

## **IN THE SUPREME COURT OF FLORIDA**

**CASE NO. \_\_\_\_\_**

**MATTER OF INCREASING THE )  
AVAILABILITY OF LEGAL )  
SERVICES FOR THE POOR AND )  
PROVIDING GREATER ACCESS )  
TO THE COURTS /**

### **PETITION OF OVER 50 ACTIVE MEMBERS OF THE FLORIDA BAR TO AMEND THE RULES REGULATING THE FLORIDA BAR REGARDING MEMBERSHIP FEES**

Pursuant to Rule 1-12.1 of the Rules Regulating The Florida Bar (the “Rules”), the undersigned fifty or more active members of The Florida Bar move for the entry of an Order modifying Rule 1-7.3(a) (“Membership Fees Requirement”) to increase The Florida Bar’s annual membership fee cap by \$100 to provide greater availability of civil legal services to the poor and to provide greater access to the courts. In support of this petition, we state as follows:

#### **INTRODUCTION**

1. Florida’s delivery of legal services to the poor is in crisis. Although the need is great, funding from all sources for legal assistance to Florida’s poor has dropped to unsustainable levels. Much of this decline in funding is attributable to the collapse in revenue from the Interest on Trust Accounts (“IOTA”) program benefitting The Florida Bar Foundation. Since 2008, revenue from the IOTA

program has *fallen 88 percent* due to a drastic decrease in interest rates. While individuals admitted to the practice of law in Florida have a responsibility to account for this shortfall by providing competent legal services for all persons, including those unable to pay for such services, these contributions have come nowhere close to filling the gap and meeting the increasing needs of Florida's poor. Studies show that as much as 80% of the legal needs of the poor go unfulfilled.

2. Worsening the problem, many providers of legal services are drastically cutting staff as a result of decreased financial support, resulting in fewer services for fewer clients. The Bar Foundation is projecting cuts of 76% of its legal aid grants by the 2015-16 grant year, and current estimates for the near future project one legal aid attorney for every 10,700 Floridians living in poverty. The result is that "equal justice under law" is rapidly becoming a hollow phrase as the poor are denied access to Florida's courts.

3. This Petition seeks to amend Rule 1-7.3(a) governing the Membership Fees Requirement to help meet the need for civil legal services for the poor. The proposed amendment would authorize the board of governors to increase The Florida Bar membership dues by \$100 and propose that be used to provide legal services to the poor.

## **LEGAL AUTHORITY TO MODIFY RULES**

4. Pursuant to Florida statute, “[a]dmissions of attorneys and counselors to practice law in the state is . . . a judicial function.” § 454.021(1), Fla. Stat. (2013). Furthermore, “[t]he Supreme Court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state.” § 454.021(2), Fla. Stat. (2013). Indeed, the Florida Supreme Court has exclusive jurisdiction to regulate admission to the practice of law and the discipline of those admitted. Art. V, § 15, Fla. Const.

5. This Court promulgates the Rules and establishes the authority and responsibilities of The Florida Bar, an official arm of the Court. *The Fla. Bar re Schwarz*, 552 So. 2d 1094, 1094 (Fla. 1989) (“As a creation of this Court, The Florida Bar is under our supervision and subject to our regulation.”); R. Regulating Fla. Bar Ch. 1, Gen. Intro. All active members of The Florida Bar must pay annual membership dues in an amount set by the board of governors in the budget. R. Regulating Fla. Bar 1-7.3. Currently, Rule 1-7.3 sets the membership fees at \$265 per year. *Id.* See also R. Regulating Fla. Bar 1-3.2 (establishing membership classifications).

