

Access to Justice Commission Quarterly Meeting

Date: Thursday, February 5, 2009

Time: 1:30 p.m.- 5:00 p.m.

Two video-conference locations (phone will be set up also):

Carson City: AOC Conference Room, 2nd Floor

Supreme Court Building 201 S. Carson St.

201 S. Carson St. Carson City, NV 89701 Las Vegas:

AOC Conference Room, 17th Floor

Regional Justice Center 200 Lewis Ave., 17th Floor Las Vegas, NV 89101

AOC Main number: 775-684-1700

AGENDA

Items may be taken out of order at the discretion of the Chairs

TAB

(Bates pp)

- 1. Approval of minutes 10.23.08 (p. 1)
- 2. Year in Review (p. 8)

Conference Call info: 1-866-779-0774 *1043736*

- a. Preferred Interest Banking Program & marketing (p. 9)
 - b. Supporting Committees
 - c. Needs Assessment
 - d. Strategic Planning and Dialogue with NLF
 - e. Emeritus Program initiated (p. 13)
 - f. Website
- 3. 2009 Commission objectives and discussion items (p. 21)
 - a. ATJC Programs and Projects Master
 - i. Senior programs (p. 24)
 - ii. Standardized Service Provider Statistic Reporting
 - iii. Provider Organization individual strategic plans and goals
 - iv. Ghost writing- potential rule change
 - v. Expanded website
 - b. Call to Action (marketing plan)
 - c. Restructuring IOLTA
 - d. Restructuring the Commission
 - i. Expansion of supporting committees (p. 27)
 - e. Rural Services
 - i. Report by Judge Dahl; questionnaire results (p. 33)
 - ii. Formation of Standing Committee and goals; ADKT 424 (p. 46); AOC Court Tech Rpt (p. 53)
 - f. Bridge The Gap 2009
 - i. 30-min presentation for Needs Assessment and provider statements
 - g. Professionalism Summit
- 4. IOLTA Campaign (p. 59)
 - a. Participating Preferred Interest Banks & ongoing negotiating efforts
 - b. Last quarter interest rate reports from NLF (p. 60)
 - c. Report from January 30, 2009 NLF Strategic Planning Day 2 (p. 62)
 - d. Research memorandum- IOLTA benchmarking and potential rule changes (p. 112)
- 5. Standing Committees (p. 215)
 - a. Committee Projects and Roster Master
 - b. Committee Reports
 - i. Communications
 - ii. Legal Services Delivery
 - iii. Development
 - iv. Executive Directors
- 6. Commission Documents (p. 222)

Updated ATJC and Committee rosters and goals; organizational chart; Rule 15

- 7. Other business (p. 229)
 - a. ATJC 2009 Calendar (p. 230)



TAB 1

Nevada Supreme Court Access to Justice Commission State Bar of Nevada

Carson City: AOC Conference Room, 2nd Floor Las Vegas: AOC Conference Room, 17th Floor Supreme Court Building 201 S. Carson St. Carson City, NV 89701

Regional Justice Center 200 Lewis Ave., 17th Floor Las Vegas, NV 89101

MINUTES draft Thursday October 23, 2008 12-4

Commission members in attendance:

Justice James Hardesty Co-Chair

Cooney

Valerie

Dahl

Hon. Stephen

Doherty

Hon. Francis

Elcano

Paul

Ferenbach

Cam

Gonzalez

Hon. Betsy

Johnson

AnnaMarie

Kandt

W. Brett

Mucha Abbott

Kimberly

Nielsen

Ernest

Thronson

David

Vogel

Sheri Cane

Voy

Hon. William

Warden

Tom

Marzec

Kristina

Commission Director

Non-voting members in attendance:

Buckley

Barbara

Executive Director, Clark County Legal Services

Non-voting members by phone:

Candelaria

Amber

Director, Eighth Judicial District Family Law Self Help Center

Guests:

Baucum

Suzan

Executive Director, Nevada Law Foundation

Beesley Farmer

Bruce Kimberly President, State Bar of Nevada Executive Director, State Bar of Nevada

McCormick

John

Administrative Office of the Courts

Myers

Carolyne

Chair, Nevada Law Foundation

Members unable to attend (excused absences):

Douglas,

Hon, Michael

Desmond

John

Steinheimer

Hon. Connie

Puccinelli

Hon. Andrew

1. Minutes 6.20.08

Moved and approved to ratify minutes of last meeting with minor amendments.

