NW
Washington, DC 20530

CRIMINAL REFERRAL -- FEDERAL VIOLATIONS
18 U.S.C. §§ 241, 242, 875, 1343, 1346, 1503, 1512, 1513, 1951, 1961–1968, 2511, 2703
RE: WILLIAM HENRY McGOWEN III
WALTON COUNTY, FLORIDA -- COORDINATED DEPRIVATION OF CIVIL RIGHTS

I. INTRODUCTION

Paul Carnie, Manager of Cessatio Potestatis LLC, a constitutional accountability advocacy organization, submits this criminal referral on behalf of William Henry McGowen III, a 71-year-old United States citizen currently incarcerated at the Walton County Jail, 40 Sheriff Circle, DeFuniak Springs, Florida 32433.

The facts set forth below, each supported by official court records, arrest documents, and the docket of a pending federal civil rights action, establish probable cause to believe that multiple named individuals -- including a sitting judicial officer and the Walton County Sheriff -- have engaged in a criminal conspiracy involving extortion under color of official right, honest services wire fraud, obstruction of federal court proceedings, witness retaliation, racketeering, and deprivation of constitutional rights, in violation of 18 U.S.C. Sections 241, 242, 875, 1343, 1346, 1503, 1512, 1513, 1951, 1961-1968, 2511, and 2703.

This referral is submitted on September 21, 2026, under time pressure: critical deadlines expire September 26 and October 13, 2026. Evidence preservation is urgent. The undersigned respectfully requests immediate investigative action.

II. THE VICTIM

William Henry McGowen III (DOB: 08/27/1954), age 72, U.S. citizen, is the plaintiff in McGowen v. Roden et al., Case No. 3:26-cv-04880-MCR-ZCB, United States District Court, Northern District of Florida, a civil rights action filed under 42 U.S.C. Section 1983. He is currently incarcerated at the Walton County Jail, a facility operated by one of the defendants in his federal lawsuit.

III. THE SUBJECTS OF THIS REFERRAL

1. Judge Kelvin C. Wells -- County Court Judge, First Judicial Circuit, Walton County, Florida. Named defendant in Case No. 3:26-cv-04880. Presides over all three of Mr. McGowen's state criminal cases (MM-362, MM-457, MM-582) and the civil eviction case (2026-CC-309). Denied his own disqualification motion. Denied a stay of proceedings while an appellate prohibition petition was pending. Continues to exercise judicial and quasi-judicial authority over the plaintiff who is suing him in federal court.

2. Sheriff Michael A. Roden -- Sheriff, Walton County, Florida. First named defendant in Case No. 3:26-cv-04880. His office served the domestic violence injunction on Mr. McGowen. His deputies arrested Mr. McGowen on all three criminal charges. His facility holds Mr. McGowen. Sheriff Roden is simultaneously Mr. McGowen's defendant, arresting authority, and jailer.

3. **Destin East Mobile Home Park** -- Private entity, Miramar Beach, Walton County, Florida. Plaintiff in the civil eviction (Case No. 2026-CC-309). Used GPS location data to report an injunction violation and trigger Mr. McGowen's arrest on MM-457 -- despite lacking statutory standing to report a domestic violence injunction violation under Florida Statute Section 741.31. Park management is understood to have connections to former law enforcement in Walton County.

4. **Joshua Knight** -- State Attorney, First Judicial Circuit of Florida. Prosecutor in Case No. MM-362. Recipient of copies of Judge Wells's orders. Actor in the prosecutorial apparatus.

5. **Unidentified Individual** -- Person who sent Mr. McGowen a text message stating "How did that work out?" via cellular telecommunications immediately before law enforcement arrived to arrest him. This individual had simultaneous knowledge of Mr. McGowen's telephone inquiry to the Walton County Clerk's office and the impending arrest, evidencing real-time coordination.

IV. FEDERAL STATUTES VIOLATED

18 U.S.C. § 241 -- Conspiracy Against Rights. Two or more persons conspiring to injure, oppress, threaten, or intimidate any person in the free exercise of any right secured by the Constitution or laws of the United States. Penalty: up to ten years; up to life if death results.

18 U.S.C. § 242 -- Deprivation of Rights Under Color of Law. Willful deprivation of constitutional rights by any person acting under color of state law. Applicable to Judge Wells and Sheriff Roden.

18 U.S.C. § 875(c) -- Interstate Threatening Communications. Transmission in interstate commerce of any communication containing a threat to injure the person of another. The text message 'How did that work out?' transmitted via cellular telecommunications to Mr. McGowen immediately before his arrest -- sent by a person with foreknowledge of the arrest -- constitutes an interstate threatening or intimidating communication in connection with his impending seizure.

18 U.S.C. §§ 1343 and 1346 -- Wire Fraud and Honest Services Fraud. Section 1346 defines 'scheme to defraud' to include a scheme to deprive another of the intangible right of honest services. A judge who uses his judicial office for the private benefit of a litigant while simultaneously a named defendant in the plaintiff's federal lawsuit deprives the public and the plaintiff of honest judicial services. Every electronic order signed and transmitted by Judge Wells in proceedings against Mr. McGowen after August 3, 2026 -- the date Case No. 3:26-cv-04880 was filed and Wells became a named defendant -- is a wire transmission in furtherance of a scheme to deprive Mr. McGowen of honest judicial services. See Skilling v. United States, 561 U.S. 358 (2010).

18 U.S.C. § 1503 -- Obstruction of the Due Administration of Justice. Whoever corruptly, or by threats or force, endeavors to influence, obstruct, or impede the due administration of justice. The retaliatory filing of MM-582 against a pending federal plaintiff, the coordinated mechanism that ensured court orders could not reach Mr. McGowen, and the taunting communication sent in connection with his arrest each constitute an endeavor to impede the due administration of justice in Case No. 3:26-cv-04880.

18 U.S.C. § 1512(c)(2) -- Obstruction of Official Proceedings. Whoever corruptly obstructs, influences, or impedes any official proceeding, or attempts to do so. An 'official proceeding' expressly includes proceedings before a federal court. The conduct of Judge Wells -- presiding over the criminal cases of his federal plaintiff to ensure his continued incarceration and inability to respond to court orders -- and of Sheriff Roden -- operating the jail preventing the federal plaintiff from receiving those orders -- constitutes corrupt obstruction of Case No. 3:26-cv-04880. The Supreme Court confirmed in Fischer v. United States, 603 U.S. 480 (2024), that Section 1512(c)(2) requires corrupt intent to obstruct; the documented pattern satisfies that standard.

18 U.S.C. § 1513(e) -- Retaliating Against a Victim. Whoever knowingly, with intent to retaliate, takes any action harmful to any person for providing truthful information relating to the commission of a federal offense. Filing MM-582 against Mr. McGowen 17 days after Walton County was served with his federal civil rights complaint, with a speedy trial deadline aligned to the federal court's objection deadline, constitutes actionable retaliation.

18 U.S.C. § 1951 -- Hobbs Act Extortion Under Color of Official Right. Extortion under color of official right occurs when a public official uses the power of his office to obtain property from another without consent. No explicit threat is required when the victim yields to official authority. Evans v. United States, 504 U.S. 255 (1992). The issuance by Judge Wells of the Writ of Possession and its execution by Sheriff Roden's deputies resulted in the taking of Mr. McGowen's residence at 9950 US Highway 98 W, Unit B6, Miramar Beach, Florida under color of judicial and law enforcement authority. This is Hobbs Act extortion by public officials acting in concert.

18 U.S.C. §§ 1961-1968 -- Racketeer Influenced and Corrupt Organizations Act (RICO). The documented conduct constitutes a pattern of racketeering activity by an enterprise affecting interstate commerce. Enterprise: Judge Wells, Sheriff Roden, Destin East Mobile Home Park, and Joshua Knight constitute an identifiable association-in-fact enterprise with the common purpose of removing Mr. McGowen from his home and suppressing his legal challenges. Predicate Acts: Hobbs Act extortion (Section 1951), honest services wire fraud (Sections 1343/1346), obstruction of official proceedings (Section 1512), obstruction of justice (Section 1503), and witness retaliation (Section 1513) -- each documented in the timeline below. Civil RICO under Section 1964(c) additionally provides Mr. McGowen a private right of action for treble damages and attorneys' fees, available against actors whose conduct falls outside judicial immunity.

18 U.S.C. § 2511 -- Unlawful Interception of Electronic Communications. Whoever intentionally intercepts any wire, oral, or electronic communication without judicial authorization. If the GPS data used to locate Mr. McGowen for the MM-457 arrest was obtained through a tracking device installed on his vehicle or person without a warrant, the installation and monitoring violated Section 2511.

18 U.S.C. § 2703 -- Compelled Disclosure of Electronic Communications. Establishes the process by which law enforcement may compel electronic communications providers to disclose stored records. If Mr. McGowen's cellular location data was obtained from a carrier without complying with the warrant requirement established in Carpenter v. United States, 138 S. Ct. 2206 (2018), the acquisition of that data was an unlawful warrantless Fourth Amendment search and may constitute a violation of Section 2703's procedural requirements.

18 U.S.C. § 373 -- Solicitation to Commit a Crime of Violence. Applicable to any individual who directed, commanded, or solicited the retaliatory arrests and criminal charges where those acts constitute federal crimes of violence.

V. DOCUMENTED CHRONOLOGICAL TIMELINE

Every date and case number cited below is drawn from official court records, arrest documents, and the federal court docket in Case No. 3:26-cv-04880.

A. The Foundation: Eviction and First Criminal Charge

May 27, 2026 -- Case No. MM-362 filed. Mr. McGowen arrested at his residence, 9950 US Highway 98 W, Unit B6, Miramar Beach, Florida, by Walton County Sheriff's Office Deputy William Brooks. Charges: Obstruct Without Violence (F.S. 843.02) and Trespassing (F.S. 810.08.1). Deputies arrived to serve a Writ of Possession issued in the civil eviction brought by Destin East Mobile Home Park (Case No. 2026-CC-309). Agency Report No. 2026-00071075; Attesting Officer: Allen Chester Pullings. Assigned to Judge Kelvin C. Wells.

B. The Domestic Violence Injunction Filed the Day After His Release

June 9, 2026 -- Mr. McGowen released from custody. Final Judgment of Injunction for Protection Against Domestic Violence (Case No. 26000429DRAXMX) bears handwritten notation: 'Released 6/9/26 -- No home, no vehicle.' Court personnel had actual knowledge of his release date and his destitute condition.

June 10, 2026, 09:59 AM -- Final Domestic Violence Injunction e-filed. Kimberly LeVaughn McGowen v. William Henry McGowen III. The document shows the petitioner attended the hearing; the respondent box is unchecked. Mr. McGowen was not present. He had been released the prior day with no home and no vehicle. The instrument was prepared before his release and filed the morning after. Sheriff Roden's office is noted in the service notation -- the same sheriff who is the first named defendant in Mr. McGowen's subsequent federal civil rights action.

C. The Second Arrest: GPS Enforcement by a Party Without Standing

June 28, 2026 -- Case No. MM-457 filed. Mr. McGowen charged with Violation of Injunction under Florida Statute Section 741.31(4)(a). The complainant was Destin East Mobile Home Park -- not the petitioner of the injunction. The park used GPS location data to establish Mr. McGowen's proximity and contacted law enforcement. Under Section 741.31, enforcement is initiated by the petitioner or through direct law enforcement observation. A third-party property management company has no standing. The arrest lacked lawful basis under Florida law.

The source and legal authority for the GPS location data is unknown and is a primary subject of this referral. Potential Hobbs Act and RICO predicate acts include the illegal acquisition of that data; potential electronic surveillance violations under Sections 2511 and 2703 attach to both its acquisition and use.

D. Mr. McGowen's Motions and Wells's Pattern of Denial

July 13, 2026 -- Motion to Disqualify Judge filed in CC-309. Grounds: Wells's pervasive role over all proceedings involving the same parties.

July 20, 2026 -- Wells denies his own disqualification (Filing No. 252942303). On this same date, Mr. McGowen signs the federal Section 1983 civil rights complaint. Wells rules on his own impartiality on the same day his plaintiff signs the federal case against him. The denial states 'prior adverse rulings, standing alone, are not legally sufficient' -- an evasion of the actual conflict: Wells is the defendant, not the subject of adverse rulings.

July 21-22, 2026 -- Wells denies motion to vacate default and writ of possession (CC-309). Every electronic order Wells transmits from this date forward is a predicate wire transmission under Sections 1343 and 1346.

E. The Federal Lawsuit and the Retaliatory Response

August 3, 2026 -- Case No. 3:26-cv-04880-MCR-ZCB assigned. U.S. District Court, N.D. Fla. Presiding: Hon. M. Casey Rodgers; Magistrate Hon. Zachary C. Bolitho. Defendants include Wells, Roden, Sconiers, and nine others.

August 5, 2026 -- IFP denied without prejudice (Doc. 5). Order mailed to Mr. McGowen's home address at Lot B6 -- which he cannot access because he is held in Walton County Jail. Mail returned as undeliverable. The mechanism of obstruction is now operational.

August 10, 2026 -- Federal summons served on Walton County. Stamped received by the Walton County Clerk (Crystal Sconiers) and the County Attorney at 571 US Highway 90 East. On this same date, MM-457 is scheduled for plea day before Wells. Every relevant official is now on actual notice of the federal civil rights action naming them as defendants.

August 12, 2026 -- Federal court mail returned (Docs. 6-7). Undeliverable. Mr. McGowen has never received the IFP denial order.

August 20, 2026 -- Wells denies Emergency Motion to Stay in MM-362 (Filing No. 255306459). A Petition for Writ of Prohibition challenging Wells's authority to proceed was pending before the First District Court of Appeal. Wells -- a defendant in the federal civil rights action filed by the defendant in his criminal case -- denied the motion to stay. Every electronic transmission of this order is an additional Section 1343/1346 predicate act.

August 25, 2026 -- Order to Show Cause (Doc. 8). Federal court orders Mr. McGowen to show cause why the case should not be dismissed. Mailed to the address that has already returned undeliverable mail. Deadline: September 8, 2026.

August 27, 2026 -- Case No. MM-582 filed. New criminal charge filed against Mr. McGowen: seventeen (17) days after Walton County received the federal summons. This new charge carries a speedy trial deadline of October 13, 2026 -- the identical date Mr. McGowen's objections to the federal court's Report and Recommendation are due. This filing is the retaliation act under Section 1513(e) and a predicate RICO act under Section 1961.

September 1, 2026 -- Federal defendants obtain counsel; mail again returned. Defense counsel Clarissa Virginia Jimenez (103 Crain Highway S., Baltimore, MD 21061) appears for defendant judges Wells, Schlechter, and Lewis (Doc. 9). On the same date, federal court mail is again returned as undeliverable (Doc. 10). The named defendant judges are represented by counsel. The federal plaintiff cannot receive mail. The obstruction under Sections 1503 and 1512 is complete.

September 8, 2026 -- Show cause deadline passes. Mr. McGowen has received none of the federal court's orders. He cannot respond.

September 15, 2026 -- Report and Recommendation (Doc. 11). Magistrate Judge Bolitho recommends dismissal for failure to comply with court orders. Objections due October 13, 2026 -- the same date as the MM-582 speedy trial deadline. The federal civil rights case filed by the plaintiff now held in the defendant's jail, before the defendant judge, is on the verge of dismissal by operation of conditions the defendants themselves created.

F. The Taunting Text Message -- Direct Evidence of Real-Time Coordination

Prior to his arrest on August 27, 2026, Mr. McGowen contacted the Walton County Clerk's office by telephone and inquired whether Destin East Mobile Home Park had filed any proceedings against him. The clerk's response was evasive -- the clerk stated he would need to 'check' rather than providing information available through the OCRS case management system, which returns results within seconds.

At the time of his arrest, Mr. McGowen was not in a courthouse or government building. He was shopping for clothing in preparation for a scheduled meeting in Washington, DC. That meeting never occurred -- law enforcement swarmed and arrested him while he was in a retail setting. Before their arrival, he received a text message on his cell phone from an unidentified number stating: "How did that work out?"

This text message constitutes direct evidence of the conspiracy under Section 241 and the obstruction under Sections 1503 and 1512. The sender had simultaneous knowledge of two facts: (1) that Mr. McGowen had called the clerk's office to inquire about the park's filings, and (2) that law enforcement was imminently about to arrest him while he was at a retail location.

Mr. McGowen was in a retail shopping environment -- not a predictable or publicly known location. The arresting officers knew where to find him. That knowledge required either real-time GPS tracking or active surveillance. The taunting text arrived before the officers did, meaning the sender was in simultaneous communication with both the information source and the arrest team. Under 18 U.S.C. Section 875(c), this transmission via cellular telecommunications constitutes an interstate threatening or intimidating communication in connection with the planned seizure.

VI. THE CONSPIRACY -- 18 U.S.C. § 241

The documented timeline establishes a conspiracy among at least four identified actors:

a. Destin East Mobile Home Park obtained a civil eviction against Mr. McGowen through proceedings before Wells. Wells presided.

b. The domestic violence injunction was prepared in advance and filed the morning after Mr. McGowen's release -- when he had no home and no vehicle. Sheriff Roden's office served the instrument.

c. Destin East, using GPS data of unknown legal origin, reported an injunction violation as a third-party complainant without statutory standing. Sheriff Roden's deputies arrested Mr. McGowen on this unlawful basis.

d. Wells was assigned to all proceedings. He denied his own disqualification. He denied the appellate stay. He continued to preside over Mr. McGowen's criminal cases after becoming a named defendant in his federal civil rights action.

e. Mr. McGowen filed a federal civil rights complaint. Seventeen days after Walton County was served, a new criminal charge was filed carrying a speedy trial deadline identical to the federal court's objection deadline.

f. Someone with real-time knowledge of Mr. McGowen's telephone inquiry and the impending arrest taunted him by text before officers arrived -- at a retail location only traceable through active GPS surveillance.

g. Throughout, Mr. McGowen was held in the jail of the first named federal defendant, preventing him from receiving court orders, communicating with counsel, or prosecuting his civil rights action.

The result: a federal civil rights action is on the verge of dismissal -- not because the claims lack merit, but because the defendants used their institutional authority to ensure the plaintiff could not respond to the federal court's orders. The defendants who are being sued have engineered the conditions that will defeat the lawsuit.

VII. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW -- 18 U.S.C. § 242

Judge Wells and Sheriff Roden, acting under color of their respective offices, have individually deprived Mr. McGowen of:

-- First Amendment: right to petition the federal government for redress. The retaliatory filing of MM-582 within 17 days of service is a direct violation.

-- Fourth Amendment: potentially unlawful GPS surveillance forming the basis of the MM-457 arrest.

-- Sixth Amendment: right to counsel. The Application for Criminal Indigent Status filed August 27, 2026 contains blank fields for case number, county, and clerk determination, rendering any public defender appointment procedurally void.

-- Fourteenth Amendment Due Process: Wells presiding over the criminal cases of his federal plaintiff; continued proceedings while a prohibition petition was pending; denial of his own disqualification.

-- Constitutional right of access to courts (Bounds v. Smith, 430 U.S. 817 (1977)): Roden's jail, operated by the first named federal defendant, serves as the mechanism preventing the federal plaintiff from receiving and responding to court orders.

VIII. HOBBS ACT EXTORTION AND HONEST SERVICES FRAUD -- 18 U.S.C. §§ 1343, 1346, 1951

Under Evans v. United States, 504 U.S. 255 (1992), Hobbs Act extortion under color of official right requires no explicit demand or threat -- only that a public official used his office to obtain property to which he had no right and the victim yielded to official authority. The issuance by Judge Wells of the Writ of Possession and its execution by Sheriff Roden's deputies resulted in the seizure of Mr. McGowen's residence at 9950 US Highway 98 W, Unit B6, Miramar Beach, Florida. Mr. McGowen yielded because uniformed law enforcement officers with a court-issued writ left him no lawful alternative. This is color-of-right extortion under Section 1951.

Every electronic order transmitted by Judge Wells in the proceedings against Mr. McGowen after August 3, 2026 -- when Wells became a named defendant in Case No. 3:26-cv-04880 -- constitutes a wire transmission in furtherance of a scheme to deprive Mr. McGowen of honest judicial services under Sections 1343 and 1346. The specific orders transmitted electronically after that date include: the August 20 denial of the Emergency Motion to Stay; copies to State Attorney Knight; and any electronic transmission connected to the continued prosecution of MM-362, MM-457, and MM-582. Under Skilling v. United States, 561 U.S. 358 (2010), honest services fraud requires a bribery or kickback scheme. The private benefit flowing to Destin East

Mobile Home Park through Wells's continued conduct -- recovery of the property, suppression of the eviction appeal, elimination of the federal plaintiff -- satisfies this element.

IX. RICO ANALYSIS -- 18 U.S.C. §§ 1961-1968

The documented conduct establishes each element of a civil and criminal RICO violation.

Enterprise. Judge Kelvin C. Wells, Sheriff Michael A. Roden, Destin East Mobile Home Park (including its management with former law enforcement connections), and Joshua Knight constitute an identifiable association-in-fact enterprise within the meaning of Section 1961(4). The enterprise's common purpose: remove Mr. McGowen from his home and suppress his legal challenges through the coordinated use of judicial process, law enforcement authority, and third-party complaint mechanisms.

Affecting Interstate Commerce. The acquisition and electronic transmission of GPS location data, the filing of federal court documents and responses by the defendants' attorney (Clarissa Virginia Jimenez, Baltimore, Maryland), the interstate electronic transmission of court orders, and the cellular communication of the taunting text message each constitute activity affecting interstate commerce within the meaning of Section 1962.

Pattern of Racketeering Activity. A 'pattern' requires at least two predicate acts within ten years, related to each other and to the enterprise, posing a threat of continued criminal activity. The following predicate acts are established by official records:

> **Predicate Act 1:** Hobbs Act extortion under color of official right (Section 1951) -- issuance and execution of Writ of Possession, May-June 2026.