6. This Court has recognized its authority to adopt and amend the Rules, and also highlighted the responsibility of both the Court and Florida lawyers to ensure that the poor have access to Florida’s courts:

[T]his Court, as the administrative head of the judicial branch, has the responsibility to ensure that access to the courts is provided for all segments of our society. Given the number of reports presented to this Court that document the legal needs of the poor, we find it necessary to implement the attached rules. Justice is not truly justice if only the rich can afford counsel and gain access to the courts. Consequently, these rules are being implemented in the hopes that they will act as a motivating force for the provision of legal services to the poor by the members of this state's legal profession. . . . There is no more effective way to gauge the success of lawyers in meeting their obligation to represent the poor – an obligation every member of the Bar swears to undertake. Lawyers have been granted a special boon by the State of Florida – they in effect have a monopoly on the public justice system. In return, lawyers are ethically bound to help the State's poor gain access to that system.

*Amendments to Rule 4-6.1 of the Rules Regulating The Fla. Bar-Pro Bono Pub. Serv.*, 696 So. 2d 734, 735 (Fla. 1997) (internal citations omitted).

### **PROPOSED AMENDMENT TO THE RULES**

7. The Petitioners propose the following amendment to Rule 1.7.3(a):

#### **RULE 1-7.3 MEMBERSHIP FEES**

**(a) Membership Fees Requirement.** On or before July 1 of each year, every member of The Florida Bar, except those members who have retired, resigned, been disbarred, or been classified as inactive members pursuant to rule 3-7.13, must pay annual membership fees to The Florida Bar in the amount of \$265 per annum. Every member of the Florida Bar must pay the membership fee and concurrently file a fee statement with any information the board of governors requires. The board of governors may increase the membership fees by \$ 100 per annum provided any increase in the membership fees set by the board of governors shall be

used as additional funding for the Legal Aid to the Poor Program of The Florida Bar Foundation.

## **ANALYSIS**

### **The Growing Unmet Need for Legal Services to Florida's Poor**

8. From 2000 to 2012, the U.S. Census Bureau calculated that the number of people in Florida living below the poverty line increased 4.3 percent to more than 3.2 million. Alemayehu Bishaw, *Poverty: 2000 to 2012, American Community Survey Briefs*, U.S. CENSUS BUREAU, at 5, Table 2 (September 2013), attached hereto at A. 7.<sup>1</sup> More than one out of every 330 homes in Florida is in foreclosure—approximately three times the national average. *See* FLORIDA REAL ESTATE STATISTICS AND FORECLOSURE TRENDS SUMMARY – REALTYTRAC REAL ESTATE, <http://www.realtytrac.com/statsandtrends/foreclosuretrends/fl> (last visited December 11, 2013), attached hereto at A. 22-23.

9. Legal aid programs handle basic needs for low-income and disadvantaged Floridians. In 2012, Florida's legal aid programs handled 89,720 cases, as follows:

- Family (29.6%)
- Housing (29.3%)
- Individual Rights (10.3%)
- Consumer (8.6%)
- Income Maintenance (7.0%)

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<sup>1</sup> Petitioners have attached a paginated appendix that includes most of the referenced internet resources for the Court's convenience. Citations to that appendix appear as "A." followed by the page number for the referenced material.

- Employment (3.6%)
- Juvenile (2.8%)
- Other (8.8%).

THE FLORIDA BAR FOUNDATION, 2012-2013 ANNUAL REPORT, 5, attached hereto at A. 136; ANNUAL REPORT OF THE FLORIDA BAR FOUNDATION'S LEGAL ASSISTANCE FOR THE POOR GRANT PROGRAM 2012, 1-4, attached hereto at A. 162-65. Despite the work of these programs, studies suggest that as much as 80 percent of the legal needs of the poor are not met. *See* LEGAL SERVICES CORPORATION, REPORT OF THE PRO BONO TASK FORCE, 2 & n.10 (Oct. 2012), attached hereto at A. 47. Because of reductions in funding, however, Florida's legal aid programs handled about 10 percent fewer cases in 2012 than in 2011: 100,769 cases were closed in 2011 versus only 89,720 cases closed in 2012. *Compare* THE FLORIDA BAR FOUNDATION, 2012-2013 ANNUAL REPORT, 5, attached hereto at A. 136 *with* THE FLORIDA BAR FOUNDATION, 2011-12 ANNUAL REPORT, 6, attached hereto at A. 117.