2. Access to Justice Section

The State Bar reported that as requested, the Access to Justice Section is formally retired and roll-over of remaining funding (approximately \$5,000) approved for allocation to Commission pro bono recognition and awards activities.

3. Committees

Each of the Committees presented verbal reports as follows, supplementing the written reports provided in the agenda, with some motion actions taken as indicated:

• Marketing- Tom Warden

Tom reported that the subcommittee met on 10/20 to begin laying out the formal assessment marketing plan. The group has a good picture of the goal, identifying a three tiered approach to lawyers, the general public/community, and legislators. Tom acknowledged the providers stated concern that caution be taken to avoid public marketing crossing over into advertising for the providers services, given the current overload in existing clients.

Given that the Needs Assessment will be approved today, Justice Hardesty asked Tom and the subcommittee to prepare a list of service organizations north and south to obtain schedules and communicate back with the Commission. Tom noted targeted areas would be useful given the escalating tough economic times-some potential donor groups will be more viable than others. Justice Hardesty stated the need for urgency, with a quarterly marketing plan that keeps the needs in the collective consciousness.

Emeritus

Moved and approved to ratify the Emeritus Attorney Application Packet (SCR 49.2). Moved and approved to ratify each of the Legal Services Providers as an EAPB provider, with the exception of the City of Las Vegas Senior Law Project, which will work under LACSN on Emeritus cases for liability insurance reasons.

Kimberly noted the Providers must provide significant input for the polices for roll out and took lead on this project. The concern is some potential applicants have called who aren't adequately staffed and resourced to take on cases, so the program needs to define and list a variety of ways in which a broad spectrum of applicants can help provide services. Kristina also noted a spate of calls from lawyers clearly seeking to circumvent the *pro hac vice* requirements, and noted emphasis must be placed on the program's prime objective of helping the legal aid providers with existing programs and cases.

Cy pres

Justice Hardesty asked Judge Gonzales to assist with getting time to address the next district court judges meeting. John McCormick offered assist Paul in this regard. The meeting is currently tentatively set for April.

Court posted fees

Justice Hardesty noted the December administrative docket extended the ban on jury fee deposits under 38(b), and noted that the rule appears to be flexible in allowing counties to make those decisions. Some counties do appear to still want jury fee deposits. As such, this may well remain an open issue. Requesting any portion of this revenue would obviously deprive the counties of revenue and the Commission should weight that carefully, especially in these economic times.

Paul updated the group on the issue of potentially requesting some portion of accrued interest payable to general fund. Justice Hardesty asked if there was any appetite to pursue. Judge Dahl expressed Justice Hardesty's wisdom in being cautious of the county's positions, there is always someone trying to squeeze

courts, which have so far been good about giving money to expand services. Since the courts have at least been working with us, not the right time to ask. The majority expressed agreement. Barbara noted that because the legislative process is fluid and you never know where things fall into a broader mix, we should never foreclose on opportunities altogether. Justice Hardesty commented on the enormous risk to the rurals in this matter, and expressed concerned about implications this legislative session.

Unanimously tabled.

Donations

Ernie stated on behalf of the providers the need to be clear about how donations are processed under the marketing plan, particularly because the forward role of the Foundation's relationship with Access to Justice is still in discussions. The marketing subcommittee agreed.

Justice Hardesty suggested the Nevada Law Foundation is the appropriate designate, which would separately account for the funds in a repository account. On these funds, the Commission would determine distribution. If that poses a problem, the Clark County or Washoe Bars should be considered. Suzan noted this approach would require a different policy than with directed donations and she would present to the NLF Board for approval. It was clarified that the focus of the marketing plan would be to encourage direct donations to the providers, but a mechanism must be in place in cases where donors are ready to write a check on the spot and don't have a particular group in mind. Suzan will raise with the NLF Board at its next meeting.

A secondary issue of processing court ordered sanctions was raised. Judge Gonzales noted every department is different. In her court, the first offense goes to Clark County Pro Bono, the second and third to the NLF, some directly to providers, and some to the Supreme Court Law Library. The Court gets confirming letters from providers on these payments. Barbara noted this has been a key funding source for over a decade since LACSN/CCLS merged with the pro bono project. Justice Hardesty asked that Judge Gonzales take this up with Judge Adair to request that sanction orders may include providers directly. It's likely become more of a habit to designate the law library.

Judge Gonzales will take point on the next judges meeting, Judge Doherty on the next Washoe meetings. John McCormick will facilitate getting letters out to the judges were necessary.

Domestic Violence Request

Justice Hardesty agreed with the Committee that this issue is not ripe to pursue in this legislative session, but is well worth researching in Committee or perhaps a designated subcommittee working with real estate and title groups.