Predicate Act 2: Honest services wire fraud (Sections 1343/1346) -- Wells's transmission of judicial orders after becoming a named federal defendant, August 3, 2026 through present.

Predicate Act 3: Obstruction of official proceedings (Section 1512(c)(2)) -- coordinated mechanism preventing Mr. McGowen from receiving federal court orders, August 5, 2026 through present.

Predicate Act 4: Obstruction of justice (Section 1503) -- retaliatory arrest and taunting communication designed to impede federal civil rights case, August 27, 2026.

Predicate Act 5: Witness/victim retaliation (Section 1513(e)) -- MM-582 filed 17 days after federal service, August 27, 2026.

These five predicate acts are related (same parties, same purpose, same victim) and pose a threat of continued activity (Mr. McGowen remains incarcerated; his federal case remains at risk of dismissal). The pattern requirement is satisfied.

Civil RICO Remedy. Under Section 1964(c), a person injured in his business or property by a RICO violation may sue and recover treble damages plus attorneys' fees. Mr. McGowen's loss of his residence constitutes injury to property cognizable under civil RICO. The civil RICO avenue is particularly significant because it is available against actors who may invoke judicial or sovereign immunity to defeat the Section 1983 claims.

X. ELECTRONIC SURVEILLANCE VIOLATIONS -- 18 U.S.C. §§ 2511 AND 2703

The GPS location data used to establish Mr. McGowen's proximity to the restricted area in Case No. MM-457 was provided by Destin East Mobile Home Park -- a private entity with no law enforcement authority and no standing to obtain, access, or report such data under Florida Statute

Section 741.31. The source of this data is unknown and must be the subject of immediate investigation.

If the data originated from a GPS tracking device installed on Mr. McGowen's vehicle or person without his consent and without a judicial warrant, its installation and use violate 18 U.S.C. Section 2511's prohibition on intentional interception of electronic communications. If the data originated from cellular location records obtained from a telecommunications carrier, its acquisition without a warrant violates the Fourth Amendment as interpreted by Carpenter v. United States, 138 S. Ct. 2206 (2018), and may violate the procedural requirements of 18 U.S.C. Section 2703.

The person or entity that provided the GPS data to law enforcement -- enabling an arrest under a statute (Section 741.31) that does not authorize third-party complaints -- may also be liable as a principal in the Section 241 conspiracy and the RICO enterprise if that person had former law enforcement relationships and access to surveillance infrastructure.

XI. SPECIFIC INVESTIGATIVE REQUESTS

1. Open a criminal investigation under 18 U.S.C. Sections 241, 242, 875, 1343, 1346, 1503, 1512, 1513, 1951, and 1961-1968 regarding the conduct described herein.

2. IMMEDIATELY PRESERVE the text message received by William Henry McGowen III stating "How did that work out?" -- including the sending number, date, time, cell carrier records, and associated tower/location data. This evidence is perishable.

3. Identify and interview the sender of the taunting text message. Determine whether that individual has connections to Destin East Mobile Home Park, the Walton County Clerk's office, the Walton County Sheriff's Office, or the Office of the State Attorney.

4. Subpoena and examine all GPS records used to establish Mr. McGowen's location in connection with the MM-457 arrest: the source device or system; the legal authority under which the data was collected; any warrant or court order authorizing acquisition; and all communications between Destin East Mobile Home Park and the Walton County Sheriff's Office regarding that data. If no warrant exists, refer for prosecution under Sections 2511 and 2703.

5. Examine all communications -- electronic, telephonic, and written -- between Judge Wells's chambers, Sheriff Roden's office, the Office of the State Attorney, and Destin East Mobile Home Park, from May 1, 2026 through the present. These communications are predicate evidence for Sections 241, 1503, 1512, and 1961.

6. Investigate the law enforcement background and professional relationships of Destin East Mobile Home Park management and ownership, and the nature of any ongoing informal relationships with members of the Walton County Sheriff's Office. Former law enforcement affiliation enabling access to surveillance infrastructure is a core element of the Section 241 and RICO theories.

7. Examine the circumstances of the Final Domestic Violence Injunction (Case No. 26000429DRAXMX, June 10, 2026), including communications between Destin East Mobile Home Park and Kimberly LeVaughn McGowen in the period preceding that

filing, and any coordination between those parties and judicial or law enforcement personnel.

8. Preserve and examine all electronic orders transmitted by Judge Kelvin C. Wells in Cases MM-362, MM-457, MM-582, and 2026-CC-309 after August 3, 2026, as predicate wire fraud acts under Sections 1343 and 1346.

9. Refer to the DOJ Civil Rights Division, Criminal Section for prosecution consideration under Sections 241, 242, 1503, 1512, 1513, 1951, and the RICO provisions.

10. Provide notice to the United States District Court, Northern District of Florida, that a federal criminal investigation is open regarding the circumstances of Case No. 3:26-cv-04880, so the Court may consider whether the interests of justice require a stay of dismissal proceedings pending investigation.

XII. IMMINENT DEADLINES -- URGENT ACTION REQUIRED

September 26, 2026 (five days from this referral): Speedy trial expiration in Case No. MM-457 -- the case arising from the unlawful GPS arrest by a party without statutory standing.

October 13, 2026: Simultaneous expiration of (a) the speedy trial period in Case No. MM-582 -- the retaliatory charge filed 17 days after federal service -- and (b) the deadline for Mr. McGowen to file objections in Case No. 3:26-cv-04880.

If Case No. 3:26-cv-04880 is dismissed on October 13, Mr. McGowen's civil rights claims against the individuals responsible for his current incarceration may be extinguished by a procedural mechanism engineered by those same individuals.

XIII. SUPPORTING DOCUMENTATION

The following official documents are available and will be provided upon request:

-- Arrest Report No. 2026-00071075 (MM-362), Walton County Sheriff's Office

-- Final Judgment of Injunction (Case No. 26000429DRAXMX, June 10, 2026)

-- Notice to Appear, Case No. MM-457 (July 1, 2026, signed Crystal Sconiers)

-- Order Denying Motion to Disqualify (CC-309, July 20, 2026, Wells)

-- Order Denying Motion to Vacate Default and Writ of Possession (CC-309, July 21-22, 2026, Wells)

-- Order Denying Emergency Motion to Stay (MM-362, August 20, 2026, Wells)

-- Federal docket, Case No. 3:26-cv-04880-MCR-ZCB (complete through September 17, 2026)

-- Federal summons, stamped received Walton County August 10, 2026

-- Non-Adversary Probable Cause Determination, August 27, 2026

-- Florida OCRS records confirming Mr. McGowen's jail address in state court system

XIV. CONCLUSION

William Henry McGowen III is a 71-year-old man held in a jail operated by the first defendant in his own federal civil rights lawsuit, prosecuted before a judge who is also his federal defendant, on charges that include one void on its face (MM-457) and one filed in documented retaliation for his exercise of the First Amendment right to petition the federal courts (MM-582). The federal civil rights case he filed -- the instrument through which he sought to hold these officials accountable -- is on the verge of dismissal because those same officials have ensured he cannot receive or respond to the court's orders.

The documented evidence -- arrest reports, court orders, federal docket entries, electronic orders transmitted by a judicial defendant after he became a named party, GPS data obtained by a third party without statutory standing, and a taunting text message received moments before an arrest at an unpredictable retail location -- does not describe a series of coincidences. It describes a coordinated pattern of conduct by identified government actors and private parties, using official legal machinery as a weapon, constituting violations of federal extortion, honest services fraud, obstruction, witness retaliation, electronic surveillance, and racketeering statutes.

This referral requests investigation and prosecution commensurate with the gravity of those facts.

Respectfully submitted,

/s/ Paul Carnie

Paul Carnie
Manager, Cessatio Potestatis LLC
paul.carnie@proton.me

September 21, 2026

Enclosures: Supporting documentation as listed in Section XIII (provided upon request)

Paul Carnie
Relator / Whistleblower
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July 6, 2026

Special Agent in Charge
Internal Revenue Service, Criminal Investigation
Miami Field Office
7850 SW 6th Court
Plantation, FL 33324

AND BY SIMULTANEOUS SUBMISSION:
Special Agent in Charge
Internal Revenue Service, Criminal Investigation
Tampa Field Office
400 N. Ashley Drive, Suite 700
Tampa, FL 33602

RE: CRIMINAL REFERRAL / 26 U.S.C. § 7206(1) / FELONY TAX FRAUD

Subject Entity: The Florida Bar Foundation Inc. (d/b/a FFLA)
EIN: 59-1004604
Address: 175 Lookout Place, Suite 100, Maitland, FL 32751
Tax Return at Issue: IRS Form 990, Tax Year July 1, 2023 - June 30, 2024 (filed April 7, 2025)
Signatory: Dominic C. Mackenzie, Executive Director/CEO (signed March 31, 2025)
Statutory Basis: 26 U.S.C. § 7206(1)

I. IDENTITY OF RELATOR AND BASIS FOR THIS REFERRAL

Paul Carnie submits this referral as a whistleblower under 26 U.S.C. § 7623 and pursuant to the mandatory reporting obligation of 18 U.S.C. § 4 (Misprision of Felony). The Relator has personal knowledge of the facts set forth herein, has reviewed the documentary evidence identified below, and submits this referral simultaneously to the IRS Criminal Investigation Division, the Treasury Inspector General for Tax Administration (TIGTA), the HHS Office of Inspector General, the Legal Services Corporation Office of Inspector General, and the Senate Finance Committee.

II. THE SPECIFIC VIOLATION / 26 U.S.C. § 7206(1)

Under 26 U.S.C. § 7206(1), it is a federal felony, punishable by up to three years imprisonment, to willfully make and subscribe any return, statement, or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which the signer does not believe to be true and correct as to every material matter. The 2023 Form 990 of the Florida Bar Foundation Inc. (EIN 59-1004604), signed under penalties of perjury by Dominic C. Mackenzie on March 31, 2025, contains a material false statement on Line 8 of Part I: the characterization of $279,646,707 as "Contributions and grants."

That characterization is materially false. The funds so characterized are not contributions. They are Interest on Trust Accounts (IOTA) interest, a compelled judicial extraction from client trust accounts mandated by order of the Florida Supreme Court. Under IRC § 170 and Treasury Regulation § 1.170A-1(h), a "contribution" is a voluntary transfer of money or property made with donative intent, without expectation of equivalent return. IOTA interest satisfies none of these elements. It is not voluntarily given. The transferors (Florida banks holding attorney-client trust accounts) do not donate the interest; they are compelled to remit it by judicial mandate. The account holders (legal clients whose funds generate the interest) have no knowledge of the transfer and have made no donative decision. The amounts are set by judicial order, collected under legal compulsion, and remitted to the Foundation as the designated institutional recipient. Compelled judicial extraction is not a contribution in any legal sense of that term.

The characterization is not merely inconsistent with the Internal Revenue Code. It is irreconcilable with controlling decisions of the United States Supreme Court. In *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), the Supreme Court held that IOTA interest is the private property of the client whose funds generated it, not the property of the bar foundation, the bank, or the court. In *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003), the Supreme Court held that the mandatory remittance of that client property to a legal foundation constitutes a taking under the Fifth Amendment to the United States Constitution. The Court upheld the program only because just compensation was zero: the interest on small, short-term trust deposits was too small to exceed the cost of collecting it, and clients suffered no measurable pecuniary loss. A government taking of private property under the Fifth Amendment is the precise constitutional opposite of a voluntary charitable contribution under IRC § 170. A transfer that requires Supreme Court sanction as a taking cannot simultaneously be characterized as a gift.

The Florida Supreme Court's March 2023 IOTA rule amendment, which the Florida Bankers Association characterized as a 3,000% increase in mandatory IOTA rates and which generated $279,646,707 in a single fiscal year, raises additional constitutional questions that *Brown* did not foreclose. The net-zero rationale of *Brown* depended on the smallness of the individual interest amounts: de minimis sums that clients would never have collected. At 3,000% of prior rates, that premise is materially altered for many accounts. Institutional clients, law firms holding large settlement funds, and clients whose funds remained in trust for extended periods may now have live just compensation claims that the net-zero premise of *Brown* did not extinguish. What is not altered is the characterization question: whether the transfers are de minimis or substantial, they are a taking, not a contribution. The Foundation's executive director signed a federal tax return under penalty of perjury characterizing a Supreme Court-recognized taking as a voluntary charitable contribution. That is the violation.

III. THE DOCUMENTARY RECORD ESTABLISHING THE VIOLATION

The following documentary record establishes the material falsity of Line 8 and the signatory's actual knowledge thereof:

1. **The Baseline Form 990 (FY 2021, July 2021 - June 2022).** The Florida Bar Foundation's Form 990 for the fiscal year ending June 30, 2022 reported contributions and grants of $11,164,573 and gross receipts of $27,427,750. This return reflects the Foundation's actual voluntary contribution base prior to the Florida Supreme Court's March 2023 IOTA rule amendment.

2. **The Florida Supreme Court's March 2023 IOTA Rule Amendment.** In Case No. SC22-1292, the Florida Supreme Court issued an amended order effective March 16, 2023, governing IOTA rules for Florida attorneys' client trust accounts. The amendment increased the mandatory interest rate applicable to IOTA accounts; the Florida Bankers Association's banking experts, appearing as respondents in SC22-1292, characterized the mandatory rate increase as "nearly 3,000%." The financial impact was immediate and material: the Foundation's reported contributions rose from $11,164,573 in FY2021 to $69,529,327 in FY2022 to $279,646,707 in FY2023, a single-cycle year-over-year increase of $210,117,380. In a single six-month period ending January 2025, the Foundation, operating under its d/b/a Funding Florida Legal Aid, separately disclosed receiving $155,378,419.24 in IOTA remittances -- the same entity and the same compelled revenue stream reported on the Form 990 at issue in this referral, not a distinct organization. This interest was not contributed voluntarily; it was generated and remitted under the compulsion of the amended judicial order.

3. **The 2023 Form 990 (FY 2023, July 2023 - June 2024, filed April 7, 2025).** The subject return reports the following figures that directly reflect the IOTA explosion:

   Line 8 (Contributions and grants): $279,646,707 (prior year: $69,529,327)

   Line 12 (Total revenue): $285,267,969

   Line G (Gross receipts): $427,654,829

Line 20 (Total assets, end of year): $338,335,082

Line 22 (Net assets, end of year): $336,999,851

Line 5 (Employees): 12

The increase from $11,164,573 (FY2021) to $279,646,707 (FY2023) on a single line, a 2,404% increase in two years, tracks precisely and exclusively with the Florida Supreme Court's IOTA rate amendment. No voluntary fundraising campaign, bequest program, or donor expansion produces a 2,400% revenue increase in two years in a 12-person organization. The source of the funds is the compelled judicial mandate, not charitable giving.

4. **The Consolidated Financial Statements Disclosure.** Part IV of the 2023 Form 990 discloses at Line 12a: "No" (the Foundation did not obtain separate, independent audited financial statements), and at Line 12b: "Yes" (the Foundation's financials are included in consolidated financial statements with another entity). The consolidating entity is The Florida Bar, the mandatory integrated professional guild created by the Florida Supreme Court's 1949 decree without legislative authorization or appropriation. The Foundation therefore does not operate as an independent 501(c)(3) charitable organization. It is a financial subsidiary consolidated with a mandatory regulatory guild. Federal grantors who awarded funds to the Foundation on the basis of its 501(c)(3) independent status did so on the basis of a materially false representation of the Foundation's independence from the guild. The Foundation's lack of independence from The Florida Bar is not merely a financial-reporting artifact; it is structural and traces to the Foundation's own founding. The Florida Bar Foundation was brought into existence in 1956 when The Florida Bar's Board of Governors voted to create it under authority granted by the Florida Supreme Court under Article XII of

the Integration Rule of The Florida Bar -- the same court rule-making authority, traceable to the Florida Supreme Court's 1949 order granting The Florida Bar's own petition for integration, that created The Florida Bar itself. No act of the Florida Legislature created the Foundation, authorized its formation, or appropriated funds to it. The entity that reported $279,646,707 in "contributions and grants" on the 2023 Form 990 is therefore, from its founding through the tax year at issue, a creature of Florida Supreme Court rule-making layered on top of another creature of Florida Supreme Court rule-making, with no intervening act of the Legislature or the People of Florida at any point in the chain. Any distinction between "The Florida Bar Foundation Inc." and its d/b/a "FFLA" is immaterial to this referral; both names refer to the single EIN 59-1004604 filer whose Form 990 reports affiliation with, and consolidation into, the Florida Supreme Court-created integrated Bar itself.

5. **HB 893 (2026) / Legislative Attempt at IOTA Authorization, Vetoed by Governor DeSantis.** On January 21, 2026, the Florida House of Representatives introduced HB 893, titled "Trust Fund Interest for Purposes Approved by Supreme Court." The bill expressly authorizes financial institutions to hold funds in interest-bearing attorney trust accounts and requires financial institutions to remit interest earned on those accounts to "an entity established by the Florida Supreme Court for the purpose of providing free legal services to low-income individuals or for other purposes expressly authorized by the Florida Supreme Court." The bill passed all three House committees unanimously (Insurance & Banking, 16-0 on January 21, 2026; Judiciary, 20-0 on January 27, 2026; Commerce, 20-0 on February 3, 2026) and was presented to the Governor on June 15, 2026, carrying a proposed effective date of July 1, 2026 and a companion Senate bill, SB 1000 (Grall). On June 30, 2026, Governor Ron DeSantis vetoed HB 893. HB 893 therefore never took effect and never became law. As set forth in Section 5d below,

the Governor's veto message independently corroborates the absence of any legislative or constitutional authorization for the IOTA program.

5a. **The Admission Embedded in the Bill, Now Confirmed by the Veto.** HB 893 would have been the first statutory enactment in Florida history to authorize banks to remit IOTA interest to a Florida Supreme Court-designated entity. Its unanimous passage through three House committees and both chambers of the Legislature is itself an admission that no such statutory authorization previously existed; a legislature does not unanimously enact express authorization for a practice that is already lawfully authorized. The Florida Bar Foundation's 2023 Form 990 was filed on April 7, 2025. The Foundation's executive director signed that return under penalty of perjury on March 31, 2025. At the time of filing, HB 893 did not exist. Governor DeSantis's subsequent veto of HB 893 on June 30, 2026 means the authorization the Legislature attempted to supply never took legal effect. The IOTA program therefore remains, through the date of this referral, without any statutory or constitutional authorization from the Legislature or the People of Florida. The Legislature's recognition that statutory authorization was required, followed by the Governor's veto of the only vehicle that would have supplied it, confirms that all IOTA collections and remittances -- past, present, and ongoing -- have been made without any legislative authorization. This directly corroborates the documentary gap established by the May 21, 2026 FOIA demands and the June 26, 2026 admission of the Bar's own Deputy General Counsel.

5b. **HB 893 Would Not Have Cured the § 7206(1) Violation, and Its Veto Confirms the Violation Is Ongoing.** Because Governor DeSantis vetoed HB 893 on June 30, 2026, the bill never took effect, and the point made here is now established rather than hypothetical: no legislative authorization for IOTA collection or remittance exists as of the date of this referral. In any event, even had HB 893 been enacted, it would not have retroactively cured the false characterization on the 2023 Form 990. More fundamentally, HB 893's own language would have defeated the "contribution" characterization going forward as well. The bill did not create a voluntary donation program. It would have mandated that banks "shall remit" interest to a court-designated entity for court-approved purposes. A legally compelled remittance to a court-designated recipient is not a "contribution" within the meaning of IRC § 170 and Treasury Regulation § 1.170A-1(h), regardless of whether it is authorized by statute or court order. The voluntariness and donative intent required by the contribution definition are absent whether the compulsion flows from a judicial mandate or a legislative one. HB 893 would have legalized the compulsion; it would not have converted it into a gift. Its veto leaves the compulsion in place with no legalizing act at all.

5c. **The Separation of Powers Admission / Florida Bankers Association Challenge.** The Florida Bankers Association filed a Motion for Rehearing in Case No. SC22-1292 shortly after the Florida Supreme Court's March 16, 2023 IOTA rule amendment became effective, arguing that the Court exceeded its authority by effectively regulating banks (a function belonging to the executive branch), rather than merely regulating lawyers. The Supreme Court declined to grant rehearing. The Legislature's response to the FBA's challenge is determinative. In introducing HB 893, the bill's sponsor, Rep. Traci Koster (R-Tampa), stated before the House Judiciary Committee: "We will have a statute that regulates banks, and we will have a Supreme Court rule that regulates lawyers, and those things will be identical to one another, so that we don't have any issues of separation of powers." This statement is a legislative admission that, before HB 893, the Court's rule was doing what only a statute can do, namely regulating banks, without legislative authorization. The 2023 Form 990 was filed on April 7, 2025, while that separation of powers defect was unresolved and the legislative fix had not yet been introduced. The Foundation's executive director signed a return characterizing $279,646,707 in constitutionally contested compelled transfers as voluntary charitable contributions at a time when the legality of the rate mechanism generating those transfers was being actively challenged and had not been cured.

5d. **The Governor's Veto Message / Executive Branch Admission of Constitutional Infirmity.** On June 30, 2026, Governor Ron DeSantis vetoed HB 893, stating in his veto message that the bill perpetuates an IOTA program "of dubious constitutionality." The Governor's veto message addressed the Florida Supreme Court's authority to establish the IOTA program in the first instance, stating that while the Court's "usurpation of regulatory authority" in establishing the program in 1978 and launching it in 1981 predates the current composition of the Court, "we should not perpetuate the errors of the past." Governor DeSantis further stated that although the Court has long attempted to justify the IOTA program by reference to the use of funds for legal aid to the poor, HB 893 "disclaims any such limitation," instead authorizing the use of interest earned on client funds "for such other purposes" that the Supreme Court may authorize -- language the Governor characterized as improperly delegating regulatory authority to the Judicial Branch and permitting the Court, through the entity it has established to distribute IOTA earnings, to compel "support of certain viewpoints" with which the clients who own the IOTA funds may disagree, citing Justice Kennedy's dissent in Brown v. Legal Foundation of Washington, 538 U.S. 216, 253 (2003).