10. Funding for legal services is countercyclical: The need increases when the economy stagnates and resources decrease. Despite the generosity of Florida's lawyers, the capacity of legal aid and *pro bono* programs to meet the needs of Florida's poor has fallen due to increased costs and declining funding. *See Trial Lawyers and Family Law sections each give \$75,000 to alleviate cuts to*

*children's legal services programs*, THE FLORIDA BAR FOUNDATION (Spring 2012), attached hereto at A. 178-79.

11. There are only 410 full-time legal aid lawyers in Florida and 120 of those positions are in jeopardy. *Id. See also Lack of Legal Aid Leaves Poor in Dire Straits*, DAYTONA BEACH NEWS JOURNAL (Sept. 19, 2012), attached hereto at A. 36. With the growth in Florida's poverty population since the recession, such reductions would result in only one legal aid attorney for every 10,700 Floridians living in poverty. *See Facing devastating cuts to legal aid, Foundation turns to lawyers*, THE FLORIDA BAR NEWS (March 1, 2012), attached hereto at A. 20. And as legal aid programs exhaust their reserves, staffing reductions are occurring. For example, although the number of cases handled by its staff attorneys rose sharply, Legal Services of Greater Miami had to cut five attorneys (from 35 to 30 full-time attorneys). Nabanita Pal, *Cuts Threaten Civil Legal Aid*, BRENNAN CENTER FOR JUSTICE (April 22, 2011), attached hereto at A. 83.

12. Revenue from the IOTA program—a significant source of support for civil legal aid providers—has collapsed due to historically low interest rates, falling 88 percent since 2008. *See Facing devastating cuts to legal aid, Foundation turns to lawyers*, attached hereto at A. 20. *See also Lack of Legal Aid Leaves Poor in Dire Straits*, attached hereto at A. 36 (noting that the Florida Bar Foundation raised \$44 million in 2007, but only \$5.58 million during the 2012

fiscal year from IOTA funds); THE FLORIDA BAR FOUNDATION, 2012-2013 ANNUAL REPORT, 16, attached hereto at A. 147 (showing that IOTA revenue raised during the 2012-2013 fiscal year continued to decrease, reaching only \$5.53 million). The Florida Bar Foundation projects that by its 2015-16 fiscal year, it will cut 76% percent of its legal aid grants (as compared to its 2009-10 fiscal year). *See Foundation grantees brace for cuts*, THE FLORIDA BAR NEWS (April 30, 2013), attached hereto at A. 24. Given that the Federal Reserve announced in December 2012 that it will keep short-term interest rates near zero, IOTA revenue is not expected to increase anytime soon. *Id.* The sustained slump in IOTA revenue has had real world implications for legal services funding. From the 2011-2012 to 2012-2013 years, general support grants were reduced by 35%. THE FLORIDA BAR FOUNDATION, 2012-2013 ANNUAL REPORT, 4, attached hereto at A. 135. Despite generous gifts from the legal community, the Florida Bar Foundation still had to cut its Children's Legal Services grants by 31% from 2011-2012 to 2012-2013. THE FLORIDA BAR FOUNDATION, 2012-2013 ANNUAL REPORT, 6, attached hereto at A. 137. Without the services of legal aid programs, the poor and financially troubled clog the civil court system without representation.

13. Statewide and local efforts at private fundraising have been largely unsuccessful and certainly insufficient to fill the gaps in lost funding. For example, the urgent campaign at the beginning of 2012, the "NOW Campaign," led



by the Presidents of The Florida Bar and The Florida Bar Foundation, which reached out to Florida's lawyers to respond to the legal aid funding crisis, resulted in only 355 donations for a total of approximately \$92,000. "*Now*" campaign brings in \$92,000, THE FLORIDA BAR FOUNDATION (Summer 2012), attached hereto at A. 88. As of 2010, about only half of Florida's attorneys reported performing any *pro bono* work. See *Reporting of Pro Bono Service*, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html#Florida> (last visited December 4, 2013), attached hereto at A. 106.