Suzan and Carolyne noted at the last major IOLTA conference, there was real money in other states that do this. However, being a lawyer closing state make a difference because the money is clearly lawyer trust funding. Justice Hardesty noted in any number of transactions title companies don't pay interest at all absent special arrangements, and opined they probably have difference types of escrow accounts. For example, holding disputed funds.

Paul noted the concerns were not necessarily with principle. (1) All success programs had to do with lawyer escrow, (2) too late for this legislature and (3) we must broker with real estate and title company associations in Nevada first.

The nexus to this money requires convincing real estate groups and bankers that ATJ claims are as strong to those funds as theirs. Cam stated that increasingly more title companies are showing up as adverse parties in this economy, and care should be taken to be sensitive in these efforts to reach out on this potential funding source.

Moved and approved to leave this in Development for long term planning. Paul, Suzan and Ernie to take point and start with the Title Association President.

Rural services- Judge Dahl

Judge Dahl briefed the group on the Baltimore Pro Se Litigation Counsel meeting in September and discussed the questionnaire, which so far is gaining excellent responses. He will compile and provide a full report at the next Commission meeting.

Technology clearly provides a viable alternative to provide services in rural areas. By manning a lawyer during certain hours at videophones with companion phones in remote locations, it provides great economy of scale and overcomes the distance problems inherent in rural delivery. The plan itself to run the videophones appears to be about 30-40\$ per month, entirely reasonable. Often the service will provide the phone as part of the contract.

Anna noted hotlines have had great success in her program. There were over 2000 calls so far this month, with three staff. NLS just set up out in Pahrump with videophones. Judge Brisbell was out last week. Works well, has scanner attached, or you can print documents. A split screen function allows you to see the caller on one side, the website on another. It remains a pilot program for now, with infrastructure posing some problems (ie getting matching bandwidth).

Justice Hardesty noted the survey will be helpful in determining specific equipment needs. Some courts don't support basic expanded services. He has gone to the bench and bar and asked law firms to donate equipment after upgrades, something John Desmond had suggested previously. So far three lawyers have done so, and donated sophisticated equipment only a few years old. There should also be a report from Robert Castelis shortly regarding connectivity. In the Second District for example they are working with community colleges, and a network should be up and running within the next few months. The Commission will also need to monitor implementation of the rule changes expected to be effected by ADKT 424 (the proposed rule to obligate judges to conduct videoconference on certain matters as spelled out).

Justice Hardesty noted the first portion of the rule is not discretionary-the discretion is there with exemptions for criminal and evidentiary hearings at the request of district court judges, everyone else has to do telephone conferences. Request was to make it discretionary but is not now drafted that way. Expect a ruling in December.

Judge Dahl and John McCormick will continue work on this topic, and asked that the Commission postpone formation of a Rural Services Committee until the next Commission meeting pending the survey results. Moved and approved.

On a secondary note, Kristina was asked to assist Ron Titus as necessary in his duties as the statewide contact for the newly formed ABA Pro Se Litigation Counsel group.

Executive Directors Meeting

Paul provided an overview of the topics in discussion with the provider executive directors, including its vision for IOLTA funding and allocation in future. Justice Hardesty relayed his and Justice Douglas request that the group provide individual reports to the Justices on how services are provided, funded, and accounted for.

4. Legal Needs Assessment

Moved and approved to ratify the Needs Assessment in full. John McCormick noted the SJI grant requires their logo and a disclaimer be affixed to the final product. Kristina will make the changes upon receipt of the information from John.

Bridge the Gap

Justice Hardesty asked for the status of the reformation of Bridge the Gap. Bruce Beesely stated the upcoming Board of Governors meeting will have changes. Justice Hardesty requested that the Commission have an expanded slot as this is the perfect time to present the needs assessment.

5. Nevada Law Foundation

Temp liquidity program.

The ABA has requested support for its position that the new unlimited Temporary Liquidity Guarantee Program, which provides unlimited deposit insurance on most deposits through December 2009, should be extended to apply to IOLTA. The Nevada Law Foundation Board will submit written comments in support.

The Commission voted unanimously to authorize Justice Hardesty to get in touch with the ABA delegation and indicate the Commission's and the Court's support and take whatever other action deemed necessary and proper.

Moved, seconded, and approved.

Grants

Suzan gave a brief overview of the grants and IOLTA revenue for the past year as indicated in the provided written materials. The Providers indicated their ongoing request for confirmation that they are receiving a majority of the funding as required by the rule.