The Governor's veto message is a contemporaneous admission by the head of Florida's executive branch, corroborating the Relator's central thesis: that the IOTA program compelling the transfer of client funds to the Florida Bar Foundation rests on no legislative or constitutional authorization, was created and is administered by unilateral judicial rule, and cannot be characterized as a voluntary charitable contribution. Separately, on June 4, 2026, in Case No. SC2025-1730, the Florida Supreme Court had amended Rule Regulating The Florida Bar 5-1.1 to tie the IOTA interest rate to the Wall Street Journal Prime Rate, a change the Court itself stated was designed to "match" HB 893. Despite the Governor's veto and his express finding that the underlying program is "of dubious constitutionality," the Court's rule remains in effect and the compelled collection of IOTA interest continues. The program is therefore now confirmed to operate on judicial rule alone, with the one legislative attempt to ratify it vetoed by the Governor for the precise defect the Relator has identified throughout this referral: the absence of any act of the Legislature or the People of Florida authorizing the collection and third-party distribution of these compelled funds.

IV. EVIDENCE OF SCIENTER / ACTUAL KNOWLEDGE

The element of willfulness under § 7206(1) is established by the following:

1. **Professional Expertise.** Dominic C. Mackenzie serves as Executive Director and CEO of an organization whose primary function is the administration of IOTA interest. The Florida Bar Foundation exists for the singular purpose of receiving, managing, and distributing IOTA interest. The Foundation's own program descriptions in the 2023 Form 990 confirm that its principal revenue source is IOTA. As the chief executive of an IOTA-administration organization, Mackenzie possessed actual knowledge that IOTA interest is not a voluntary contribution but a compelled judicial transfer. No

reasonable innocent explanation exists for characterizing a known compelled judicial transfer as a voluntary contribution on a return signed under oath.

2. **The Penalty of Perjury Declaration.** The 2023 Form 990 contains the following declaration immediately above Mackenzie's signature: "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete." Mackenzie signed this declaration on March 31, 2025. The return was prepared by CRI Advisors LLC (Firm EIN 99-4625061, PTIN P00748415). Both the signatory and the preparer are sophisticated actors in the legal-financial sector who understood the distinction between voluntary contributions and compelled judicial transfers.

3. **The Magnitude of the Mischaracterization.** The mischaracterized amount ($279,646,707 in a single year) is not a rounding error or clerical mistake. It is the entirety of the Foundation's revenue base. A mischaracterization of this magnitude on a return signed under oath, by the chief executive of an organization dedicated to administering the mischaracterized funds, cannot be attributed to inadvertence. It is willful.

4. **Prior Notice / Formal Demand for Legislative Authority.** On May 21, 2026, Relator Paul Carnie, through the United States Government Accountability Commission, served formal public records requests via certified mail (USPS Article Nos. 9414811898765527121324 and 9414811898765527159631) on both the Office of the General Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and the Clerk of Court, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399. The requests demanded, among other things, all records

identifying the legislative or constitutional authority for the Florida Supreme Court and The Florida Bar to impose mandatory dues, assessments, or fees on licensed attorneys and to collect, hold, and distribute those funds to third-party organizations, including the Florida Bar Foundation.

5. **Florida Bar Admission by Deputy General Counsel.** On June 26, 2026, Rick Courtemanche, Deputy General Counsel of The Florida Bar, responded in writing to the May 21, 2026 public records request (Public Records Request No. W016439-060226). The response identified two sources of authority: (1) Article V, Section 15 of the Florida Constitution, which states that "The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted"; and (2) the Introduction to the Rules Regulating The Florida Bar, which provides that "The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, an official arm of the court." The Bar produced no legislative act, no act of the Florida Legislature, and no enactment by the People of Florida through their constitutional lawmaking process. Courtemanche's response concluded with the following admission: "In 1949 the Florida Supreme Court granted a petition to integrate the Florida Bar." This admission, made by the Bar's own Deputy General Counsel, establishes on the record that The Florida Bar was created not by the Legislature but by a court petition granted by the court to itself.

6. **The Authority Gap / Article V, Section 15 Does Not Authorize Mandatory Dues or Third-Party Distribution.** Article V, Section 15 of the Florida Constitution authorizes only two things: (1) regulation of the admission of persons to the practice of law, and (2) discipline of persons admitted. It says nothing about mandatory dues, assessments, IOTA interest collection, or distribution of compelled funds to third-party

organizations such as the Florida Bar Foundation. The Bar's June 26, 2026 response, which offered Article V, Section 15 as the entirety of its constitutional authority, therefore fails to answer the question posed: what legislative or constitutional authority specifically authorizes The Florida Bar to collect mandatory dues as a condition of practice and to distribute those funds to third-party organizations? The answer is that no such authority exists. The Bar's response confirms it.

7. **Narrowed Demand / Single Identifiable Record.** On June 25, 2026, Relator served narrowed follow-up requests on both the Florida Bar and the Clerk of the Florida Supreme Court, explicitly requesting a single identifiable record: any statute, legislative act, appropriations bill, joint resolution, or provision of the Florida Constitution enacted or ratified by the People of Florida through their Legislature that specifically authorizes the Florida Supreme Court or The Florida Bar to require mandatory dues as a condition of practice and to distribute those funds to third-party organizations. The follow-up stated: "If the Florida Supreme Court's authority to require mandatory dues and direct their distribution rests solely on the Court's own rules and opinions, with no underlying act of the Legislature, this request will have established that fact through the absence of any responsive document." That absence constitutes constructive confirmation that no legislative delegation exists. The Foundation's entire revenue base, $279,646,707 reported on the 2023 Form 990 as voluntary contributions and grants, rests on compelled transfers authorized by no act of the People. Continued characterization of those transfers as voluntary contributions on a return signed under penalty of perjury, by a signatory who has received this demand and is charged with knowledge of the absence of any legislative response, constitutes knowing and willful false reporting within the meaning of 26 U.S.C. § 7206(1).

V. FEDERAL GRANT NEXUS / FALSE CLAIMS TO THE UNITED STATES

The mischaracterization of IOTA interest as voluntary contributions is not an isolated accounting question. It is the predicate for a cascade of false certifications to the United States:

1. The Foundation receives federal grants under the Victims of Crime Act (VOCA), administered through the Department of Justice Office for Victims of Crime, and through the Legal Services Corporation (LSC). Grant eligibility requires that the recipient be a qualified, independent 501(c)(3) charitable organization.

2. Because the Foundation's financial statements are consolidated with The Florida Bar, a mandatory guild that is not a qualifying charitable organization, the Foundation is not, in substance, an independent 501(c)(3) entity. Every grant application and certification that represented the Foundation as a qualified independent charitable organization was materially false.

3. The IOTA rate increase, characterized by the Florida Bankers Association's banking experts as "nearly 3,000%," generated $210,117,380 in additional compelled transfers in a single fiscal year (FY2022 to FY2023), bringing the total to $279,646,707 on one return. These funds are reported as "contributions and grants" on the Foundation's Form 990, which is used as the basis for grant applications, financial representations to federal agencies, and public disclosures to donors and grantors who rely on the 990 as evidence of the Foundation's independent charitable character.

4. The Appropriations Clause, properly scoped, independently constrains the federal and state funds in this chain. This point attaches not to the Bar's own IOTA dues collection, which never touches the United States or Florida treasury, but specifically to the VOCA and LSC grant funds identified in items 1 through 3 above, which are drawn from the

United States Treasury. The federal Appropriations Clause provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. Florida's Constitution contains a parallel requirement: "No money shall be drawn from the treasury except in pursuance of appropriation made by law." Fla. Const. art. VII, § 1(c). Routing federally appropriated VOCA and LSC funds through the Foundation -- an entity created in 1956 by vote of The Florida Bar's Board of Governors under authority granted by the Florida Supreme Court, never by act of the Legislature, and financially consolidated with a mandatory regulatory guild that Line 12b of its own Form 990 confirms is not independent -- raises the same appropriations-based concern that the Relator has raised in parallel filings concerning The Florida Bar and the Foundation: that money appropriated by an accountable legislative body is being administered, in substantial part, through an entity that was never created by, and does not answer to, any legislature. Whether any specific VOCA or LSC certification was actionably false under these circumstances is governed by the materiality framework of Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176, 194 (2016), which the Relator commends to the IRS Criminal Investigation Division and its referral partners for further development against the underlying grant files.

This conduct is simultaneously referred to the HHS Office of Inspector General (VOCA grants) and the Legal Services Corporation Office of Inspector General (LSC grants) by separate contemporaneous letters.

VI. SUPPORTING DOCUMENTS SUBMITTED WITH THIS REFERRAL

The following documents are attached to this referral and incorporated by reference:

Exhibit A: IRS Form 990, Florida Bar Foundation Inc. (EIN 59-1004604), Tax Year July 1, 2021 - June 30, 2022 (baseline return, filed June 12, 2023)

Exhibit B: IRS Form 990, Florida Bar Foundation Inc. (EIN 59-1004604), Tax Year July 1, 2023 - June 30, 2024 (subject return, filed April 7, 2025) / Signed by Dominic C. Mackenzie, Executive Director/CEO, March 31, 2025

Exhibit C: IRS Tax Exempt Organization Search result confirming EIN 59-1004604 is assigned to "Florida Bar Foundation Inc." (Maitland, Florida), Publication 78 Data: On List: Yes, Deductibility Code: PC

Exhibit D: Florida Supreme Court IOTA Rule Amendment (March 2023, Case No. SC22-1292), the judicial order mandating the compelled interest transfer that generated the $279,646,707 reported as "contributions and grants"

Exhibit E: The Florida Bar Proposed Budget, Fiscal Year 2024-2025: General Fund revenues of $43,103,749 funded entirely from mandatory member dues and fees; footnote states that the Bar legislative program is funded entirely from member fees. Establishes that The Florida Bar legislative activities, including lobbying for IOTA legislation, are financed by compelled member assessments, not voluntary contributions, confirming the Bar and Foundation constitute a unified compelled-fee apparatus.

Exhibit F: Florida Bar News article, January 14, 2025: FFLA Distributes $93 Million in IOTA Funds to 35 Legal Aid Organizations; with addendum titled The Mandated IOLTA Surge documenting the SC22-1292-driven revenue explosion: FY2021 baseline

$12,813,870 to FY2024 $285,267,969 (2,226% increase); $155,378,419.24 received in a single six-month period; Florida Bankers Association banking experts characterized the mandatory rate increase as nearly 3,000%. Corroborates that the revenue surge was compelled by judicial mandate, not generated by voluntary charitable giving.

Exhibit G: The Florida Bar News article, "Governor Vetoes Bill Addressing IOTA Interest Rate" (July 1, 2026), reproducing Governor Ron DeSantis's June 30, 2026 veto message on HB 893, in which the Governor states that the IOTA program is "of dubious constitutionality," that the Florida Supreme Court's creation of the program constituted a "usurpation of regulatory authority," and that the program should not be perpetuated notwithstanding its long history. Corroborates, as an admission by the head of Florida's executive branch, that the IOTA program compelling the transfers reported as "contributions and grants" on the 2023 Form 990 has no legislative or constitutional authorization.

VII. RELIEF REQUESTED

The Relator respectfully requests that the IRS Criminal Investigation Division:

1. Open a criminal investigation into Dominic C. Mackenzie and any co-signatories or preparers for willful false subscription under 26 U.S.C. § 7206(1) in connection with the 2023 Form 990 of the Florida Bar Foundation Inc. (EIN 59-1004604);

2. Investigate whether prior-year returns filed by the Foundation contain the same mischaracterization of compelled IOTA interest as voluntary contributions, and whether such mischaracterization constitutes a pattern of willful false reporting;

3. Investigate whether the Foundation's consolidated financial relationship with The Florida Bar, as disclosed on Line 12b of the 2023 Form 990, disqualifies the Foundation

from 501(c)(3) status, and whether tax-exempt status was obtained and maintained on the basis of false representations of organizational independence;

4. Coordinate with the HHS Office of Inspector General and the Legal Services Corporation Office of Inspector General regarding federal grant fraud claims arising from the same underlying misrepresentations;

5. Notify the Relator, pursuant to 26 U.S.C. § 7623(b), of the status of this referral and any resulting action, so that the Relator may pursue whistleblower award proceedings before the IRS Whistleblower Office as appropriate.

IX. ADDITIONAL STATUTORY EXPOSURE

The conduct described in this referral gives rise to additional criminal, civil, and excise tax liability beyond the primary 26 U.S.C. § 7206(1) count, as set forth below.

1. **Preparer Liability / 26 U.S.C. § 7206(2).** The 2023 Form 990 was prepared by CRI Advisors LLC (Firm EIN 99-4625061, PTIN P00748415). Under 26 U.S.C. § 7206(2), any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation of a return that is fraudulent or false as to any material matter is guilty of a federal felony. A tax advisory firm managing the returns of an organization with $427,654,829 in gross receipts, whose revenue base consists overwhelmingly of compelled judicial transfers, cannot credibly claim ignorance of the distinction between voluntary contributions and IOTA interest. The Relator respectfully requests that CRI Advisors LLC and its responsible partners be investigated as potential subjects under § 7206(2).

2. **No Statute of Limitations / 26 U.S.C. § 6501(c)(1).** Where a return is false or fraudulent with intent to evade tax, 26 U.S.C. § 6501(c)(1) provides that the tax may be

assessed, or a proceeding in court for collection may be begun without assessment, at any time. The mischaracterization of IOTA interest as voluntary contributions is not an isolated error on a single return; it is a structural fraud embedded in the Foundation's organizational purpose and repeated across every year the IOTA program has operated. The unlimited lookback under § 6501(c)(1) means that every prior-year Form 990 filed by the Foundation, and every year in which compelled judicial interest was reported as voluntary charitable contributions, is open for examination and assessment without limitation.

3. **Civil Fraud Penalty / 26 U.S.C. § 6663.** If examination determines that the Foundation is a taxable entity, because its 501(c)(3) status was fraudulently obtained or maintained on false representations of independence from The Florida Bar, the IRS may assess taxes on the Foundation's income for open years. Under 26 U.S.C. § 6663, if any portion of any underpayment of tax is attributable to fraud, a penalty equal to seventy-five percent (75%) of the underpayment attributable to fraud shall be added to the tax. Applied to a revenue base of $279,646,707 in a single year, the § 6663 penalty exposure is substantial. The Relator invites the IRS to calculate the cumulative exposure across all years the fraud has operated.

4. **Excess Benefit Transactions / 26 U.S.C. § 4958.** Under 26 U.S.C. § 4958, an excess benefit transaction occurs when an applicable tax-exempt organization provides an economic benefit to a disqualified person in excess of the value of consideration received. The Florida Bar, as the entity that compels collection of IOTA interest, controls the Bar Foundation through consolidated governance, and receives the organizational benefit of the Foundation's independent charitable appearance, is a disqualified person with respect to the Foundation within the meaning of § 4958(f).

The transfer of $279,646,707 in compelled judicial revenue to an entity that is not independent of the Bar, characterized as charitable contributions in order to generate grant eligibility, may constitute an excess benefit transaction subject to excise taxes on both the organization and responsible individuals, including the responsible officers of both The Florida Bar and the Foundation who authorized and certified the transactions.

VIII. RELATOR'S CERTIFICATION

I, Paul Carnie, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief, that the documents attached hereto are true and accurate copies of the originals, and that this referral is submitted in good faith based on a reasonable belief that the conduct described herein constitutes a violation of 26 U.S.C. § 7206(1).

I further certify that this referral has been submitted simultaneously by certified mail, return receipt requested, to the IRS Criminal Investigation Division (Miami Field Office), the IRS Criminal Investigation Division (Tampa Field Office), the Treasury Inspector General for Tax Administration (TIGTA), the HHS Office of Inspector General, the Legal Services Corporation Office of Inspector General, and the United States Senate Committee on Finance.

Respectfully submitted,

/s/ Paul Carnie

Paul Carnie
Relator / Whistleblower
26 U.S.C. § 7623 Whistleblower
Paul.Carnie@proton.me

EXHIBIT A

efile GRAPHIC print - DO NOT PROCESS | As Filed Data - | DLN: 93493132059193

Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ **Go to *www.irs.gov/Form990* for instructions and the latest information.**

OMB No. 1545-0047

2021

Open to Public Inspection

A For the 2021 calendar year, or tax year beginning 07-01-2021 , and ending 06-30-2022

B Check if applicable:
- ☑ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return/terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization
THE FLORIDA BAR FOUNDATION INC

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) | Room/suite
175 LOOKOUT PLACE STE 100

City or town, state or province, country, and ZIP or foreign postal code
MAITLAND, FL 32751

D Employer identification number
59-1004604

E Telephone number
(407) 960-7000

G Gross receipts $ 27,427,750

F Name and address of principal officer:
ROBERT H HEIDT
175 LOOKOUT PLACE STE 100
MAITLAND, FL 32751

H(a) Is this a group return for subordinates? ☐Yes ☑No
H(b) Are all subordinates included? ☐Yes ☐No
If "No," attach a list. See instructions.
H(c) Group exemption number ▶

I Tax-exempt status: ☑ 501(c)(3) ☐ 501(c) ( ) ◀ (insert no.) ☐ 4947(a)(1) or ☐ 527

J Website: ▶ WWW.FLORIDABARFOUNDATION.ORG

K Form of organization: ☑ Corporation ☐ Trust ☐ Association ☐ Other ▶

L Year of formation: 1956 | **M** State of legal domicile: FL

Part I Summary

Activities & Governance

1 Briefly describe the organization's mission or most significant activities:
FUNDING, PROMOTION AND SUPPORT OF GREATER ACCESS TO JUSTICE.

2 Check this box ▶ ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.

3	Number of voting members of the governing body (Part VI, line 1a)	**3**	32
4	Number of independent voting members of the governing body (Part VI, line 1b)	**4**	32
5	Total number of individuals employed in calendar year 2021 (Part V, line 2a)	**5**	13
6	Total number of volunteers (estimate if necessary)	**6**	32
7a	Total unrelated business revenue from Part VIII, column (C), line 12	**7a**	0
b	Net unrelated business taxable income from Form 990-T, Part I, line 11	**7b**	0

			Prior Year	Current Year
Revenue	**8**	Contributions and grants (Part VIII, line 1h)	8,596,461	11,164,573
	9	Program service revenue (Part VIII, line 2g)	0	0
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	1,182,067	1,307,737
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	1,668,875	341,560
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	11,447,403	12,813,870
Expenses	**13**	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	7,395,777	8,151,802
	14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	1,333,365	1,284,319
	16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b	Total fundraising expenses (Part IX, column (D), line 25) ▶250,479		
	17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	748,367	917,378
	18	Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	9,477,509	10,353,499
	19	Revenue less expenses. Subtract line 18 from line 12	1,969,894	2,460,371

			Beginning of Current Year	End of Year
Net Assets or Fund Balances	**20**	Total assets (Part X, line 16)	35,534,740	34,018,201
	21	Total liabilities (Part X, line 26)	4,904,410	4,666,794
	22	Net assets or fund balances. Subtract line 21 from line 20	30,630,330	29,351,407

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

****** | 2023-05-09
Signature of officer | Date

ROBERT HEIDT DIRECTOR OF FINANCE
Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
		2023-05-09		P00748415

Firm's name ▶ CARR RIGGS & INGRAM LLC | Firm's EIN ▶ 72-1396621

Firm's address ▶ 1031 W MORSE BLVD SUITE 200
WINTER PARK, FL 32789 | Phone no. (407) 644-7455

May the IRS discuss this return with the preparer shown above? (see instructions) ☑ Yes ☐ No

efile Public Visual Render | ObjectId: 202520979349302052 - Submission: 2025-04-07 | TIN: 59-1004604

Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2023

Open to Public Inspection

A For the 2023 calendar year, or tax year beginning 07-01-2023 , and ending 06-30-2024

B Check if applicable:
- ○ Address change
- ○ Name change
- ○ Initial return
- ○ Final return/terminated
- ○ Amended return
- ○ Application pending

C Name of organization
THE FLORIDA BAR FOUNDATION INC

Doing business as
FFLA

Number and street (or P.O. box if mail is not delivered to street address)
175 LOOKOUT PLACE STE 100

Room/suite

City or town, state or province, country, and ZIP or foreign postal code
MAITLAND, FL 32751

D Employer identification number
59-1004604

E Telephone number
(407) 960-7000

G Gross receipts $ 427,654,829

F Name and address of principal officer:
DOMINIC C MACKENZIE
175 LOOKOUT PLACE STE 100
MAITLAND, FL 32751

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list. See instructions.

H(c) Group exemption number

I Tax-exempt status: ☑ 501(c)(3) ☐ 501(c) ( ) (insert no.) ☐ 4947(a)(1) or ☐ 527

J **Website:** HTTPS://FUNDINGFLA.ORG

K Form of organization: ☑ Corporation ☐ Trust ☐ Association ☐ Other

L Year of formation: 1956

M State of legal domicile: FL

Part I **Summary**

Activities & Governance

1 Briefly describe the organization's mission or most significant activities:
FUNDING, PROMOTION AND SUPPORT OF GREATER ACCESS TO JUSTICE.