14. Furthermore, between 2000 and 2009, Florida's legal services providers reported a 30% decline in the number of lawyers providing *pro bono* services through their organizations. See Kim MacQueen, *Pro bono goes stagnant*, THE FLORIDA BAR NEWS (January 1, 2009), attached hereto at A. 30. Successful *pro bono* programs are largely contingent on a strong legal aid infrastructure. Most *pro bono* programs are run by full-time legal services employees who conduct case intake, identify legal issues, conduct trainings, supply pleadings, and refer *pro bono* cases to the private bar volunteer attorneys. Without adequate funding for legal aid programs with a *pro bono* component, the individual effort of *pro bono* lawyers will be far more difficult, if not impossible, extremely inefficient, and much less effective.

**Other States Facing Similar Crises in the  
Provision of Legal Services Have Adopted Mandatory  
Increases In Bar Fees to Provide Legal Services to the Poor**

15. Throughout the nation, a number of state supreme courts and bar associations already have increased annual fees or dues to help fund free legal assistance for its indigent residents. These include:

Illinois	Members pay \$95 towards the Lawyers' Trust Fund, which is the largest state-level funder of civil legal aid for the poor in Illinois. <sup>2</sup>
Missouri	Starting in 2014, members will pay \$30 to fund legal services. <sup>3</sup>
New York	Members pay \$50 towards the Indigent Legal Services Fund and \$25 towards the Legal Services Assistance Fund. <sup>4</sup>
Pennsylvania	Members pay \$25 towards IOLTA program to fund legal services for the poor. <sup>5</sup>
Texas	Members pay \$65 split evenly between civil legal aid and innovative criminal indigent defense projects. <sup>6</sup>

<sup>2</sup> *Illinois Supreme Court Increases Registration Fees for Attorneys to Help Fund Legal Services for Poor*, SUPREME COURT OF ILLINOIS (June 5, 2012), attached hereto at A. 25.

<sup>3</sup> Order dated November 8, 2013, re: Rules 6.01 and 6.07, Supreme Court of Missouri (en banc), attached hereto at A. 90-91.

<sup>4</sup> *The Legal Profession – Attorney Registration: Registration FAQs*, New York State Courts, <http://nycourts.gov/attorneys/registration/faqs.shtml#open> (select link for registration requirements for attorneys) (last visited Dec. 6, 2013), attached hereto at A. 176.

<sup>5</sup> News Release, *Annual Registration Fee for Lawyers to Increase*, ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS (Apr. 2, 2009), attached hereto at A. 86.

<sup>6</sup> Tex. Gov't Code Ann. § 81.054 (2013).

Wisconsin	Members pay \$50 towards Public Interest Legal Services Fund <sup>7</sup>
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16. Other states, such as Georgia, are currently considering increasing bar fees to better fund indigent representation. *See* Kathleen Baydala Joyner, *State Bar Task Force Mulls Increase in Fees*, DAILY REPORT (Oct. 16, 2013), attached hereto at A. 28-29.

17. Still other states have addressed the decreased funding for legal aid in other ways:

Colorado	In May 2011, the Colorado Supreme Court voted unanimously to transfer \$750,000 in 2012 and 2013 from the Court's attorney registration fund to Colorado Legal Services to provide pro bono services to Colorado's indigent population. <sup>8</sup>
Hawaii	Members may opt out of a \$75 contribution to Volunteer Legal Services Hawaii, a non-profit entity founded to provide legal services to low-income individuals through pro bono volunteer lawyers. <sup>9</sup>

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<sup>7</sup> Wis. SCR § 13.045 (2008).

<sup>8</sup> *Colorado Supreme Court authorizes transfer of surplus attorney registration funds to Colorado Legal Services*, COLORADO JUDICIAL BRANCH, (May 11, 2012), attached hereto at A. 19

<sup>9</sup> *2013 Mandatory Licensing Fee Schedule*, HAWAII BAR ASSOCIATION, attached hereto at A. 1.