2 Check this box ☐

3	Number of voting members of the governing body (Part VI, line 1a)	3	31
4	Number of independent voting members of the governing body (Part VI, line 1b)	4	31
5	Total number of individuals employed in calendar year 2023 (Part V, line 2a)	5	12
6	Total number of volunteers (estimate if necessary)	6	31
7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
b	Net unrelated business taxable income from Form 990-T, Part I, line 11	7b	0

			Prior Year	Current Year
Revenue	8	Contributions and grants (Part VIII, line 1h)	69,529,327	279,646,707
	9	Program service revenue (Part VIII, line 2g)	0	0
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	432,130	4,959,827
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	797,288	661,435
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	70,758,745	285,267,969
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	11,324,992	39,738,040
	14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	1,214,350	1,244,211
	16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b	Total fundraising expenses (Part IX, column (D), line 25) 228,607		
	17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	892,284	899,597
	18	Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	13,431,626	41,881,848
	19	Revenue less expenses. Subtract line 18 from line 12	57,327,119	243,386,121

			Beginning of Current Year	End of Year
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	90,115,024	338,335,082
	21	Total liabilities (Part X, line 26)	1,974,433	1,335,231
	22	Net assets or fund balances. Subtract line 21 from line 20	88,140,591	336,999,851

Part II **Signature Block**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

Signature of officer — Date: 2025-03-31

DOMINIC C MACKENZIE EXECUTIVE DIRECTOR/CEO

Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
		2025-03-31		P00748415
Firm's name CRI ADVISORS LLC			Firm's EIN 99-4625061	
Firm's address 1031 W MORSE BLVD SUITE 200 WINTER PARK, FL 32789			Phone no. (407) 644-7455	

May the IRS discuss this return with the preparer shown above? See Instructions. . . . . ☑ Yes ☐ No

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11282Y Form **990** (2023)

Page 2

Form 990 (2023) Page **2**

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III . . . . ☑

1 Briefly describe the organization's mission:

THE MISSION OF THE FLORIDA BAR FOUNDATION, INC. IS TO INCREASE ACCESS TO THE JUSTICE SYSTEM FOR PEOPLE OF LIMITED MEANS. THE FLORIDA BAR FOUNDATION FUNDS LEGAL SERVICES, DEVELOPS INNOVATIVE TOOLS AND PROGRAMS, AND SUPPORTS LEGAL AID PROVIDERS AND THE COURTS. FOR A MORE IN-DEPTH REVIEW OF THE FOUNDATION'S GRANTS:HTTPS://FUNDINGFLA.ORG

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? . . . . ☐ Yes ☑ No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? . . . . ☐ Yes ☑ No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses $ 35,925,396 including grants of $ 35,384,647) (Revenue $)

LEGAL ASSISTANCE FOR THE POOR:IN 2023-2024, APPROVED GRANT AWARDS INCLUDED CHILDREN'S LEGAL SERVICES, COMMUNITY ECONOMIC DEVELOPMENT, TWO-YEAR EQUAL JUSTICE WORKS FELLOWSHIPS, DISASTER RELIEF FOR HURRICANE SALLY, ANDSTUDENT LOAN FORGIVENESS TO 200+ ATTORNEYS AT LEGAL AID ORGANIZATIONS. IN ADDITION, THE ENGLE GRANT PROGRAM PROVIDED FUNDING TO QUALIFIED LEGAL AID ORGANIZATIONS IN THE MIDDLE DISTRICT OF FLORIDA TO ASSIST LITIGANTS IN OBTAINING REPRESENTATION IN COURT. WE ALSO AWARDED FUNDS TO BE USED TO RETAIN OR HIRE PERSONNEL TO PROVIDE DIRECT LEGAL ASSISTANCE TO LOW-INCOME CLIENTS FOR LEGAL ISSUES CAUSED BY OR DIRECTLY RELATED TO THE COVID-19 PANDEMIC. OTHER 2023-2024 PROJECTS INCLUDED: 1) COORDINATING AND PARTIALLY SUBSIDIZING ONLINE LEGAL RESEARCH SERVICES TO LEGAL ASSISTANCE GRANTEES AT A SIGNIFICANTLY REDUCED RATE, WITH THE FOUNDATION FACILITATING CENTRALIZED BILLING FOR A STATEWIDE CONTRACT WITH INTERNATIONAL LEGAL RESEARCH FIRM REUTERS THOMSON/WESTLAW; AND 2) CONTINUED PARTIAL SUBSIDIES TO GRANTEES FOR AN ONLINE CASE MANAGEMENT SYSTEM (LEGAL SERVER) FUNDED AND IMPLEMENTED BY THE FOUNDATION IN 2008 TO IMPROVE THE ADMINISTRATION OF DAY-TO-DAY CASEWORK AND RELATED ACTIVITIES OF THEIR LAWYERS AND PARALEGALS. THIS CASE MANAGEMENT SYSTEM PROVIDES GRANTEES THE DATA AND COMMUNICATION NEEDED TO MANAGE CASES, TRACK OUTCOMES, AND REPORT TO FUNDING SOURCES. THE FOUNDATION'S STATEWIDE CONTRACT WITH LEGAL SERVER EFFECTIVELY REDUCES THE COST TO GRANTEES AND MAKES THE SERVICE AVAILABLE TO SOME WHO COULD NOT OTHERWISE AFFORD A COMPUTERIZED CASE MANAGEMENT SYSTEM.

4b (Code:) (Expenses $ 425,000 including grants of $ 425,000) (Revenue $)

IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE:IN 2023-2024, APPROVED GRANT AWARDS INCLUDED CONTINUED FUNDING FOR THE FLORIDA INNOCENCE PROJECT, WHICH WORKS TO EXONERATE FLORIDIANS FOR CRIMES THEY DID NOT COMMIT AND TO FLORIDA'S CHILDREN FIRST, WHICH WORKS TO IMPROVE THE CHILD WELFARE SYSTEM.

4c (Code:) (Expenses $ 138,600 including grants of $ 138,600) (Revenue $)

LAW STUDENT ASSISTANCE:THE FOUNDATION APPROVED FUNDING FOR THE FLORIDA STATE UNIVERSITY COLLEGE OF LAW FOR ELIMINATING ECONOMIC BARRIERS FOR IMMIGRANT AND FARMWORKERS AND TO NOVA SOUTHEASTERN UNIVERSITY SHEPARD BROAD COLLEGE OF LAW.

(Code:) (Expenses $ 3,860,903 including grants of $ 3,789,793) (Revenue $)

PRO BONO PARTNERSHIPS:"PRO BONO" ROUGHLY TRANSLATES TO "FOR THE GOOD OF THE PUBLIC AND GENERALLY ENCOMPASSES LAWYERS REPRESENTING, AT NO CHARGE, PERSONS WHOCANNOT OTHERWISE AFFORD TO HIRE AN ATTORNEY. THE FLORIDA BARFOUNDATION'S PRO BONO DEPARTMENT WAS A HUB AND CONNECTOR BETWEEN LAWFIRMS, LAW SCHOOLS, THE JUDICIARY, LEGAL AID PROGRAMS, AND OTHERSTAKEHOLDERS TO INCREASE AWARENESS OF AND CREATE PRO BONOOPPORTUNITIES.DURING THE YEAR, THE FOUNDATION PROVIDED SUPPORT AND FUNDING TO THEFLORIDA PRO BONO COORDINATORS' ASSOCIATION TO EXPAND PRO BONO EFFORTSAND OPPORTUNITIES AND CREATE FURTHER PARTNERSHIPS. THE FOUNDATIONEXPANDED FLORIDAPROBONOMATTERS.ORG, AN ONLINE REFERRAL SYSTEM THATENABLES LAWYERS TO SEARCH FOR AND TAKE PRO BONO CASES ACROSS MULTIPLELEGAL AID ORGANIZATIONS. FOR THE SECOND YEAR, THE FOUNDATION ALSOFACILITATED THE FLORIDA PRO BONO LAW SCHOOL CHALLENGE, WHICH MATCHESLAW STUDENTS FROM ALL 12 FLORIDA LAW SCHOOLS WITH LAWYERS TO WORK ONCLIENT CASES HOSTED BY FOUNDATION GRANTEES

4d Other program services (Describe in Schedule O.)
(Expenses $ 3,860,903 including grants of $ 3,789,793) (Revenue $)

4e **Total program service expenses** 40,349,899

Form **990** (2023)

Form 990 (2023) Page **3**

Part IV Checklist of Required Schedules

			Yes	No
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? *If "Yes," complete Schedule A*	1	Yes	
2	Is the organization required to complete *Schedule B, Schedule of Contributors*? See instructions.	2	Yes	
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? *If "Yes," complete Schedule C, Part I*	3		No
4	**Section 501(c)(3) organizations.** Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? *If "Yes," complete Schedule C, Part II*	4		No
5	Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19? *If "Yes," complete Schedule C, Part III*	5		No
6	Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? *If "Yes," complete Schedule D,*Part I	6		No
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? *If "Yes," complete Schedule D, Part II*	7		No
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? *If "Yes," complete Schedule D,* Part III	8		No
9	Did the organization report an amount in Part X, line 21 for escrow or custodial account liability; serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? *If "Yes," complete Schedule D, Part IV*	9	Yes	
10	Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi endowments? *If "Yes," complete Schedule D, Part V*	10	Yes	
11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X, as applicable.			
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? *If "Yes," complete Schedule D,* Part VI.	11a	Yes	
b	Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VII*	11b		No
c	Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VIII*	11c		No
d	Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part IX*	11d		No
e	Did the organization report an amount for other liabilities in Part X, line 25? *If "Yes," complete Schedule D, Part X*	11e	Yes	
f	Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? *If "Yes," complete Schedule D, Part X*	11f	Yes	
12a	Did the organization obtain separate, independent audited financial statements for the tax year? *If "Yes," complete Schedule D, Parts XI and XII*	12a		No
b	Was the organization included in consolidated, independent audited financial statements for the tax year? *If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional*	12b	Yes	
13	Is the organization a school described in section 170(b)(1)(A)(ii)? *If "Yes," complete Schedule E*	13		No
14a	Did the organization maintain an office, employees, or agents outside of the United States?	14a		No
b	Did the organization have aggregate revenues or expenses of more than $10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at $100,000 or more? *If "Yes," complete Schedule F, Parts I and IV*	14b		No
15	Did the organization report on Part IX, column (A), line 3, more than $5,000 of grants or other assistance to or for any foreign organization? *If "Yes," complete Schedule F, Parts II and IV*	15		No
16	Did the organization report on Part IX, column (A), line 3, more than $5,000 of aggregate grants or other assistance to or for foreign individuals? *If "Yes," complete Schedule F, Parts III and IV*	16		No
17	Did the organization report a total of more than $15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? *If "Yes," complete Schedule G, Part I.* See instructions.	17		No
18	Did the organization report more than $15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? *If "Yes," complete Schedule G, Part II*	18	Yes	
19	Did the organization report more than $15,000 of gross income from gaming activities on Part VIII, line 9a? *If "Yes," complete Schedule G, Part III*	19		No
20a	Did the organization operate one or more hospital facilities? *If "Yes," complete Schedule H*	20a		No
b	If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?	20b		
21	Did the organization report more than $5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? *If "Yes," complete Schedule I, Parts I and II*	21	Yes	

Florida Bar Foundation Inc.

EIN: 59-1004604 | Maitland, Florida, United States

EXHIBIT C

Publication 78 Data

Organizations eligible to receive tax-deductible charitable contributions. Users may rely on this list in determining deductibility of their contributions.

On Publication 78 Data List: Yes

Deductibility Code: PC

Exhibit D

Supreme Court of Florida

No. SC22-1292

IN RE: AMENDMENTS TO RULES REGULATING THE FLORIDA BAR—MISCELLANEOUS.

March 16, 2023

PER CURIAM.

Before the Court is a petition of The Florida Bar (Bar) proposing amendments to seventeen Rules Regulating The Florida Bar (Bar Rules) and one bylaw. We have jurisdiction. *See* art. V, § 15, Fla. Const.; *see also* R. Regulating Fla. Bar 1-12.1.

The Bar proposes amending Bar Rules 1-3.5 (Retirement), 1-3.7 (Reinstatement to Membership), Bylaw 2-9.7 (Insurance for Members of Board of Governors, Officers, Grievance Committee Members, UPL Committee Members, Clients' Security Fund Committee Members, and Employees), 4-1.6 (Confidentiality of Information), 4-3.8 (Special Responsibilities of a Prosecutor), 5-1.1 (Trust Accounts), 11-1.1 (Purpose), 11-1.2 (Activities), 11-1.3 (Requirements and Limitations), 11-1.4 (Certification of Student), 11-1.5 (Approval of Legal Aid Organization), 11-1.6 (Other Activities), 11-1.7 (Supervision), 11-1.8 (Miscellaneous), 11-1.9 (Continuation of Practice Program After Completion of Law School Program or Graduation), 11-1.10 (Certification of Members of Out-of-State Bars), 19-1.5 (Relationship to the Supreme Court Commission on Professionalism), and 20-5.1 (Generally).

The Bar's proposals were approved by the Board of Governors of The Florida Bar, and consistent with Bar Rule 1-12.1(g), the Bar published formal notice of the proposed amendments in *The Florida Bar News*. The notice directed interested parties to file comments directly with the Court. No comments were received. Having considered the Bar's petition, the Court hereby amends the Bar Rules as proposed, except for the proposed technical amendment to rule 5-1.1(g)(3) and the proposed amendment to rule 5-1.1(g)(5)(B) requiring a minimum net interest rate of 25 basis points. The more significant amendments are discussed below.

First, rule 1-3.5 is reorganized and new subdivision (b) (Practice of Law Prohibited) is added to explain requirements for retired members of the Bar. Specifically, retired members must not practice law in Florida unless reinstated to active membership in good standing or certified as an emeritus lawyer, must affirmatively represent their retired status, and must not hold themselves out as being able to practice law in Florida or render advice on matters of Florida law unless certified as an emeritus lawyer. Also, new language clarifying the requirements for retired members to be reinstated to active membership is added to new subdivision (c) (Reinstatement).

Next, in rule 1-3.7, subdivision (f) (Members Delinquent 60 Days or Less) is amended to treat a failure to file a trust account compliance certification as an administrative delinquency. Additionally, language stating that the effective date of reinstatement relates back to the date of delinquency is replaced with language providing that a lawyer is not considered in violation of the Bar Rules if an administrative delinquency is cleared within 60 days.

In bylaw 2-9.7, "current and former" is added to clarify that current and former officers of the Bar; members of the board of governors, UPL, clients' security fund, and grievance committees; and employees of the Bar will be covered by insurance and indemnification for actions taken while acting on behalf of the Bar in their official capacity.

Next, in rule 4-1.6, subdivision (b)(2), regarding when a lawyer must reveal information, is amended to make clear that confidential information must be disclosed to prevent death or substantial bodily harm to anyone, including a client. Additionally, a new subdivision (c)(7) is added to rule 4-1.6 to permit a lawyer to reveal confidential information to the extent the lawyer reasonably believes necessary to "respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law."

Also, in rule 5-1.1, subdivision (g)(1)(E) is amended to expand the definition of an interest or dividend-bearing trust account to include a business or consumer deposit account, and in subdivision (g)(5)(A), language is added that requires eligible institutions to maintain IOTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers when IOTA accounts meet or exceed the same minimum balance qualifications. And, in subdivision (g)(5)(B), language is added requiring eligible institutions to tie interest rates for IOTA accounts to specific indexed rate points.

In rule 11-1.2, subdivision (f) regarding the determination of indigency is deleted, as lawyers can look to the statutes and other sources for guidance on indigency rather than having the Board of Governors set the standards.

Rule 11-1.8, which pertains to the rule chapter's lack of effect on the unlicensed practice of law, is deleted, and rules 11-1.9 and 11-1.10 are renumbered as 11-1.8 and 11-1.9.

Next, rule 19-1.5 is deleted, as the Supreme Court Commission on Professionalism and Civility was disbanded in *In re Florida Supreme Court Commission on Professionalism and Civility*, Florida Administrative Order No. AOSC19-12 (Mar. 12, 2019).

Last, a new subdivision (h) is added to rule 20-5.1 to make ineligible for the Florida Registered Paralegal Program persons who have "engage[d] in conduct involving dishonesty, fraud, deceit, or misrepresentation in the application or reapplication process," which will allow the Florida Registered Paralegal Compliance Committee to deem someone unfit after a thorough investigation has been conducted as to whether an applicant possesses the professional standard or integrity expected of a Florida Registered Paralegal during the application or reapplication process.

Accordingly, the Rules Regulating The Florida Bar are amended as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective May 15, 2023, at 12:01 a.m.

It is so ordered.

MUÑIZ, C.J., and CANADY, POLSTON, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules Regulating The Florida Bar

Joshua E. Doyle, Executive Director, Gary S. Lesser, President, F. Scott Westheimer, President-elect, and Elizabeth Clark Tarbert, Division Director, Lawyer Regulation, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 1-3.5 RETIREMENT

(a) Eligibility. Any member of The Florida Bar may retire from The Florida Bar ~~up~~on petition or other written request to, and approval of, the executive director.

(b) Practice of Law Prohibited.

(1) A retired member ~~shall~~must not practice law in this state ~~except upon petition for reinstatement~~unless reinstated to active membership in good standing by the executive director or unless certified as an emeritus lawyer under chapter 12 of these rules, but only for those activities permitted under chapter 12 of these rules~~, and approval of, the executive director; the payment of all membership fees, costs, or other amounts owed to The Florida Bar; and the completion of all outstanding continuing legal education or basic skills course requirements~~.

(2) Retired members must affirmatively represent their retired status when any statement of Florida Bar membership is made, e.g., when in writing, Esquire (Ret.) or Member, Florida Bar (Ret.).

(3) Retired members must not hold themselves out as being able to practice law in Florida or render advice on matters of Florida law unless certified as an emeritus lawyer under chapter 12 of these rules.

(c) Reinstatement. To be reinstated to active membership in good standing, a retired member must:

(1) complete the reinstatement application;

(2) pay all membership fees, costs, or other amounts owed to The Florida Bar;

(3) complete all outstanding continuing legal education or basic skills course requirements as stated elsewhere in these rules; and

(4) be approved for reinstatement by the executive director.

(d) Permanent Retirement. A member who ~~seeks and~~ is approved to permanently retire ~~shall~~is not ~~be~~ eligible for reinstatement or readmission. A retired member ~~shall be~~is entitled to receive ~~such~~ other privileges as the board of governors ~~may~~ authorizes.

(e) Discipline. A retired member ~~shall~~ remains subject to disciplinary action for acts committed before the effective date of retirement. Acts committed after retirement may be considered in evaluating the member's fitness ~~to resume~~for reinstatement to the practice of law in Florida as elsewhere stated in these ~~Rules Regulating The Florida Bar~~rules.

(f) Referral to Board of Governors. If the executive director is in doubt as to disposition of a petition, the executive director may refer the petition to the board of governors for its action.

(g) Review of Disposition. Action of the executive director or board of governors denying a petition for retirement or reinstatement from retirement may be reviewed ~~up~~on petition to the Supreme Court of Florida.

RULE 1-3.7 REINSTATEMENT TO MEMBERSHIP

(a)-(e) [No change]

(f) Members Delinquent 60 Days or Less. ~~Reinstatement~~Any member reinstated from delinquency for payment of membership fees, trust account compliance certification, or completion of continuing legal education or basic skills course requirements approved within 60 days from the date of delinquency ~~is effective on the last business day before the delinquency. Any member reinstated within the 60-day period~~ is not considered in violation of these rules and is not subject to disciplinary sanction for practicing law in Florida during that time.

(g) [No change]

BYLAW 2-9.7 INSURANCE FOR MEMBERS OF BOARD OF GOVERNORS, OFFICERS, GRIEVANCE COMMITTEE MEMBERS, UPL COMMITTEE MEMBERS, CLIENTS' SECURITY FUND COMMITTEE MEMBERS, AND EMPLOYEES

The bar will provide insurance coverage for current and former members of the board of governors, officers of The Florida Bar, members of UPL, clients' security fund, and grievance committees, and employees of The Florida Bar as authorized by the budget committee and included in the budget. The bar will indemnify current and former officers, board of governors, UPL, clients' security fund, and grievance committee members and bar employees as provided in the standing board policies.

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(a) Consent Required to Reveal Information. A lawyer must not reveal information relating to a client's representation ~~of a client~~ except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) When Lawyer Must Reveal Information. A lawyer must reveal confidential information to the extent the lawyer reasonably believes necessary to:

(1) ~~to~~ prevent a client from committing a crime; or

(2) ~~to~~ prevent ~~a~~ death or substantial bodily harm ~~to another~~.

(c) When Lawyer May Reveal Information. A lawyer may reveal confidential information to the extent the lawyer reasonably believes necessary to:

(1) ~~to~~ serve the client's interest unless it is information the client specifically requires not to be disclosed;

(2) ~~to~~ establish a claim or defense on the lawyer's behalf ~~of the lawyer~~ in a controversy between the lawyer and client;

(3) ~~to~~ establish a defense to a criminal charge or civil claim against the lawyer based on conduct in which the client was involved;

(4) ~~to~~ respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) ~~to~~ comply with the Rules Regulating The Florida Bar; ~~or~~

(6) ~~to~~ detect and resolve conflicts of interest between lawyers in different firms arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or

(7) respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law.

(d) [No change]

(e) Inadvertent Disclosure of Information. A lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the client's representation ~~of a client~~.

(f) [No change]

Comment

[No change]

Authorized disclosure
[No change]
Disclosure adverse to client
[No change]
Withdrawal
[No change]
Dispute concerning lawyer's conduct

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure this advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (c)(5) permits this disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges complicity, so that the defense may be established by responding directly to a third party who has made the assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. A charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Subdivision (c)(7) allows a lawyer to respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law. However, under subdivision (f), even when the lawyer is operating within the scope of the (c)(7) exception, disclosure must be no greater than the lawyer reasonably believes necessary to refute the specific allegations.

Disclosures otherwise required or authorized
[No change]
Detection of Conflicts of Interest
[No change]
Acting Competently to Preserve Confidentiality
[No change]
Former client
[No change]

RULE 4-3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case ~~shall~~must:

(a) [No change]

(b) not seek to obtain from an unrepresented accused a waiver of important pre-trial rights such as a right to a preliminary hearing; and

(c) [No change]

Comment

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations such as making a reasonable effort to assure that the accused has been advised of the right to and the procedure for obtaining counsel and has been given a reasonable opportunity to obtain counsel so that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate. ~~Florida has adopted the American Bar Association Standards of Criminal Justice Relating to Prosecution Function. This is the product of prolonged and careful deliberation by lawyers experienced in criminal prosecution and defense and should be consulted for further guidance.~~ See also rule 4-3.3(d) governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of these obligations or systematic abuse of prosecutorial discretion could constitute a violation of rule 4-8.4.