Minnesota	The Minnesota Supreme Court approved a temporary increase in annual registration fees, allocating \$75 of the increase to the Board of Public Defense to provide additional funding for legal representation of its clients and \$25 to the Legal Services Advisory Committee to be distributed by the Committee for civil legal services for low income and disadvantaged Minnesotans. <sup>10</sup>
South Carolina	Members may opt out of \$30 assessment to meet the civil legal needs of indigents. <sup>11</sup>
Alaska	Active members who provide 400 or more hours of pro bono service each calendar year may pay reduced annual membership fees for the year immediately following the year the pro bono hours were provided. <sup>12</sup>

18. Florida's annual bar fees have not been raised since 2001. If indexed to inflation over the past 12 years, Florida's bar fees would have risen by at least \$84. *See* CPI Inflation Calculator, BUREAU OF LABOR STATISTICS, [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (input \$265 and select 2001 as the year, resulting in \$265 in 2001 having the same buying power as \$348.75 in 2013, or an approximate \$84 difference). Furthermore, Florida's bar fees are relatively low compared with other states. Florida Bar members pay annual fees of \$265, while members of other state Bars must pay annual fees ranging from \$300 to \$660: Alabama (\$300), Alaska (\$660), California (\$410), Kentucky (\$350),

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<sup>10</sup> Order Extending Increase in Lawyer Registration Fees, State of Minnesota Supreme Court, ADM10-8002 (formerly C9-81-1206) (March 2, 2011), attached hereto at A. 92-95.

<sup>11</sup> S.C. Bar Rule 410 (2013).

<sup>12</sup> Art. III, sec. 1, 2013-2014 Bylaws of the Alaska Bar Association.

Missouri (\$305), Nebraska (\$335), Nevada (\$450), New Hampshire (\$520), North Dakota (\$380), Oregon (\$522), South Dakota (\$415), Utah (\$425), Washington (\$325), Wisconsin (\$460) and Wyoming (\$355).

### **Explanation of Requested Modification**

19. The requested modification would authorize the board of governors to raise the annual active membership fees by \$100 and require that any membership fee in excess of the current fee be allocated to provide greater access to legal services for Florida's poor through the Legal Aid to the Poor Program of The Florida Bar Foundation. The Florida Bar Foundation has established and trained staff to properly administer and account for funds created by this proposed rule change.

20. As discussed above, a \$100 increase in the annual active membership fee is reasonable considering Florida's legal aid funding crisis. The Florida Bar's members have an obligation to ensure that the poor have access to the courts. Far from mandating charitable contributions by Florida's lawyers, this increase would assist them in fulfilling the obligations of their membership in The Florida Bar. *See Amendments to Rule 4-6.1 of the Rules Regulating The Fla. Bar-Pro Bono Pub. Serv.*, 696 So. 2d at 735. There are currently more than 96,000 members of the Florida Bar; a \$100 increase in bar dues would raise about \$10 million for legal aid services for the poor.

### **Request for Expedited Consideration and Suggested Procedure**

21. The Court is requested to expedite consideration of this matter. Petitioners have fully complied with Rule 1-12.1 before filing this petition. Petitioners suggest that interested persons be allowed 30 days from the date of this Petition within which to file written submissions with the Court, allowing Petitioners 10 days to respond, with oral argument set as soon thereafter as practicable.

### **CONCLUSION**

Allowing a \$100 increase in The Florida Bar's membership fees offers immense benefit to the public with minimal inconvenience to Florida's lawyers. Lawyers have a professional obligation to assist in improving the administration of justice, and to provide legal services to those unable to pay for such services. The adoption of a \$100 fee increase would aid Florida lawyers in meeting that responsibility by providing needed funds for legal services to the poor. The Court is urged to adopt the requested amendment.

Respectfully submitted,

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