Subdivision (b) does not apply to an accused appearing pro se with the approval of the tribunal, nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in subdivision (c) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

RULE 5-1.1 TRUST ACCOUNTS

(a)-(f) [No change]

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in this rule, the term:

(A)-(D) [No change]

(E) "Interest or dividend-bearing trust account" means a federally insured checking account, business or consumer deposit account or sub account, business or consumer deposit account or sub account that does not have a maturity date (non-maturing deposit), or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least $250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(F)-(J) [No change]

(2) *Required Participation*. All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida ~~bar~~Bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds*. The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider such factors as the:

(A)-(D) [No change]

(E) minimum balance requirements ~~and/~~or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) [No change]

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions must maintain IOTA accounts ~~which~~that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers when IOTA accounts meet or exceed the same minimum balance ~~or other account eligibility~~ qualifications~~, if any~~.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account. When the Wall Street Journal Prime Rate ("indexed rate") is between 325 and 499 basis points (3.25% and 4.99%), the minimum interest rate paid net of all fees and service charges ("yield") must be no less than 300 basis points (3.00%) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00%) or above, the yield must be no less than 40% of the indexed rate in effect on the first business day of each month.

(C) [No change]

(6)-(7) [No change]

(h)-(k) [No change]

Comment

[No change]

Foundation Provision of Training and Technology; Grantees' Funds from Non-IOTA Sources
[No change]

RULE 11-1.1 PURPOSE

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for ~~such~~legal services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rules are adopted.

RULE 11-1.2 ACTIVITIES

(a) [No change]

(b) Appearance in Court or Administrative Proceedings. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf the student is appearing has ~~indicated in writing~~ consented in writing to that appearance and the supervising lawyer has ~~also indicated in writing approval of~~approved that appearance in writing. In those cases in which the indigent person has a right to appointed counsel, the supervising ~~attorney shall~~lawyer must be personally present at all critical stages of the proceeding. In all cases, the supervising ~~attorney shall~~lawyer must be personally present when required by the court or administrative tribunal, ~~who~~which ~~shall~~ determines the extent of the eligible law student's participation in the proceeding.

(c) Appearance for the State in Criminal Proceedings. An eligible law student may ~~also~~ appear in any criminal matter on behalf of the state with the written approval of the state attorney or the attorney general and of the supervising lawyer. ~~In such cases the~~The supervising ~~attorney shall~~lawyer must be personally present when required by the court, ~~who~~which ~~shall~~ determines the extent of the law student's participation in the proceeding.

(d) Appearance on Behalf of Governmental Officers or Entities. An eligible law student may ~~also~~ appear in any court or before any administrative tribunal in any civil matter on behalf of the state, state officers, or state agencies, or on behalf of a municipality or county~~, provided~~ that ~~the municipality or county~~ has a full-time legal staff~~,~~ with the written approval of the ~~attorney~~lawyer representing the state, state officer, state agency, municipality, or county. The ~~attorney~~lawyer representing the state, state officer, state agency, municipality, or county ~~shall~~must supervise the law student and ~~shall~~ be personally present when required by the court or administrative tribunal, which ~~shall~~ determines the extent of the law student's participation in the proceeding.

(e) Filing of Consent and Approval. In each case, the written consent and approval referred to above ~~shall~~must be filed in the record of the case and ~~shall be~~ brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. If the client is the state attorney, state officer, or governmental entity, ~~it shall be sufficient to file~~filing the written consent and approval with the clerk and each presiding judge once for the term of the student's participation is sufficient.

~~**(f) Fixing of Standards of Indigence.** The board of governors shall fix the standards by which indigence is determined under this chapter upon the recommendation of the largest voluntary bar association located in the circuit in which a program is implemented hereunder.~~

RULE 11-1.3 REQUIREMENTS AND LIMITATIONS

In order to make an appearance ~~pursuant to~~under this chapter, the law student must:

(a) ~~have~~ register~~ed~~ with the Florida Board of Bar Examiners as a certified legal intern registrant; ~~have paid~~pay ~~the~~a $75 registration fee ~~for such registration~~ if the registration is ~~completed~~filed within the first 250 days of the registrant's law school education or $150 if the registration is filed after the 250-day deadline<u> (any fee paid under this subdivision will be deducted from the applicable application fee if the certified legal intern registrant later applies for admission to The Florida Bar)</u>; and ~~have received~~<u>receives</u> a letter of clearance as to character and fitness from the Florida Board of Bar Examiners;~~ any fee paid under this subdivision shall be deducted from the applicable application fee should the certified legal intern registrant subsequently decide to apply for admission to The Florida Bar~~;

(b) be ~~duly ~~enrolled in the United States in, and appear~~ing~~ as part of a law school practice program of, a law school approved by the American Bar Association;

(c) have completed legal studies amounting to at least 4 semesters or 6 quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit or the equivalent~~ if the school is on some other basis~~;

(d) [No change]

(e) be introduced to the court in which the student is appearing by ~~an attorney~~<u>a lawyer</u> admitted to practice in that court;

(f) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services~~, but this shall~~<u>; although this does</u> not prevent a state attorney, public defender, legal aid organization, ~~or ~~state officer<u>,</u> or governmental entity from paying compensation to the eligible law student ~~(~~nor ~~shall~~<u>does</u> it prevent ~~any of the foregoing~~<u>them</u> from ~~making such charge~~<u>charging</u> for ~~its ~~services as ~~it~~<u>they</u> may ~~otherwise ~~require~~)~~; and

(g) certify in writing that the <u>law </u>student has read and ~~is familiar with~~<u>will abide by</u> the Rules of Professional Conduct as adopted by ~~this court and will abide by the provisions thereof~~<u>the Supreme Court of Florida</u>.

RULE 11-1.4 CERTIFICATION OF STUDENT

The certification of a student by the law school dean or the dean's designee:

(a) ~~Shall~~must be filed with the clerk of ~~this court~~the Supreme Court of Florida, ~~and~~where~~, unless it is sooner withdrawn,~~ it ~~shall~~ remains in effect ~~until the expiration of~~for 18 months after it is filed unless withdrawn sooner~~.~~;

(b) ~~May~~may be withdrawn by the dean, or the dean's designee, at any time by mailing a notice, that does not need to include the cause for withdrawal, ~~to that effect~~ to the clerk of ~~this court~~the Supreme Court of Florida~~. It is not necessary that the notice state the cause for withdrawal.~~;

(c) ~~May~~may be terminated by ~~this court~~the Supreme Court of Florida at any time without notice or hearing and without any showing of cause.~~ Notice of the termination may be filed with the clerk of the court.~~

RULE 11-1.5 APPROVAL OF LEGAL AID ORGANIZATION

Legal aid organizations that provide a majority of their legal services to the indigent and use law student interns~~ pursuant to~~under this chapter must be approved by the ~~supreme court~~Supreme Court of Florida. A legal aid organization seeking approval ~~shall~~must file a petition with the clerk of the court certifying that it is a nonprofit organization and ~~reciting~~stating with specificity the:

(a) ~~the~~ structure of the organization and whether it accepts funds from its clients;

(b) ~~the~~ major sources of funds used by the organization;

(c) ~~the~~ criteria used to determine potential clients' eligibility for legal services performed by the organization;

(d) ~~the~~ types of legal and nonlegal services performed by the organization; and

(e) ~~the~~ names of all Florida Bar members ~~of The Florida Bar~~ who are employed by the organization or who regularly perform legal work for the organization.

Legal aid organizations ~~approved on the effective date of~~under this chapter ~~need not reapply for approval, but all such organizations~~ are under a continuing duty to notify the court promptly of any significant modification to their structure or sources of funds.

RULE 11-1.6 OTHER ACTIVITIES

(a) Preparation of Documents; Assistance of Indigents. ~~In addition, an~~An eligible law student may engage in other activities~~,~~ under the general supervision of a member of ~~the bar of this court~~The Florida Bar, but outside the personal presence of that lawyer, including preparation of:

(1) ~~preparation of~~ pleadings and other documents to be filed in any matter in which the student is eligible to appear, ~~but such pleadings or documents must be~~ signed by the supervising lawyer;

(2) ~~preparation of~~ briefs, abstracts, and other documents to be filed in appellate courts of this state, ~~but such documents must be~~ signed by the supervising lawyer;

(3) ~~except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court, assistance~~applications and supporting documents for post-conviction relief to indigent inmates ~~or~~of correctional institutions or other persons who request ~~such~~ assistance ~~in preparing applications for and supporting documents for postconviction relief~~, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court. If there is ~~an attorney~~a lawyer of record in the matter, all ~~such~~ assistance must be supervised by ~~the attorney of record,~~ and all documents submitted to the court must be signed by, that lawyer ~~and all documents submitted to the court on behalf of such a client must be signed by the attorney of record~~.

(b)-(c) [No change]

RULE 11-1.7 SUPERVISION

~~The member of the bar under whose supervision an eligible law student does any of the things permitted by~~A supervising lawyer under this chapter must:

(a) be a ~~lawyer~~member of The Florida Bar in good standing and eligible to practice law in Florida whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled~~ and who is a member of The Florida Bar in good standing and eligible to practice law in Florida~~;

(b) be a lawyer employed by a state attorney, public defender, an approved legal aid organization, a state officer, or a governmental entity enumerated in rule 11-1.2~~(d)~~;

(c)-(d) [No change]

~~**RULE 11-1.8 MISCELLANEOUS**~~

~~Nothing contained in this chapter shall affect the right of any person who is not admitted to the practice of law to do anything that the person might lawfully do prior to the adoption of this chapter.~~

RULE 11-1.~~9~~8 CONTINUATION OF PRACTICE PROGRAM AFTER COMPLETION OF LAW SCHOOL PROGRAM OR GRADUATION

(a) Certification. A law student at an American Bar Association-approved Florida law school who has filed an application for admission to The Florida Bar, ~~has~~ received an initial clearance letter as to character and fitness from the Florida Board of Bar Examiners, ~~has~~ completed a law school practice program awarding a minimum of 3 semester credit hours or the equivalent or requiring at least 200 hours of actual participation in the program, and ~~has~~ had certification withdrawn by the law school dean by reason of successful completion of the program or ~~has~~ graduated from law school following successful completion of the program may make appearances for any of the same supervisory authorities under the same circumstances and restrictions that were applicable to students in law school programs ~~pursuant to~~under this chapter if the supervising ~~attorney~~lawyer:

(1) files a certification in the same manner and subject to the same limitations as that required to be filed by the law school dean; ~~and files a separate certificate of the dean stating that the law student has successfully completed the law school practice program. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of certification. The maximum term of certification for graduates shall be 12 months from graduation; and~~.

(2) further certifies that the ~~attorney will~~lawyer assumes the duties and responsibilities of ~~the~~a supervising ~~attorney~~lawyer ~~as provided by other provisions of~~under this chapter~~.~~; and

(3) files a separate certificate of the dean stating that the law student has successfully completed the law school practice program. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of certification.~~ The maximum term of certification for graduates shall be 12 months from graduation; and~~.

(b) Graduates of Non-Florida Law Schools. A graduate of an American Bar Association-approved non-Florida law school may qualify for continuation in the practice program if the graduate has ~~made application~~filed an application for admission to The Florida Bar, ~~and~~ received a letter of initial clearance as to character and fitness from the Florida Board of Bar Examiners, and has successfully completed a clinical program in law school that met the definition of a law school practice program under rule 11-1.2~~(a) and~~ that awarded a minimum of 3 semester hours or the equivalent or required at least 200 hours of actual participation in the program.

(c) Term of Certification. The maximum term of certification for graduates is 12 months from the date of graduation.

(~~c~~d) Termination of Certification. ~~Failure of a post-graduate certified legal intern to do any of the following shall result in the automatic termination of certification:~~

~~(1) failure to take the next available Florida bar examination;~~

~~(2) failure to take the second available Florida bar examination, if unsuccessful on the first administration;~~

~~(3) failure to pass every portion of the Florida bar examination by at least the second administration, if unsuccessful on the first administration; or~~

~~(4) denial of admission to The Florida Bar.~~Failure to take the next available Florida bar examination, failure of any portion of the Florida bar examination on the second administration if a second administration is required, or denial of admission to The Florida Bar terminates certification under this rule.

(e) Withdrawal of Certification. Certification may be withdrawn in the same manner as the law school dean's withdrawal of certification.

RULE 11-1.~~10~~9 CERTIFICATION OF MEMBERS OF OUT-OF-STATE BARS

(a) Persons Authorized to Appear. A member of an out-of-state bar may practice law in Florida ~~pursuant to~~under this chapter if the member of the out-of-state bar:

(1) ~~the appearance is made as~~is an employee of the attorney general, a state attorney, a public defender, or the capital collateral representative; ~~and~~

(2) ~~the member of an out-of-state bar has made application~~has applied for admission to The Florida Bar; ~~and~~

(3) ~~the member of an out-of-state bar~~ submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; and

(4) ~~the member of an out-of-state bar~~ is in good standing with that bar, is eligible to practice law in that jurisdiction, and is not currently the subject of disciplinary proceedings.

(b) Term of Certification. The maximum term of certification under this section is 12 months from the date of certification~~; provided, however, that the certification may extend~~but may be extended beyond 12 months if the certificate holder has passed the Florida bar examination and is awaiting the results of the character and fitness evaluation of the Florida Board of Bar Examiners. ~~Certification may be withdrawn in the same manner as provided for the withdrawal of certification by a law school dean.~~

(c) [No change]

(d) Withdrawal of Certification. Certification may be withdrawn in the same manner as the law school dean's withdrawal of certification.

~~RULE 19-1.5 RELATIONSHIP TO THE SUPREME COURT COMMISSION ON PROFESSIONALISM~~

~~The commission on professionalism has been established by administrative order of the Supreme Court of Florida and has been charged with the planning and implementation of an ongoing plan and policy to ensure that the fundamental ideals and values of the justice system and the legal profession are inculcated in all of those persons serving or seeking to serve in the system.~~

~~The center shall endeavor to assist the commission in this regard consistent with the center's funding, staffing, operational, and reporting structure.~~

RULE 20-5.1 GENERALLY

~~The following individuals are~~A person is ineligible for registration ~~as a Florida Registered Paralegal~~ or ~~for~~ renewal of a registration ~~that was previously granted~~ to become a Florida Registered Paralegal if that person:

(a) ~~a person who~~ is currently suspended or disbarred or ~~who~~ has resigned or been revoked in lieu of discipline from the practice of law in any state or jurisdiction;

(b) ~~a person who~~ has been convicted of a felony in any state or jurisdiction and ~~whose~~has not had the person's civil rights ~~have not been~~ restored;

(c) ~~a person who~~ has been found to have engaged in the unlicensed ~~(~~or unauthorized~~)~~ practice of law in any state or jurisdiction within 7 years of the application date;

(d) ~~a person whose~~has had that person's registration or license to practice ~~has been~~ terminated or revoked for disciplinary reasons by a professional organization, court, disciplinary board, or agency in any jurisdiction;

(e) ~~a person who~~ is no longer primarily performing paralegal work as defined elsewhere in these rules;

(f) ~~a person who~~ fails to comply with prescribed continuing education requirements as set forth elsewhere in this chapter;~~ or~~

(g) ~~a person who~~ is providing services directly to the public as permitted by case law and subchapter 10-2 of these rules~~.~~; or

(h) engages in conduct involving dishonesty, fraud, deceit, or misrepresentation in the application or reapplication process.

The Florida Bar proposed budget for Fiscal Year 2024-2025

EXHIBIT E

In compliance with Chapter 2-6.9 of the Rules Regulating The Florida Bar, notice is hereby given that the Board of Governors has approved a budget for the 2024-2025 fiscal year. The proposed budget will become final unless written email objections are filed with the executive director at edbudget@floridabar.org before 5:30 p.m. (ET) on April 19, 2024. Such objections will be considered by the Board of Governors at its May 10, 2024, meeting.

*Footnote: Reference Rules Regulating 2-9.3 TFB's legislative program is funded entirely from member fees. For this FY budget the per paying member amount of $4.04 is calculated based on the membership count as of 7/1/23.

Other Programs:

Leadership Academy	
Revenues	22,500
Expenses	
Staff & Office Expense	96,212
Contract Services	7,100
Travel	39,748
Other Expense	81,886
Admin & Internal Svcs	40,177
Total Expense	265,123
Net Operations	(242,623)

Type tex

G. Kirk Haas Fund	
Revenues	5,000
Expenses	
Other Expense	5,000
Total Expense	5,000
Net Operations	-

Young Lawyers Division:	
Revenues	1,046,783
Expenses	
Staff & Office Expense	118,898
Contract Services	22,150
Travel	222,987
Other Expense	616,750
Admin & Internal Svcs	48,015
Total Expense	1,028,800
Net Operations	17,983

General Fund Totals:	
Revenues	43,103,749
Expenses	48,397,874
Net Operations	(5,294,125)

Certification Fund:	
Revenues	1,502,396
Expenses	
Staff & Office Expense	851,806
Contract Services	65,500
Travel	27,680
Other Expense	138,800
Admin & Internal Svcs	431,477
Total Expenses	1,515,263
Net Operations	(12,867)
Beginning Fund Balance	2,465,789
Ending Fund Balance	2,452,922

FFLA DISTRIBUTES $93 MILLION IN IOTA FUNDS TO 35 LEGAL AID ORGANIZATIONS

EXHIBIT F

Jan 14, 2025 Top Stories

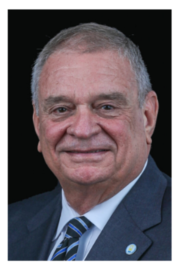
'Because of a substantial increase in IOTA collections last fiscal year, FFLA is able to distribute to grantees 165% more IOTA grant funding and double Loan Repayment Assistance Program loans to legal aid lawyers from $5,000 to $10,000 each'

FFLA FUNDING FLORIDA LEGAL AID

The board of directors of FFLA has approved a general distribution of $89,748,976 in Interest on Trust Account (IOTA) funds to 35 Florida legal aid organizations.

Organizations must use the grant money within calendar year 2025. At its December 6, 2024, meeting, FFLA also approved using $3,636,425 in IOTA funds for its Pro Bono Support and Enhancement grant program. FFLA is the designated administrator of the Supreme Court's IOTA program.

"Because of a substantial increase in IOTA collections last fiscal year, FFLA is able to distribute to grantees 165% more IOTA grant funding and double Loan Repayment Assistance Program loans to legal aid lawyers from $5,000 to $10,000 each," Roberto R. Pardo, FFLA president, said. "This funding is transformative for Florida's network of legal aid providers, allowing them to retain and hire more highly qualified legal professionals, expand facilitation of pro bono volunteerism and ultimately increase the number of clients receiving legal assistance."



Bob Pardo: 'This funding is transformative for Florida's network of legal aid providers, allowing them to retain and hire more highly qualified legal professionals, expand facilitation of pro bono volunteerism and ultimately increase the number of clients receiving legal assistance.'

With approval from the Florida Supreme Court in October, FFLA also placed an additional $142.8 million of IOTA collections in a reserve for future distribution to qualified grantee organizations. The goal of FFLA's reserve is to hold a balance that can be used to fund grantees at consistent levels even when interest rates fluctuate, affecting the amount of collections year to year. Steady levels of funding allow grantees to plan more effectively for the future, according to FFLA.

From 2022 to 2023, the number of qualified legal services providers employed by IOTA grantees increased from 587 to 639. As of November 5, 2024, 691 are employed, an 18% increase. Grantees also reported increasing the total number of clients they served from 114,002 in 2022 to 123,729 in 2023, reducing the number of clients they had to turn away due to a lack of resources.

A list of grantees and grant amounts is below.

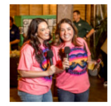
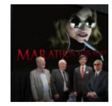
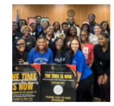
Qualified Grantee Organization	2025 IOTA Distribution Grant	2024-25 Pro Bono Support and Enhancement Grant
Americans for Immigrant Justice	$4,726,275	-
Bay Area Legal Services	$6,636,062	-
Brevard County Legal Aid	$2,101,241	$141,000
Catholic Legal Services	$3,791,005	-
Coast to Coast Legal Aid	$1,919,924	-
Community Justice Project	$981,608	-
Community Law Program	$901,639	$19,000

Community Legal Services	$7,609,678	-
CABA Pro Bono	$1,346,206	$75,000
Dade Legal Aid	$2,629,309	$900,000
Florida Health Justice Project	$1,479,529	$50,000
Florida Justice Institute	$986,353	-
Florida Legal Services	$5,535,084	$50,000
Florida Rural Legal Services	$1,564,527	-
Florida's Children First	$493,176	-
Gulfcoast Legal Services	$3,381,146	$53,425
Heart of Florida Legal Aid Society	$974,578	-
IDignity	$657,568	$25,000
Innocence Project of Florida	$986,353	$50,000
Jacksonville Area Legal Aid	$4,831,927	$408,000
Lawyers for Children America	$986,353	-
Lee County Legal Aid Society	$1,218,223	-
Legal Aid Foundation of Tallahassee	$232,447	$120,000
Legal Aid Society of the Orange County Bar Association	$5,108,189	$700,000
Legal Aid Service of Broward County	$5,105,253	$370,000
Legal Aid Service of Collier County	$1,461,868	-
Legal Aid of Manasota	$1,127,049	$285,000
Legal Aid Society of Palm Beach County	$7,217,971	$225,000
Legal Services of Greater Miami	$2,299,769	-
Legal Services of North Florida	$4,091,060	-
Northwest Florida Legal Services (Emerald Coast Legal Aid)	$929,786	$30,000
Seminole County Bar Association Legal Aid Society	$1,738,959	$60,000
Southern Legal Counsel	$1,315,138	$75,000
St. Michael's Legal Center for Women and Children	$901,639	-
Three Rivers Legal Services	$2,482,084	-
Total	**$89,748,976**	**$3,636,425**

CLASSIFIED ADS

NEWS IN PHOTOS




COLUMNS

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Columns | Oct 10, 2025

Judicial Independence and Why We Should Care

Columns | Oct 09, 2025

The Portable Mindfulness Practice

Columns | Sep 26, 2025

CONTACT
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850-561-5600

GOVERNOR VETOES BILL ADDRESSING IOTA INTEREST RATE

Jul 01, 2026 By Mark D. Killian Editor Top Stories

EXHIBIT G

Saying it perpetuates an IOTA program "of dubious constitutionality," Gov. Ron DeSantis on June 30 vetoed a bill designed to settle a dispute over the interest rate banks pay on lawyers' trust accounts.

HB 893, sponsored by Republican Sen. Erin Grall, a Ft. Pierce attorney, and Republican Rep. Traci Koster, a Tampa lawyer, cleared both chambers unanimously.

In his **veto message**, DeSantis questioned the Supreme Court's authority to implement the IOTA program, which was established in 1978 and launched in 1981, saying while the court's "usurpation of regulatory authority" predates the current composition of the court, "we should not perpetuate the errors of the past."

Gov. DeSantis said that although the court has long attempted to justify the IOTA program by reference to the use of funds for legal aid to the poor, HB 893 “disclaims any such limitation.”

"Instead, it authorizes the use of interest earned on client funds 'for such other purposes' that the Supreme Court may authorize. This improperly delegates regulatory authority to the Judicial Branch and raises various other concerns, including that it allows the Court (through the entity it has established to distribute IOTA earnings) to compel 'support of certain viewpoints' with which the clients who own the IOTA funds may disagree," DeSantis said, citing U.S. Supreme Court Justice Anthony Kennedy's dissent in *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 253 (2003).

Acting June 4 in **Case No. SC2025-1730**, the court amended Rule Regulating The Florida Bar 5-1.1 to require participating financial institutions to pay a specified rate tied to the *Wall Street Journal* Prime Rate on IOTA accounts. In adopting the amendment, the court noted: "With this change, the interest rate provision in the rule would match recently enacted legislation on the same subject, *see* Fla. HB 893 (2026)." Gov. DeSantis has since vetoed that legislation, but the Bar rule remains in effect.

SUPPLEMENT NO. 1 TO CRIMINAL REFERRAL

Submitted in support of, and to be associated with, the criminal referral of June 27, 2026

TO:	Internal Revenue Service, Criminal Investigation — Miami Field Office; and Criminal Investigation — Tampa Field Office
FROM:	Paul Carnie, Relator, 30 N. Gould Street, Suite R, Sheridan, Wyoming 82801; Paul.Carnie@proton.me
DATE:	September 10, 2026
RE:	The Florida Bar Foundation, Inc., d/b/a Funding Florida Legal Aid — EIN 59-1004604. Form 990 for the tax year July 1, 2023 through June 30, 2024, filed April 7, 2025; signed under penalties of perjury March 31, 2025 by Dominic C. Mackenzie; prepared by CRI Advisors LLC (Firm EIN 99-4625061; PTIN P00748415).
CERT. NO.:	________________________________

I. Purpose of this Supplement

This supplement adds authority located after the June 27, 2026 submission, states one consequence of that authority, addresses one element candidly, and adds a request for relief in the alternative. It withdraws nothing from the original referral. Relator asks that it be associated with the existing referral file rather than opened as a separate matter.

The authority added below is the Service's own. It does not depend on any court's characterization of IOLTA interest, on any unresolved question of Florida law, or on any determination by any other agency. It establishes falsity from inside the Internal Revenue Code and the Service's published rulings, using no premise the Service has not itself published.

II. Authority Located Since the June 27, 2026 Submission

A. Rev. Rul. 81-209

The Service ruled that interest earned on pooled client trust funds under a state IOLTA program is not includible in the gross income of the clients whose funds generate it.

B. Rev. Rul. 87-2, 1987-1 C.B. 18 (amplifying Rev. Rul. 81-209)

The Service held that such interest "is not includible in the gross incomes of either the clients or the lawyers." The stated reason is the operative language for present purposes:

> *"[N]either the clients nor the lawyers have control over, or right to, such interest."*

Rev. Rul. 87-2 has never been revoked, modified, or superseded. It remains the Service's published position.

C. P.L.R. 9909032 (Dec. 3, 1998)

Months after *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), the Service reached the same conclusion in a private letter ruling and addressed *Phillips* in a footnote. Under 26 U.S.C. § 6110(k)(3), a written determination may not be used or cited as precedent, and Relator does not offer it as precedent. It is offered as record evidence of two facts: that the Service considered *Phillips* and did not revoke Rev. Rul. 87-2, and that the Service has published no guidance reconciling the two.

III. The Consequence: There Is No Contributor

Form 990, Part VIII, Line 1 reports contributions, gifts, grants, and other similar amounts. A contribution presupposes a contributor — a person who held the thing and gave it away. Dominion must be parted with, and it must be parted with voluntarily. That is what makes a receipt a contribution rather than some other kind of revenue.

Apply the Service's own rulings. Neither the client nor the lawyer has "control over, or right to" the interest. A person who has no right to a thing and no control over it cannot give it. On the Service's published position, no party in the chain was in a position to contribute this revenue to anyone.

Apply instead the holding of *Phillips*: the interest is the private property of the client. Then the client owned it — but the client never elected to part with it. The transfer is compelled by court rule; the client is not asked and cannot decline. What is taken is not given. *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003), held that no just compensation was owed because the client's net pecuniary loss was zero. It did not hold that the client made a gift, and no case does.

The two paths are exhaustive on this question, and they converge. On the Service's rulings, no one had it to give. On the Supreme Court's holding, the one who had it never gave it. There is no third position in which an identifiable contributor voluntarily transferred this interest to the Foundation.

That is the falsity. The Foundation's Form 990 reports as contributions revenue that, on the Service's own authority, no contributor contributed. The misclassification is not a matter of degree or estimate. It is the reporting of a transaction as a category of transaction that, on the filer's own governing authority, did not occur.

This bears directly on the two line items identified in the original referral. Part VIII, Line 1 states the character of the revenue. Schedule A carries that character forward into the public support computation, which in turn supports the organization's classification under 26 U.S.C. §§ 509(a)(1) and 170(b)(1)(A)(vi). A revenue stream with no contributor cannot be public support contributed by the public.

IV. The 1981 Record: The Question Was Identified at Inception

When the Supreme Court of Florida adopted the program in 1981, the tax treatment was an open question, and the court said so. *Matter of Interest on Trust Accounts*, 402 So. 2d 389 (Fla. 1981). Justice Boyd, dissenting, warned that until the Service spoke definitively the program should not be implemented:

> *"Unless we receive a definitive and binding ruling from the Service … it is unwise to implement the plan."*

The majority answered in a footnote that "IRS approval is anticipated promptly upon our readoption of this program."

Relator offers this for one purpose only. The reporting question was not raised for the first time by Relator in 2026. It was identified in 1981 by the court that created the program, and it was resolved by anticipation rather than by ruling. The program has operated on that anticipation ever since. The Service is entitled to know that the record of the program's own creation contains the reservation.

V. Candor as to the Elements

Relator's June 27, 2026 referral stated that the conduct is willful. Relator does not withdraw that statement, but sets out plainly what the Service will confront, so that the Service is not asked to reach a conclusion Relator has not tested.

A. Falsity is stronger than as originally submitted

The original referral rested the falsity showing substantially on the mismatch between the Foundation's reporting and the property characterization in *Phillips* and *Brown*. That showing now runs instead through the Service's own published rulings and does not depend on any litigation characterization. It cannot be answered by disputing what *Phillips* held, because it does not depend on what *Phillips* held.

B. Willfulness is the difficult element, and Relator says so

The reporting practice at issue is not unique to this filer. Materially the same treatment has been followed by IOLTA-funded foundations across the states for roughly four decades, under a revenue ruling the Service has never disturbed. A signatory will assert good-faith reliance on Rev. Rul. 87-2 and on uniform industry practice.

Under *Cheek v. United States*, 498 U.S. 192 (1991), a good-faith misunderstanding of the law negates willfulness in a criminal tax case however unreasonable the belief. Relator does not pretend that obstacle away.

Relator further states, for accuracy, that the written notice given to the Foundation and its counsel on May 21, 2026 (USPS 9414 8118 9876 5527 1213 24 and 9414 8118 9876 5527 1596 31) postdates the filing of the return at issue on April 7, 2025. That notice cannot supply willfulness as to that return. What it does bear on is the position maintained after notice: the June 26, 2026 response admitted rather than corrected, no amended return has been filed, and the next annual return will be prepared and signed with actual written notice of the authority set out above in the filer's hands.

Relator submits that the Service should evaluate the subject return on the evidence available to it, including the professional expertise of the signatory and the preparer, and should evaluate the succeeding filing cycle on a record in which reliance is no longer uninformed.

C. Absence of tax loss is not absence of offense

Relator anticipates that a criminal referral concerning an organization exempt under 26 U.S.C. § 501(c)(3) may be triaged against expected tax loss. Relator respectfully notes that 26 U.S.C. § 7206(1) contains no deficiency element. It reaches a person who willfully makes and subscribes a return, made under penalties of perjury, which he does not believe to be true and correct as to every material matter. Tax loss is a sentencing measure. It is not an element of the offense.

Relator further notes that misclassification of revenue in the public support computation is not consequence-free even in revenue terms. If the character of the receipts is such that they are not public support, the organization's classification under §§ 509(a)(1) and 170(b)(1)(A)(vi) is placed in question, and with it the Chapter 42 excise regime that attaches to a private foundation, including 26 U.S.C. § 4940. Relator does not assert that outcome. Relator asserts that the question is a live one and that it is the Service's to answer, not the filer's to assume.

VI. Relief Requested — Additional and in the Alternative

The five items of relief requested in the June 27, 2026 referral are unchanged and are incorporated by reference, including notification under 26 U.S.C. § 7623(b). Relator adds the following.

6. **Association of authority.** That Rev. Rul. 81-209, Rev. Rul. 87-2, 1987-1 C.B. 18, and P.L.R. 9909032 be associated with the referral file, and that the analysis in Part III above be considered as the primary statement of falsity, superseding the more limited statement in the original referral.

7. Referral to Exempt Organizations in the alternative. That, in the event Criminal Investigation declines the matter for criminal development, the referral be routed to TE/GE Exempt Organizations for civil examination rather than closed. The questions presented for civil examination are the accuracy of the return required by 26 U.S.C. § 6033, the classification of receipts on Form 990, Part VIII, Line 1, the resulting Schedule A public support computation, and the organization's continued classification under §§ 509(a)(1) and 170(b)(1)(A)(vi). A declination on the criminal element should not resolve the civil accuracy question by silence.

8. That the Office of Chief Counsel be asked whether Rev. Rul. 87-2 remains sound. The ruling's stated premise is that neither the client nor the lawyer has any right to or control over the interest. *Phillips* held that the interest is the client's property. If the ruling stands, the Foundation's contribution reporting cannot; if the reporting stands, the ruling's premise cannot. Relator does not ask the Service to choose in his favor. He asks the Service to choose, and to publish the choice, because filers across the country are reporting under a premise the Service has left unreconciled for twenty-eight years.

9. Preservation. That the Service preserve, and direct the subject organization to preserve, the working papers, engagement communications, and prior-year comparative schedules underlying the Part VIII and Schedule A classifications for tax years beginning on and after July 1, 2019.

VII. Certification

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on September 10, 2026, pursuant to 28 U.S.C. § 1746.

/s/ Paul Carnie

____

Paul Carnie, Relator
30 N. Gould Street, Suite R, Sheridan, Wyoming 82801
Paul.Carnie@proton.me

VIII. Enclosures to This Supplement

Exhibit H — Rev. Rul. 87-2, 1987-1 C.B. 18 (irs.gov/pub/irs-tege/rr87-002.pdf).

Exhibit I — Rev. Rul. 81-209.

Exhibit J — P.L.R. 9909032 (Dec. 3, 1998) (irs.gov/pub/irs-wd/9909032.pdf), submitted subject to the limitation of 26 U.S.C. § 6110(k)(3).

Exhibit K — Matter of Interest on Trust Accounts, 402 So. 2d 389 (Fla. 1981), majority footnote and dissent of Boyd, J.

Exhibits A through G of the June 27, 2026 referral are incorporated by reference and are not re-enclosed.

EXHIBIT H

Rev. Rul. 87-2, 1987-1 C.B. 18

Lawyer Trust Account Fund; excludability of income. A Lawyer Trust Account Fund created, supervised and controlled by a state Supreme Court is not subject to federal income tax. Interest income that is earned on pooled accounts containing clients' nominal and short-term funds held by lawyers and paid over to the Fund pursuant to an order of the state Supreme Court is not includible in the gross incomes of either the clients or lawyers. Rev. Rul. 81-209 amplified.

ISSUES

1. If, under the circumstances described below, a Lawyer Trust Account Fund (Fund) is created by an order of a state Supreme Court and operates under the court's supervision and ongoing control, is the Fund subject to federal income tax?

2. If interest income that is earned on certain pooled accounts containing client funds held by lawyers is paid over to the Fund, is that interest includible in the gross incomes of either the clients or lawyers?

FACTS

Lawyers in state A are required to place in a trust account funds received from clients to be used for those clients, as when a client deposits an amount with a lawyer for payment of court costs in the client's case. In many cases these advances are too small and are on deposit for too short a time to permit, as a practical matter, their deposit in separate accounts for each client or their deposit in a commingled interest-bearing account with interest allocated to each client. As a consequence, the long-standing practice of lawyers in the state was to deposit these small and short-term advances in a commingled checking account. These commingled accounts did not bear interest because fiduciary rules prohibit a lawyer from receiving interest on client trust funds.

In response to this situation and, in particular, to avoid the necessity for using noninterest-bearing accounts, the Supreme Court of the state, pursuant to its authority to regulate the practice of law, issued an order establishing the Fund and promulgating rules for the Fund's operations and financial support.

The order requires that client funds received by lawyers be deposited into interest-bearing accounts. If the client funds are of nominal amount and are to be held by the lawyer for only a short period, then the funds are required to be deposited into a pooled account containing similar funds received from other clients, the interest on which is payable to the Fund.

The client cannot compel the lawyer to invest the funds on the client's behalf. In cases where the client funds are either of more than a nominal amount or are to be held for a long period of time, the funds must be deposited into an account the interest on which is payable to the client.

Interest paid over to the Fund from the pooled accounts is invested and is disbursed by the Fund for public purposes, as determined by the Fund. The Fund is governed by nine members-six lawyers having their principal offices in the state and three public members, who are residents of the state. The public members and three of the lawyers are directly appointed by the Supreme Court. The remaining three lawyers are nominated by the bar association of the state, a professional organization exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. The Supreme Court may decline to appoint the bar association's nominees and may appoint other persons instead. Further, the Supreme Court may remove any member of the governing body of the Fund at any time, with or without cause. The Fund is required to maintain adequate books and records and to make formal reports to the Supreme Court on a quarterly basis. The Supreme Court monitors the activities of the Fund by having one of its judges attend all meetings of the Fund (subject to absences due to scheduling conflicts). The judge who attends Fund meetings reports regularly to the Court regarding Fund matters.

The members of the Fund meet monthly to determine how to invest and disburse the assets of the Fund. The Supreme Court retains the right, however, to override decisions of the members regarding investments and disbursements. The Fund has no employees of its own and its daily operations are conducted by Supreme Court employees acting as such.

The Fund may be abolished by order of the Supreme Court. If the Fund's operations are discontinued, any funds then on hand will be transferred, as directed by the Supreme Court, to a successor state agency, to an organization exempt from income tax under section 501(c)(3) of the Code, or to the general fund of the state.

LAW AND ANALYSIS

Under section 61 of the Internal Revenue Code gross income means all income from whatever source derived, except as otherwise provided.

Income earned by a state, a political subdivision of a state, or an integral part of a state or political subdivision of a state is generally not taxable in the absence of specific statutory authorization for taxing such income. See Rev. Rul. 71-131, 1971-1 C.B. 28, and Rev. Rul. 71-132, 1971-1 C.B. 29, holding that income derived from the operation of liquor stores by a state is not subject to federal income tax. An example of a statutory exception to this general rule is found in section

511(a)(2)(B) of the Code, under which the unrelated business taxable income of colleges and universities that are state agencies or instrumentalities is taxable.

In this case, the Supreme Court's creation of the Fund and its ability to select and remove the Fund's governing body, to control the Fund's investments and expenditures, to monitor the Fund's daily operation, and to abolish the Fund indicate that the Fund is not an independent entity, but rather is an integral part of the state. Therefore, income earned by the Fund is not subject to federal income tax.

Rev. Rul. 81-209, 1981-2 C.B. 16, considered a lawyer trust account arrangement similar to the one in this ruling. In Rev. Rul. 81-209, interest earned on clients' nominal and short-term advances that were deposited in a lawyer's trust account was paid over to a bar foundation pursuant to a program established by the Supreme Court of State. The bar foundation was a nonprofit charitable organization as described in section 501(c)(3) of the Code. The program barred clients from receiving the benefit of any interest earned on the deposited advances. Further, clients could not compel the attorney to invest the advances for the clients' benefit. The ruling held that, under the unique facts of the arrangement, interest earned on clients' nominal and short-term advances and paid over to a charitable organization is not includible in the gross incomes of the clients.

Similarly, in this case, the clients and lawyers have no right to the interest earned on the client accounts that is required by the Supreme Court order to be paid over to the Fund. Consequently, because neither the clients nor the lawyers have control over, or right to, such interest, the interest paid over to the Fund is not taxable to either the clients or lawyers. The interest is included in the Fund's income.

HOLDINGS

(1) The Fund's income is not subject to federal income tax since the Fund is an integral part of the state.

(2) Interest income that is earned on certain pooled accounts containing client nominal and short-term funds and paid over to the Fund pursuant to the order of the Supreme Court is not includible in the gross incomes of either the clients or lawyers.

EXHIBIT I

Rev. Rul. 81-209

Citations: Rev. Rul. 81-209; 1981-2 C.B. 16

Rev. Rul. 81-209

ISSUE

Whether interest earned on client advances deposited in "trust accounts" under the circumstances described below is includible in the gross income of the clients.

FACTS

Attorneys in state X who are retained to render legal service must place in trust accounts monetary advances received in the ordinary course of their business. In many cases these advances are too small in amount and are on deposit for too short a time to permit, as a practical matter, deposit of funds in separate accounts for each client, or deposit in a commingled account with interest allocated to each client. As a consequence, the long standing practice of attorneys in state X is to deposit these small and short-term advances in commingled noninterest bearing checking accounts.

In 1981 the Supreme Court of state X reviewed this practice regarding client advances as a matter within its original jurisdiction regarding the discipline and practice of attorneys. The court concluded that for practical reasons interest could not be made available to the clients on advances that were nominal and held for short duration, and continued the practice of allowing attorneys to deposit these advances in noninterest bearing checking accounts. However, the court also concluded that such funds could be productive of income for charitable purposes, and could be invested without violating the fiduciary relationship between attorney and client. Accordingly, the court established a program whereby an attorney could elect to commingle the nominal and short-term advances of all clients in an interest bearing trust account instead of a noninterest bearing checking account. Interest earned on amounts deposited in these trust accounts will be paid to the bar foundation of state X, a non-profit charitable organization described in section 501(c)(3) of the Internal Revenue Code.

The rights of the clients with respect to these advances will not be changed by the program; and no client may individually elect whether to participate in the program. If the attorney elects to participate in the program, the attorney must do so with respect to nominal and short-term advances of all clients. As with advances deposited in noninterest bearing checking accounts, advances deposited under the program continue to be readily available to attorneys for disbursement on behalf of clients. Under the program, all these disbursements for clients are in fact paid out of these trust accounts. The program bars clients from receiving the benefit of any interest earned on the commingled advances; and, because of their fiduciary responsibility to their clients with respect to any advances, it is illegal for the attorneys to receive any benefit from the interest earned on the commingled advances. Furthermore, under the program, clients cannot compel attorneys to invest the advances on the clients' behalf.

HOLDING

Under the unique facts described herein, interest earned on clients' nominal and short-term advances and paid over to the bar foundation pursuant to the program established by the Supreme Court of X is not includible in the gross incomes of the clients.

EXHIBIT J

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 61.30-00, 3406.07-00, 6049.03-00

Number: **199909032**

Release Date: 3/5/1999

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:IT&A:2-PLR-110527-98

Date:
December 3, 1998

In re:

Legend:

State =
Client =
Foundation =
Law Firm =
Financial Institution =
Rule =

Dear :

This is in response to your request for rulings concerning the Interest on Lawyer Trust Account (IOLTA) program of State. This ruling request was submitted on behalf of the Foundation, Client, Law Firm, and the Financial Institution. The relevant facts are summarized below.

Lawyers in State who are retained to render legal services must place in trust accounts funds received in the ordinary course of their business that belong to clients. In many cases these advances are too small in amount or are on deposit for too short a time to permit, as a practical matter, deposit of the funds in separate accounts for each client or deposit in a commingled account with interest allocated to each client. As a consequence, the longstanding practice of attorneys in State is to deposit these small or short-term advances in commingled, non-interest-bearing trust accounts.

The Supreme Court of State has amended Rule, which governs the safekeeping of client property by lawyers, by authorizing attorneys to commingle the nominal or short-term funds of clients in interest-bearing IOLTA trust accounts instead of non-interest-bearing trust accounts. Generally attorneys are required to establish IOLTA trust accounts unless they elect out of the IOLTA program or under certain circumstances provided in Rule. Interest earned on IOLTA trust accounts is paid to the Foundation, which uses these amounts to fund legal services for the poor and to provide other public programs specifically approved by the Supreme Court of State.

An IOLTA trust account may be established only with authorized financial institutions, such as the Financial Institution. Participating lawyers and law firms must direct the financial institution to remit all interest or dividends, net of reasonable service charges or fees, at least quarterly to the Foundation. Any reasonable service charge that exceeds the interest earned on an IOLTA account during a reporting period must be waived by the financial institution or, alternatively, such excess charge is to be billed to the Foundation.

The IOLTA trust account must include all client funds that are nominal in amount or are to be held for a short period of time. No client may individually elect whether to participate in the program. The funds must be subject to withdrawal upon request and without delay and without risk to principal by reason of such withdrawal.

The IOLTA program specifically bars clients and lawyers or law firms from receiving the benefit of any interest earned on the commingled client funds in the IOLTA accounts. It provides that no earnings from an IOLTA account will be made available to a lawyer or law firm and that such earnings must be remitted by the financial institution to the Foundation. Furthermore, clients cannot compel attorneys to invest the nominal or short-term client funds on the clients' behalf.

It is represented that the purposes of the IOLTA program of State are exclusively charitable and educational exempt purposes and do not serve any substantial non-exempt purpose, such as the promotion, protection, or enhancement of the legal profession, and that the Foundation is an organization described in § 501(c)(3) of the Internal Revenue Code and exempt from federal income tax under § 501(a).

The Financial Institution and Law Firm will participate in the IOLTA program of State. You have requested a ruling that interest earned on Client's nominal or short term funds deposited in Law Firm's IOLTA trust account at the Financial Institution and paid to the Foundation is not includible in the income of Client or Law Firm. In addition, you have requested a ruling that neither Law Firm nor the Financial Institution is required to report interest paid on an IOLTA trust account on Form 1099.

Section 61(a)(4) and § 1.61-7 of the Income Tax Regulations provide that, unless excluded by law, gross income means all income from whatever source derived, including interest. In Commissioner v. Glenshaw Glass Co., 348 U.S. 429 (1955), 1955-1 C.B. 207, the Supreme Court of the United States defined income to include all accessions to wealth that are clearly realized and over which taxpayers have complete dominion.

Rev. Rul. 81-209, 1981-2 C.B. 16, deals with the income tax consequences to the clients in a state IOLTA program similar to the IOLTA program of State. The long-standing practice of attorneys in the state had been to deposit clients' nominal and short-term advances in a lawyer's trust account, which was non-interest-bearing. The state supreme court found that for practical reasons interest could not be made available to the clients on advances that were nominal and held for short duration. However, the court concluded that such funds could be productive of income for charitable purposes. The court established a program whereby an attorney could elect to commingle the nominal and short-term advances of all clients in an interest-bearing trust account instead of a non-interest-bearing account. Interest earned on these trust accounts was paid over to the bar foundation of the state, a nonprofit charitable organization as described in § 501(c)(3). The rights of the clients with respect to these advances were not changed by the program. The program barred clients from receiving the benefit of any interest earned on the advances deposited in an IOLTA trust account. Further, clients could not compel the attorney to invest the advances for the clients' benefit and had no voice in their lawyer's decision to participate in the program. The program authorized, but did not require, lawyers to place nominal and short-term funds into IOLTA trust accounts. No client could elect or veto participation.

Rev. Rul. 81-209 holds that, under the facts of the arrangement, interest earned on clients' nominal and short-term advances and paid over to the foundation is not includible in the gross incomes of the clients.

Rev. Rul. 81-209 was amplified by Rev. Rul. 87-2, 1987-1 C.B. 18, which considers another lawyer trust account arrangement. The supreme court of the state issued an order establishing a Lawyer Trust Account Fund (Fund) and promulgated rules for its operation. The order required that client funds received by lawyers be deposited into interest-bearing accounts. If the client funds were of nominal amount and were to be held by the lawyer for only a short period, then the client funds were required to be deposited into a pooled account containing similar funds received from other clients, the interest on which was payable to the Fund. Interest paid over to the Fund from the pooled accounts was invested and disbursed by the Fund for public purposes, as determined by the Fund, which was an integral part of the state. The program barred clients from receiving the benefit of any interest earned on these pooled accounts. Fiduciary rules prohibited lawyers from receiving interest on client trust funds.

Rev. Rul. 87-2 holds that because neither the clients nor the lawyers have control over, or right to, interest on pooled accounts paid over to the Fund, the interest paid over to the Fund is not taxable to either the clients or lawyers.

Here, under the IOLTA program of State, Law Firm does not have control over, or right to, interest on the IOLTA trust account paid over to the Foundation. Rule requires Law Firm to segregate Client's funds from its own funds and specifically bars Law Firm from receiving the benefit of any interest earned on the IOLTA trust account. Similarly, Client does not have control over, or right to, interest on the IOLTA trust account paid over to the Foundation.[1] Client cannot elect or veto participation. The Financial Institution must pay all interest earned on an IOLTA trust account, net of any service charges, to the Foundation.

Section 6049(a) provides that every person ("payor") who makes payments of interest (as defined in § 6049(b)) aggregating $10 or more to any other person ("payee") during a calendar year must make an information return setting forth the aggregate amount of such payments, and the name and address of the payee. Form 1099-INT, Statement for Recipients of Interest Income, is required with respect to such payments. Generally, such returns must be filed on magnetic media under § 6011(e)(2).

Section 6049(c) provides that every person required to make a return under subsection (a) shall furnish the payee a written statement (payee statement) showing the aggregate amount of such payments and the name and address of the person required to make such return. A payee statement is a paper statement of the information reported on a Form 1099.

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[1]In Phillips v. Washington Legal Foundation, ___ U.S. ___, 118 S. Ct. 1925 (1998), the Supreme Court of the United States held that interest earned on client funds held in IOLTA accounts is the "private property" of the client for purposes of the Takings Clause (U.S. Const. amend. V). However, the Court left for consideration on remand the question whether IOLTA funds have been "taken" by the state, as well as the amount of "just compensation," if any, due to the clients. Thus, the Court did not hold that the client had any control over, or right to, interest on the IOLTA trust account.

For purposes of § 6049, the term "interest" does not refer to all sums paid for the use of money. Instead, § 6049(b) defines the types of interest reportable under that section. For example, the term "interest" includes interest on deposits with persons carrying on the banking business, but does not include these same payments if the payee is an exempt recipient, except to the extent otherwise provided in regulations.

Pursuant to § 6049(b)(4)(B) and § 1.6049-4(c)(1)(ii)(B), generally a payment of interest to an organization exempt from taxation under § 501(a) is not subject to information reporting. However, § 1.6049-4(c)(1)(i), as in effect before January 1, 1999, provides that a person who withholds tax under § 3451 is required to make an information return regardless of whether the payee is an exempt recipient. But § 3451, which required mandatory withholding on payments of interest, was repealed by the Interest and Dividend Tax Compliance Act of 1983, 1983-2 C.B. 352. In its place, an expanded backup withholding provision was added by Congress.

Backup withholding is required under § 3406. Under this section, a payor must deduct and withhold a tax equal to 31 percent of any reportable interest payment if: (1) the payee fails to furnish a taxpayer identification number (TIN) in the manner required; (2) the Service notifies the payor that the TIN furnished by the payee is incorrect; (3) the Service notifies the payor that there has been a notified payee underreporting; or (4) the payee fails to certify that the payee is not subject to backup withholding.

To be subject to backup withholding, a payment must be "reportable payment" as that term is defined in § 3406(b). A reportable interest payment includes any interest payment required to be shown on an information return under § 6049(a).

Some payees are exempt from backup withholding. Section 3406(g)(1) exempts any organization described in § 6049(b)(4)(B), relating to any organization exempt from taxation under § 501(a). However, backup withholding may be imposed due to a payor error or the failure of an exempt recipient to provide an exemption certificate, if required. An exempt payee may furnish an exemption certificate to the payor to avoid possible erroneous backup withholding. A Form W-9, Request for Taxpayer Identification Number and Certification, may be used for this purpose.

Under Q & A 29 of § 35a.9999-1 of the Temporary Employment Tax Regulations, a payor may require an exempt recipient to furnish a Form W-9 or substitute form and may treat an exempt recipient who fails to furnish this certificate as a person who is not exempt. In addition, if the Form W-9 submitted by a payee to certify its exempt status does not contain a TIN, Q & A 16 of § 35a.9999-2 requires a payor to impose backup withholding.

Q & A 46 of § 35a.9999-3 provides that a payor is required to make an information return whenever the payor imposes backup withholding regardless of the amount of the payment. If tax is withheld under § 3406, an information return must be made unless the amount is refunded by the payor. *See* Q & A 38 and 39 of § 35a.9999-3 and Rev. Proc. 84-80, 1984-2 C.B. 758.

Based on the foregoing, the following rulings are provided:

1. Interest earned on Client's funds deposited in Law Firm's IOLTA trust account and paid to the Foundation is not includible in the income of Client or Law Firm.

2. Generally, under § 6049 the Financial Institution is not required to report interest paid to the Foundation on an information return because the Foundation is an organization exempt from tax under § 501(a) and is thus an exempt recipient. However, if backup withholding is imposed and not refunded, the Financial Institution must file a Form 1099-INT on magnetic media with the Service and must furnish a payee statement to the Foundation. Law Firm is not required to report the interest paid to the Foundation because it is not the payor under § 6049.

A copy of this letter must be attached to any income tax return to which it is relevant. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers who requested it, and it is based expressly on the unique facts represented by the taxpayers regarding the operation of the IOLTA program of State. The taxpayers may not continue to rely on this ruling if, at some future date, State modifies the IOLTA program. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

By ___________________
Robert A. Berkovsky
Chief, Branch 2

EXHIBIT K

Matter of Interest on Trust Accounts (Fla. 1981)

Court: Florida Supreme Court
Citation: 402 So. 2d 389
Docket Numbers: 51182, 60350, 60351
Date Decided: July 16, 1981

402 So. 2d 389 (1981)

In the Matter of INTEREST ON TRUST ACCOUNTS.

Nos. 51182, 60350 and 60351.

Supreme Court of Florida.

July 16, 1981.

Rehearing Denied, Opinion Clarified August 5, 1981.

Russell Carlisle, President, Florida Bar Foundation, Fort Lauderdale, and Henry G. Zapruder of Cohen & Uretz, Washington, D.C., on behalf of the Florida Bar Foundation, Inc. and sixty-seven active members of The Florida Bar.

John F. Harkness, Jr., Executive Director, Tallahassee, Leonard H. Gilbert, President, Tampa, Samuel S. Smith, President-elect, Miami Beach, and John A. Boggs, Asst. Staff Counsel, Tallahassee, of The Florida Bar, Bill Wagner of Wagner, Cunningham, Vaughan and McLaughlin, Tampa, Chairman for the Florida Bar Integration Rule and Bylaws Committee, and Ben H. Wilkinson, Chairman, Special Committee, Tallahassee, on behalf of the Board of Governors of The Florida Bar.

Roderick N. Petrey and Randall C. Berg, Jr. of the Florida Justice Institute, Inc., Miami, on behalf of: American Civil Liberties Union, Common Cause of Florida, Florida Audubon Society, Florida Clearinghouse on Criminal Justice, Florida Conference of NAACP Branches, Florida Institutional Legal Services, Inc., Florida Legal Services, Inc., Florida Public Defender Association, Governor's Commission on Advocacy for Persons With Developmental Disabilities, Project Directors' Association, Southern Christian Leadership Conference, and Southern Legal Counsel, Inc.

Sara-Ann Determan, Chairperson, Special Committee on Public Interest Practice, Washington, D.C., on behalf of: the American Bar Association.

L. Orin Slagle, Dean, Florida State University College of Law, Tallahassee, on behalf of: Florida State University College of Law, the University of Florida, Spessard L. Holland Law Center, Nova University for the Study of Law, and Stetson University College of Law.

Robert M. Curtis, Fort Lauderdale, Henry P. Trawick, Jr., Sarasota, and Gerald L. Brown, Pensacola, Responding to Petition.

ENGLAND, Justice.

This proceeding emerges from the Court's 1978 program designed to generate interest on lawyers' trust accounts for the improvement of the administration of justice in Florida.[1] The original plan, permitting voluntary participation by lawyers and law firms, was once amended to meet technical requirements of the Internal Revenue Service (IRS) and to accommodate The Florida Bar's request that we remove a requirement that compliance certificates be prepared for attorneys by certified public accountants.[2] Notwithstanding these alterations, the program has never been implemented for its intended purposes due to delays in resolving with IRS the appropriate federal income tax treatment of the earnings, payable to the Florida Bar Foundation, Inc., to be generated on clients' funds held in lawyers' accounts.

Representing that tax considerations could be favorably resolved with IRS by a minor amendment to the program, the Foundation, joined by the Bar, has proposed amendments to the program for that purpose. In doing so, the Foundation has also asked that the program be made mandatory for all Florida attorneys, a position made possible by recent changes in the banking laws. In light of the latter proposal, the Foundation asked that we announce the changes and solicit comments from all interested parties. Promptly after the change proposals were submitted we did just that, simultaneously suspending the original program until further order of the *390 Court.[3] We have received responses and comments on the Foundation's proposals in abundance, and spirited oral argument was held on June 2.

I

The response to our request for comments was an outpouring of mail and filings, predominantly hostile to the proposed changes.[4] In addition to communications from the Foundation explaining the changes proposed, and from the Bar (presenting a catalogue of unanswered concerns), we have heard from attorneys, law firms, bar associations, bar committees, law schools, the Florida Bankers' Association, and various public interest law organizations. All these materials have been extremely helpful to us. They properly and candidly raise moral, legal and practical problems that inhere in the Foundation's proposals, and they express the sentiments of many attorneys, both on their own behalf and on behalf of their clients generally.

Interestingly, the federal problems which necessitated submission of program changes attracted almost no interest from those who communicated with us. Some concern was expressed about the uncertainty and vagueness of the terms which IRS deems essential to describe the categories of clients' funds brought within the ambit of this trust account program those "held for a short period of time" or "nominal in amount." But those concerns present neither an impediment to the adoption of a revised program nor an occasion for more specificity, for the plan we adopted in 1978 always contemplated precisely the same "nominal" and "short" standards, which have classicly and historically governed attorneys in their trust account practices.[5]

Changes which are said to be necessary to make the program acceptable to IRS revolve around the federal income tax concept known to tax practitioners as the "assignment of income" doctrine. That doctrine, which is an outgrowth of a graduated, federal income tax rate structure, was first articulated in Lucas v. Earl, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731 (1930). It evolved to prevent persons who generate income by their services or with their property from shifting that income to other persons in whose hands the income either would not be taxed or would be taxed at significantly lower rates. Classic income assignment situations involve conscious, tax avoidance schemes by taxpayers in high income brackets. Over the years the common elements of prohibited income assignment have been a tax avoidance motive and a scheme or device for shifting income to related or controlled taxpayers. See, e.g., United States v. Basye, 410 U.S. 441, 93 S. Ct. 1080, 35 L. Ed. 2d 412 (1973); Commissioner v. First Security Bank of Utah, 405 U.S. 394, 92 S. Ct. 1085, 31 L. Ed. 2d 318 (1972); Helvering v. Horst, 311 U.S. 112, 61 S. Ct. 144, 85 L. Ed. 75 (1940); Poe v. Seaborn, 282 U.S. 101, 51 S. Ct. 58, 75 L. Ed. 239 (1930).

In its efforts to enforce the tax laws and prevent erosion of the nation's tax base, the Internal Revenue Service has always been wary of plans with tax connotations which, although not designed for tax avoidance, might create precedent capable of being used for that purpose. Thus, any tax-shifting proposal submitted to IRS for approval invariably receives special scrutiny, not only for its motivations but as well for any incidental or implicit precedential potential.

This Court's 1978 program for the generation of income on client's accounts, seen by IRS as involving a conceptual reassignment of interest income from clients to the Foundation, raised concerns within IRS that the *391 program could become a breeding ground for yet unborn tax avoidance schemes. As a result, hesitancy existed to approve taxability to the Foundation of the interest generated on lawyers' commingled trust accounts. IRS acknowledged that, unlike all prior, prohibited assignment of income situations, the Court's program did not in any way involve taxpayer-initiated, tax evasion among related or controlled taxpayers. Indeed, it was noted that the Service had approved income transfer plans fraught with far more tax avoidance risk as precedent than the Court's program.[6] Nonetheless, the Service was slow to rule approvingly on the Court's program as originally adopted, and because the feasibility of implementing the program depended upon the earned income on trust accounts being treated as taxable to the Foundation rather than to individual clients, the withholding of approval effectively barred implementation of the program.

Eventually, tax counsel was able to obtain firm assurances from IRS that the tax treatment being sought for the program would be approved so long as clients could in no way and to no degree control the creation or destiny of earnings generated on their attorney-held funds.[7] The linchpin of approval was removal of all client control over the placement or non-placement of funds at interest that is, elimination of the client's veto over the investment of funds from which he could never benefit because the amounts on deposit were either too small in amount or to be held for only a short duration. On the basis of IRS' proposal for approval, and despite the continued belief by the Foundation's tax counsel both that no client "income" ever existed under the program and that the principles of Lucas v. Earl were in no wise implicated, the Foundation proposed that we amend the program to eliminate all client control and, in the process, reaffirm the "nominal in amount" and "short in time" standards for program applicability. This we now do.

But it was not the tax aspects of the Foundation's proposal which raised the brouhaha which attended its submission to the Court. The Foundation's other proposal that the program be converted from a voluntary to a mandatory plan has evoked the most vehement response from bar members. The range of comments on this point run from respectful disagreement to hyberbolic outrage.[8] Specific objections can be categorized as concerns that the Foundation's revised program will have these effects:

1. burden attorneys with new record-keeping responsibilities and costs; *392 2. be unfair to clients, or deprive them of their earnings; 3. adversely affect (or some say, further erode) the public image of the legal profession; 4. generate potential disciplinary problems for attorneys, due to the absence of specific guidelines or standards for handling clients' accounts; 5. produce undetermined effects on professional liability insurance premiums; 6. discriminate unfairly, because NOW accounts are not available to incorporated attorneys under current banking regulations; 7. require that attorneys monitor compliance with the payment and reporting requirements of financial institutions; 8. essentially mandate contributions from attorneys to the Foundation, since commingled trust accounts contain unearned legal fees and fees which have been earned but not yet withdrawn; 9. interfere with traditional attorney-client relationships, whether no explanation is made to clients concerning the use of account earnings (thus creating a conflict of interest between client and the Foundation), or whether an explanation is offered (thus choosing, in effect, the Foundation as the charity to which the proceeds of the client's fund will be paid); 10. interfere with attorney-banker relations, to the point that a change of institutions would be required in cases where banks do not pay interest on demand accounts; 11. confiscate clients' funds, in violation of the "taking" provisions of the federal Constitution[9] (noting Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 101 S. Ct. 446, 66 L. Ed. 2d 358 (U.S. 1980)); 12. increase clients' demands for more individual, interest-bearing accounts; and 13. discourage placing any funds in escrow with attorneys.

In addition to this plethora of concerns, we have been peppered with euphemisms ranging from declarations of the most current principles of Republicanism ("justices, too, read the election returns") to restatements of the traditions of an early frontier era ("leave us alone"). It has been suggested that the Foundation's proposal is not only outside our constitutional authority, being a legislative function (taxation), but is unconstitutional (taxation without representation, among other reasons), is unwarranted (because some attorneys can now get interest for their clients on their individual accounts), is unwise (because the Foundation is selected as sole recipient of any earnings which are generated), and is unjust (bankers complain that they cannot even earn interest on their own funds which are escrowed with attorneys). And as if these were not sufficient concerns for our ingestion, we have been told that the Foundation's proposals involve so many unresolved problems such as uncertainty in application to Florida attorneys who practice out of the state or to multistate law firms, unrepresentativeness of the Foundation's currently authorized governing board, and uncertainty as to the treatment of service charges from financial institutions that the only sensible thing to do is to appoint a study committee to examine the matter further.

Quite obviously, the Foundation's proposal has struck a nerve in the legal profession, and the focus of pain is the mandatory nature of the proposal. The original idea of creating a program of this type brought some negative views, but no comparable outcry attended the initiation and development of our original, voluntary program.

We cannot ignore the response of our bar. Indeed, we requested comments and criticisms precisely because we did not deign ourselves capable of discerning all possible *393 problems, legal and practical, or all reasonable objections to the Foundation's proposal.

In its persistently careful effort to bring about a trust account interest program which can at last see the light of day, the Foundation has filed a response with the Court which has met virtually every legitimate concern and problem with either an answer, an accommodation, or an acknowledgment of the difficulties. It urges us, nonetheless, not to send the program back into studied oblivion.[10] On this point we are in complete accord with the Foundation. The time has come either to implement this concept, or to scrap it. We choose to implement.[11] In attempting to do so, of course, we have carefully confronted the responsible concerns of the program's philosophical opponents and friends, as described below. But first, a note of frustrated fatalism is clearly in order.

If we have failed in any constitutional or tax sense to resolve the obstacles to implementation, and we do not believe that we have, it appears to us that we have done our best and should end our labors here. Thus, if we are further forestalled from advancing the public good through the program outlined below, it seems to us that the program will simply have to be written off as one of those good ideas whose time has not yet come. Our decision today, subject only to any technical difficulties properly and promptly brought to our attention, is our last endeavor in this field.

II

Two dominating considerations shape our implementation methodology. First, we acknowledge that the banking laws in Florida today are not what they were in 1978, and that the changes are sufficiently profound as to warrant reconsideration of the original plan. Second, the public and institutional responses we have received underscore what we earlier knew in approving a voluntary plan; namely, that Florida is not wholly like the provinces and countries which have implemented trust account interest programs in the homogeneity of its banking institutions,[12] in the centralization of its attorney populace, or in the forms of governmental control exercised over its legal profession.[13]

In addition to these matters, a new consideration which affects the program in light of the Foundation's request that we make it make it mandatory is the Supreme Court's 1980 decision in Webb's Fabulous Pharmacies, Inc. v. Beckwith. That consideration is whether the earnings on clients' funds are "property" of the clients which constitutionally cannot be taken from them without compensation. The dictates of the fifth and fourteenth amendments to the United States Constitution, as articulated in Webb's, obviously cannot be ignored in framing any program involving a state-directed use of income generated on private funds.

III

Taking all factors into account, we adopt these concepts for a voluntary program designed to generate interest on lawyers' trust accounts, effective as of September 1 unless modified by intervening order the Court:

(1) We now reaffirm the goals of our 1978 program, including the payment of interest under the program to the Florida Bar Foundation, Inc., and we reaffirm our commitment to their accomplishment with all possible speed.

(2) We now reaffirm our initial decision that interest be made available under the program only on a voluntary basis that is, *394 on the basis of willing participation by attorneys and law firms, whether proprietorships, partnerships, or professional corporations.

(3) We accede to the concerns of IRS with regard to a possible erosion of the "assignment of income" doctrine, and we direct the application of this program to all clients of electing, participating attorneys or firms whose funds on deposit are either nominal in amount or to be held for a short period of time.[14]

(4) We reaffirm these cardinal principles concerning clients' funds held in trust accounts by attorneys and firms who elect NOT to participate in the program:

(a) no earnings from the funds may be made available to the attorneys or firms;[15]

(b) upon request of a client, earnings may be made available to the client whenever possible on deposited funds which are neither nominal in amount nor to be held for a short period of time;[16] provided however, inasmuch as traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive, no charge of ethical impropriety or other breach of professional conduct shall attend a failure to invest or to advise of the possibility of investing clients' funds of whatever amount or duration held;[17]

(c) clients' funds which are nominal in amount or to be held for a short period of time, and for which individual income generation and allocation is not arranged with a financial institution, must be retained in a non-interest bearing, demand trust account; and

(d) the determination of whether a client's funds are nominal in amount or to be held for a short period of time rests exclusively in the sound judgment of each attorney or law firm, just as it has from time immemorial, and no charge of ethical impropriety or other breach of professional conduct shall attend an attorney's exercise of judgment in that regard.

(5) We reaffirm these principles concerning clients' funds which are held by attorneys and firms who elect TO participate in the program:

(a) no earnings from the funds may be made available to the attorneys or firms;

(b) upon request of a client, earnings may be made available to the client whenever possible on deposited funds which are neither nominal in amount nor to be held for a short period of time; provided however, inasmuch as traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive, no charge of ethical impropriety or other breach of professional conduct shall attend a failure to invest or to advise of the possibility of investing clients' funds of whatever amount or duration held;[18]

(c) clients' funds which are nominal in amount or to be held for a short period of time shall be retained in an interest bearing checking or savings trust account, with the interest (net of any service charges or fees) made payable to the Florida Bar Foundation, Inc., and

(d) the determination of whether a clients' funds are nominal in amount or to be held for a short period of time rests exclusively in the sound judgment of each attorney or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend an attorney's exercise of judgment in that regard.

*395 (6) We reject the Foundation's proposals for mediating claims against attorneys.[19]

(7) We note and approve the Bar's withdrawal of its proposed addition of a new paragraph (f) to Integration Rule 11.02(4).[20]

(8) We remove as unnecessary under current banking laws those provisions of our original program which were designed to assure the immediate availability of clients' funds held at interest.[21]

(9) We remove the notice requirement provisions of our original program.[22]

(10) We now reaffirm the general, governing principles for implementation of a trust account program which are set forth in paragraphs 1 through 5 of section VIII of our original opinion.[23]

IV

We envision extensive participation by lawyers and law firms in this voluntary program. We have deliberately made the program simple and inexpensive by: (i) omitting any burdensome or costly accounting and record-keeping requirements; (ii) approving and continuing traditional attorney-client relationships and responsibilities; (iii) approving and continuing existing practical and ethical procedures concerning either the investments of clients' funds or investment advice, including the abolition of any requirement that clients be notified of the program; and (iv) providing that the Foundation shall absorb any financial institution's special charges or fees for participation in the program, by directing that interest payments shall be net of such charges and fees.

With respect to constitutional concerns regarding the program, we see none that bars implementation. There are many distinguishing features between the program today implemented for the generation of interest on lawyers' trust accounts, and the legal requirements of state law which led the United States Supreme Court to invoke the fifth amendment "taking" clause for the protection of private property in its Webb's decision. The most relevant distinction, plainly, is the fact that no client is compelled to part with "property" by reason of a state directive, since the program creates income where there had been none before, and the income thus created would never benefit the client under any set of circumstances. We know from Webb's, 101 S. Ct. at 450, that

[p]roperty interests ... are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law... .

*396 It follows that no client has a "property interest," in the constitutional sense, which is being taken from him by this program.

Of course, another vast difference from Webb's is the voluntary nature of this program, for the program today approved is not abusive of the rights, interests or funds of clients. It is volitional not only from the perspective of attorneys but, in the most practical sense, from the will of clients, for no attorney or firm will participate in the program in the face of a strenuous objection from its clients. Nor should Florida attorneys jeopardize clients or client relations by dogmatically insisting on participation in the program in the face of announced opposition of a serious nature. We doubt that client concerns will prohibit broad participation in the program, however, since only clients with nominal funds or those to be held for short durations that is, clients who cannot themselves benefit from investing are in effect providing the pooled income source. In this sense of client acquiescence to program participation, any argument based on the "taking" aspect of Webb's is attenuated beyond tenability.

We reiterate that notification to clients whose funds are nominal in amount or to be held for a short period of time is unnecessary for those attorneys and firms who choose to participate in the program. That is not to suggest that many will not want to notify their clients of their participation in the program in some fashion. Plainly, there is no impropriety in an attorney or firm advising all clients of their willingness to advance the administration of justice in Florida beyond their individual abilities and in conjunction with other public-spirited members of their profession. But participation in the program will involve no more than an affirmative desire to participate, coupled with the attorney's or firm's communication of that desire to an authorized financial institution. That communique should contain only an expression of the attorney's or firm's desire to participate in the program and, if the institution has not already received appropriate notification, advice regarding IRS' approval of the taxability of earned interest or dividends to the Foundation.[24]

We urge the Bar to encourage participation in this program, and in furtherance of that end to assist Florida financial institutions and Florida attorneys with as much information and aid as may be necessary to establish and maintain simple and inexpensive compliance procedures. The foremost objective of our 1978 program was to enhance the capability of the legal profession to deliver legal services to the poor.[25] The broad delivery of legal services has long been a cherished commitment of this Court.[26] At a time in this nation when existing governmental resources for this purpose are drastically threatened,[27] our revisitation to this program provides a propitious occasion to reemphasize our commitment and to revalidate our methodology.

We urge all Florida lawyers who are able to participate in the program to do so. We trust they will follow the example of the Foundation's leaders, whose perseverance and patience has marked the road toward an expanded access to justice throughout our state.[28]

The following, revised provisions of Rule 11.04(d) are hereby adopted, effective on *397 September 1, 1981, unless modified by intervening order of this Court.

It is so ordered.

SUNDBERG, C.J., and OVERTON, ALDERMAN and McDONALD, JJ., concur.

BOYD, J., dissents with an opinion.

ADKINS, J., dissents.

Integration Rule 11.02(4)(d) (strike-throughs indicate deleted material; underscoring indicates added material.)

(d) Interest-bearing Trust Savings Accounts. A member of The Florida Bar who elects to create or maintain an interest-bearing trust a trust savings account for clients' funds which are nominal in amount or to be held for a short period of time shall comply with the following provisions:

(i) A trust savings An interest-bearing trust account may be established with any bank or savings and loan association authorized by federal or state law to do business in Florida and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(ii) Except as otherwise required by law, funds in each trust savings account shall be subject to withdrawal, or to transfer to a trust checking account, upon request and without delay. Any depository institution permitted by law to require advance notification (30 or 60 days) before allowing withdrawal of savings deposits is nonetheless eligible to act as a depository for trust savings accounts under this rule if it meets the requirements of paragraph (i) above, provided the institution has not acted to delay the withdrawal of deposited funds (other than for the clearance of deposited deposited funds or for good cause attributable to the circumstances of the particular depositor rather than the institution's financial needs or general policy) at any time during the past five years. An otherwise qualified institution which has not been in existence for five full years may serve as a trust savings account depository if it has met the requirements of this subsection throughout its existence.

(iii) An institution shall cease to be eligible for the receipt of trust savings funds at such time as it fails to qualify under paragraphs (i) or (ii). Any lawyer or law firm maintaining a trust savings account against which immediate withdrawal rights are refused shall immediately notify the Florida Bar Foundation, Inc. of the name and address of the depository institution and the date of such refusal.

(iv) If, pursuant to governing law or banking regulations, a depository institution requires notice in writing for an intended withdrawal not less than 30 days before such withdrawal is made, the lawyer or law firm may certify to The Florida Bar Foundation, Inc. that the client's funds detained as a result of the depository institution's notification requirement are needed immediately for the client's affairs.

(A) Upon receiving such certification, the Foundation shall be authorized to advance to the certifying lawyer or law firm, from the interest earned on trust savings accounts, an amount of money necessary to meet the client's emergency needs subject, however, to limitations expressed in subparagraph (C).

(B) Simultaneously with certification, the lawyer or law firm shall direct the depository institution in writing, with a copy to the Foundation, that upon the expiration of the notification period detained funds equal to the amount advanced by the Foundation shall be remitted directly to the Foundation.

(C) The Board of Directors of the Foundation may adopt rules of procedure reasonably necessary to implement the authority provided in subparagraph (A) and to assure full reimbursement of sums advanced. Periodically the Board may set dollar limitations on the amount of money which may be advanced to meet the emergency needs of any client in the event a notification requirement is imposed by a depository institution.

*398 (ii) (v) The rate of interest payable on any interest-bearing trust savings account shall not be less than the rate paid by the depository institution to regular, non-attorney savings depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately. (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby.

(iii) (vi) Lawyers or law firms electing to deposit client funds in a trust savings account shall direct the depository institution:

(A) to remit interest or dividends, as the case may be, on the average monthly balance in the account, at least quarterly, to the Florida Bar Foundation, Inc.;

(B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

(C) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance for each month of the period for which the report is made., and any remittances to the Foundation made during that period pursuant to subparagraph (iv) (B).

(vii) Lawyers and law firms electing to deposit client funds in a trust savings account shall transmit to each client for whom trust funds are now held, and to each new client for whom funds are to be held, a copy of the notice reproduced below. The Florida Bar shall print and maintain a supply of this notice, and distribute copies without charge to those who may request them. The Bar's costs for printing and distribution shall be treated as a cost of administering the program, and shall be reimbursed to the Bar by the Foundation from interest earned on trust accounts.

Important Notice to Clients

For your protection, the Florida Supreme Court requires that all funds of a client which are held by an attorney must be deposited in a trust account separate from the attorney's, and must be kept available for immediate withdrawal. Because most clients' funds which come into the hands of attorneys are relatively small in amount or are to be held for relatively short periods of time, it is impractical for attorneys to establish a separate account for each client or to invest each client's funds to earn interest. For this reason client funds are held in a common trust checking account on which the depository bank pays no interest.

Under a new program approved by the Florida Supreme Court, attorneys are now permitted to deposit clients' common trust funds in savings accounts. Due to the expense and complexity which would attend any attempt to compute or distribute the interest attributable to each client's funds, it is not feasible to pay to individual clients the earnings on their proportionate share of common trust savings accounts. Of course, no attorney is permitted to receive the earnings on a client's funds, either. Rather under the Supreme Court's new directive, the interest income from clients' deposits will be used to fund programs designed to benefit the general public.

The goals of the Court's program are to improve the administration of justice in this state and to expand the delivery of legal services to the poor.

We have sent you this explanation, at the direction of the Florida Supreme Court, to advise you that we are participating in the Court's new program and that the funds you have entrusted to us for your affairs (other than attorneys' fees) will be deposited in an interest bearing trust savings account unless you specifically give us written instructions to the contrary. A directive not to allow such use of your funds will not produce income for your. Your funds will simply be placed in a non-interest-bearing trust checking account until needed.

BOYD, Justice, dissenting.

I concurred in the opinion of the Court when we originally decided to attempt to fund the Florida Bar Foundation with interest earned on lawyers' trust accounts. In re Interest on Trust Accounts, 356 So. 2d 799 (Fla. 1978). In view of the difficulties that have delayed the implementation of the program, however, I have approached the instant rule-amendment proceeding with an open mind on the question whether "to implement this concept," to study it further, "or to scrap it." Opinion of the Court at 8. While the objective sought to *399 be achieved by the plan the funding of the Florida Bar Foundation is highly commendable, the serious unresolved problems brought to our attention by the many members of the Bar who participated in this proceeding compel me to withhold my approval.

Unlike the majority, I find that a significant number of the responses we received did raise questions about the "assignment of income" problem. While not discussing the problem in the technical language of the tax practitioner, many lawyers expressed a strong, common-sense feeling that income earned from the investment of trust funds simply must be deemed in the first instance to be the property of the owners of the funds. Some lawyers expressed concern that the Internal Revenue Service will treat such income as taxable to the owners. Without a requirement for notice to clients of the investment of their funds, some attorneys are worried that such clients may be charged income they never knew they received.

The majority opinion discusses the resolution of the problems of income assignment and taxability without documenting the statements made regarding the approval or assurances of the Internal Revenue Service. Unless we receive a definitive and binding ruling from the Service regarding the tax liability of the owners of trust funds, the attorneys entrusted with them, and the Foundation, it is unwise to implement the plan.

The same common-sense considerations that prompt concern on the question of who will be deemed to earn the income generated by clients' funds leads some members of our Bar to question whether the channeling of the income to the Foundation without the actual consent of the trust fund owners violates the Fifth Amendment ban on deprivation of property without due process of law. I find merit to this argument.

The majority's answer to the "taking" argument is inadequate. The Court says that the program creates income where there was none before, so no property is actually taken from the owners of the trust funds. But the majority also recognizes that when trust funds are kept in non-interest-bearing accounts, the beneficiaries are the depository banks. The point is that there is almost always income from properly invested capital. If a lawyer keeps a client's funds in an office safe or in a shoe box, there is no income. But once deposited with a financial institution, the money, within the limits of the applicable banking laws and regulations, is put to work earning income. If the depository institution pays no interest to the depositor, the institution benefits financially. But if interest is paid, the depositor receives income. The majority acknowledges that it may now be possible for a financial institution to provide interest allocation for multiple depositors in single trust accounts, even though the individual clients' funds may be nominal in amount or to be held for a short period of time. Yet the Court still insists that to direct the income to the Foundation without notice to and consent of the owners does not affect their property interests. This is inconsistent.

I also believe that the lack of a requirement for actual notice to and consent of persons whose property will generate the income that is to fund the plan will create a conflict of interest between the Foundation and owners of the affected trust funds. Many protesting members of the Bar have argued that the lack of notice will also adversely affect the public image of the legal profession in Florida.

The plan adopted by the Court today will put grave pressures on the attorney-client relationship. While it is recognized in a most general sense that lawyers should hold trust funds that are greater than nominal in amount or to be held for more than a short period of time in interest-bearing accounts, it is left to the unfettered and unguided discretion of attorneys to decide whether a particular client's property meets these criteria. Despite the attempt to exonerate in advance a lawyer's decision on this matter that may eventually be shown not to have been in the client's best interest, I predict that controversies and charges of ethical impropriety will arise from lawyers' participation in the program.

I am sympathetic to the goals of the Florida Bar Foundation, and would be willing to concur in the result of the majority opinion were it not for the serious problems I have just discussed. But at the same time I have been deeply affected by the communications of protest we have received from many members of the Bar. I note in particular the letter of Mr. Jay H. Beckerman, who writes in part:

Any attorney or client who chooses ... to contribute to the Florida Bar Foundation, Inc., has been and should be free to do so. That foundation or any other *400 form of a charity or eleemosynary entity or purpose should be required to attract donations on its merits, and not be enriched by a funneling scheme with which the coerced donors do not agree and did not choose of their own free will.

With the plan for charitable use of interest on lawyers' trust accounts in its present posture, I must respectfully dissent.

ORDER OF CLARIFICATION

ENGLAND, Justice.

In accordance with our request that technical difficulties in the trust account program be brought to our attention promptly, The Florida Bar has filed a petition requesting two changes to the Integration Rule by which the program is implemented. The Bar advises us that not all depository institutions utilize an average monthly balance method for computing interest or dividends, and it requests that we modify Rules 11.02(4)(d)(iii)(A) and (C) appropriately. The Bar's request is granted, and the operative language of Rule 11.02(4)(d)(iii) which will become effective on September 1, 1981, as amended on July 16, 1981, is further amended to read:

(iii) (vi) Lawyers or law firms electing to deposit client funds in a trust savings account shall direct the depository institution:

(A) to remit interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Florida Bar Foundation, Inc.; (B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and (C) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance for each month of the period for which the report is made.

It is so ordered.

SUNDBERG, C.J., and ADKINS, BOYD, OVERTON, ALDERMAN and McDONALD, JJ., concur.

NOTES

[1] In re Interest on Trust Accounts, 356 So. 2d 799 (Fla. 1978).

[2] Matter of Interest on Trust Accounts, 372 So. 2d 67 (Fla. 1979).

[3] In the Matter of Interest on Trust Accounts, 396 So. 2d 719 (Fla. 1981).

[4] Over sixty identical "form" letters expressing dissatisfaction with the program were filed from attorneys in the Dade County area. Most of these mailings appear to originate from small or one-man law firms. Not all communiques were adverse

to the Foundation's proposals, however. Support for the changes come from four Florida law schools and from various public interest law committees and organizations.

[5] See 356 So. 2d at 802 & n. 20, 804.

[6] Rev.Rul. 479, 1976-2 C.B. 20 (members of medical staff of hospital who assign right to receive income from teaching cases to research and educational foundation as a condition precedent to being member of staff not taxable on fees for treating teaching cases because they have "no control over the fees charged, or the collection and disbursement of such fees."); Rev.Rul. 274, 1969-1 C.B. 36 (faculty physicians of a medical school who provide medical services to indigent patients at a hospital are not required to include in their gross income fees collected and remitted to the university in accordance with university policy and agreement where "[u]nder this arrangement, no individual physician would ever have control of the funds collected.").

[7] Under the Court's original program, of course, clients could prevent the realization of income but they could not benefit from their action. No income would be earned for the Foundation if an individual client took affirmative steps to notify his attorney that he did not want income paid to the Foundation. In that case, the funds on deposit with the attorney would be placed in a non-interest bearing checking account from which no interest income would be generated. The client's choice, consequently, was a negative one, to prevent the creation of income, in the absence of which the Foundation would benefit. Tax counsel argued unsuccessfully to IRS that because clients with funds on deposit could in no way "realize" income in the tax sense, there was no transfer or shift of income among taxpayers, except in the conceptual sense that "income" would inhere on unearning deposits for the benefit of depository commercial banks.

[8] Many comments reflect a complete misunderstanding of the program's operation, the role of attorneys in its implementation, or the federal tax implications and tax return requirements of the program. In light of our action today, there is no need to correct those misapprehensions here.

[9] U.S.Const. amend. V.

[10] The notion of generating interest on lawyers' trust accounts in Florida began in 1971. In re Interest on Trust Accounts, 356 So. 2d 799, 800 (Fla. 1978).

[11] Disagreement with the general wisdom of improving the administration of justice with the earnings on clients' funds, which runs through many of the adverse filings, has already been considered and resolved in our 1978 decision. Id. at 805-07. We refuse the invitation to turn back.

[12] 356 So. 2d at 807 n. 44.

[13] Id. at 803-04 nn. 28-30.

[14] We have knowingly added the words "to be" as part of the temporal standard, rather than continue the former standard of time shortness in fact. The significance lies in allowing attorneys to test for shortness when the funds are received, and not require a hindsight reexamination based on duration in fact. We cannot require attorneys to be seers, and we see no value in allowing the program or any attorney to be jeopardized by an ex post facto audit.

[15] 356 So. 2d at 800-01.

[16] Id. at 802 n. 20.

[17] Of course, a failure to comply with a client's investment directives may give rise to a legal liability for damages.

[18] See note 17, above.

[19] The rejected proposal was reproduced as new paragraphs (vii) and (viii) to Integration Rule 11.02(4)(d) in In the Matter of Interest on Trust Accounts, 396 So. 2d 719, 722 (Fla. 1981).

[20] This proposal was also reproduced in the Court's opinion soliciting commentary. Id.

[21] Fla. Bar Integr.Rule, art. XI, Rule 11.02(4)(d)(ii)-(iv).

[22] Fla. Bar Integr.Rule, art. XI, Rule 11.02(4)(d)(vii).

[23] Those principles, as they appear in 356 So. 2d at 807, are:

1. Implementation will be effected through the Integration Rule rather than through by-laws alone;

2. Interest earned on trust accounts will be remitted to the Foundation rather than the Bar, at least quarterly, for distribution among the agencies which will provide approved services;

3. Clients' trust funds may be invested in savings accounts of qualified financial institutions, but not in U.S. government or other securities;

4. No filing of any sort with the Bar will be required other than a certificate of annual compliance with minimum trust account procedures, and no accounting and record-keeping requirements shall be imposed on plan participants other than those minimum requirements expressed in the new rules;

5. In lieu of special name designations for attorney trust accounts, all accounts in which clients' funds are deposited will, as they are now, simply be identified as "trust accounts."

To avoid unforeseeable problems of rigidity, we authorize the Foundation to approve periodic remittances less frequently than quarterly from any participating financial institution which cannot feasibly, in accordance with its standard banking and accounting practices, remit interest payments to the Foundation at least quarterly.

[24] IRS approval is anticipated promptly upon our readoption of this program. The Bar and the Foundation can promptly communicate the details of approval, together with the Foundation's tax identification number, to Florida associations representing appropriate financial institutions.

[25] 356 So. 2d at 811.

[26] Our most recent exhortation on the subject appears in The Florida Bar v. Furman, 376 So. 2d 378, 381-82 (Fla. 1979).

[27] For example, continued funding for the Legal Services Corporation is a matter of intense debate in Washington, D.C.

[28] A special note of appreciation is in order for the efforts of Henry Zapruder, of the Washington law firm of Cohen and Uretz, whose skill and diligence as tax counsel to the Foundation has proved invaluable to the Foundation, to the Court, and to the citizens of Florida.