Bruce Beesely asked Suzan to put some flow charts together for these statistics back to 2006, which she agreed to do. Suzan also noted she contacted other similarly-situated IOLTA programs, who all have a full time ED and 2-3 staff. The ratio of distributed funds to overhead is a low of 46%, high of 90%, and average of 75%-80% paid to LSP across the country. Justice Hardesty asked that the audit summary provided to the Court by Suzan be circulated to the Commissioners. Suzan also stated the NLF auditor Steve is available to meet, organize data differently, or whatever the Commission may request.

Justice Hardesty noted that much of this is expected to be addressed in the December strategic planning. He and Justice Douglas are interested in tracking revenue by bank. Suzan indicated she has asked her database programmer to look into this, as well as a geographic breakdown. If the programming can't be amended to do so, she can do it by hand.

Comparability

Suzan provided an update on IOLTA comparability. The Commission discussed that it is critical that preferred partner banks be acknowledged as much as possible. Barbara indicated she intended to do so at LACSN's upcoming awards. Suzan noted she could add the banks to the Silver Ball, and perhaps a plaque could be added in the Supreme Court Library.

The State Bar noted it had approved providing the member mailing lists to preferred interest banks for a nominal fee, which the Commission acknowledged with thanks.

Justice Hardesty noted he and Carolyne should meet with bankers to get their perspective on benchmarks.

As an interim measure, the following benchmarks were approved for preferred banks: .50 basis points off the 30-Day LIBOR, equal to the Fed Fun Target Rate, or a flat 2% for one year. All should be in writing with no fees or negative netting.

Kristina & Suzan to provide research and recommendations to the Commission on a potential comparability rule.

Foundation as Commission fundraiser & investor

The Commission will revisit these issues after strategic planning. As has been stated previously, the Nevada Law Foundation has the infrastructure and positive branding in place to be a tremendous asset in partnership with the Commission on fundraising.

6. Nevada Legal Services

Anna stated the LSC outlook for NLS is optimistic. Site visits are planned for Nevada in 2009, which is a good indicator. An accord was also reached with LSC over the 280K funds. At some time in future if the NLS sells the related property, LSC gets any equity up to 280K off the sale of the current building. There are still some lingering issues; still don't have the report from the inspector general, may have some questions form 2004, 2006.

Since some addressed recent events with LSC in Wyoming, Anna briefly commented that it had no impact on Nevada. Wyoming got defunded, but had been on probation since 2003. That program was actively not participating and had poor quality legal work. Wyoming is now without legal services – they asked for national help, but everyone unanimously agreed you have to stay in-state to be effective.

Self-help

Anna also noted an ongoing concern that LSC does not recognize the self-help center as providing a service. At some point NLS anticipates asking the Commission to weigh in.

Judge Gonzales noted Nevada will keep it the center, it's just a question of funding. LACSN has stated before it would assume the contract. From the Commission perspective it's one of the best sources right now to get help to people. The self-help center has gone to great lengths to make sure the Center is not tainted by LSC funds.

Judge Gonzales also noted approval was granted to increase civil filing fees by \$3 to fund the Regional Justice Center Self-Help Center and serve outlying justice courts as well.

7. Set 2009 Commission meetings

February 5, 2009 1-5 April 28, 2009 1-5 July 10, 2009 1-5 October 9, 2009 1-5

Location: videoconference by the AOC.

Meeting adjourned at 3:15 pm.

TAB 2



ACCESS TO JUSTICE COMMISSION LIST OF BANKS OFFERING PREFERRED IOLTA INTEREST Updated 2.3.09

Bank of George
Bank of Nevada
Community Bank of Nevada
First Asian Bank
First Independent Bank

Irwin Union Bank Meadows Bank Mutual of Omaha Bank Nevada Commerce Bank Nevada State Bank Red Rock Community Bank Service 1st Bank of Nevada U.S. Bank

IOLTA Added to Emergency Coverage Offered by the FDIC

The Federal Deposit Insurance Corp. (FDIC) client funds deposited in Interest on Lawyer Trust Accounts (IOLTA), regardless of amount, are eligible for full deposit insurance coverage under the Temporary Liquidity Guarantee Program (TLGP) through December 31, 2009. http://www.fdic.gov/news/board/08BODtlgp.PDF

Bank of George 2.15% APY

This rate offer is valid January 1, 2009 through December 31, 2009, regardless of minimum deposit balance, with continued courtesy waiver of any service charges on IOLTA.

Bank of George is a locally owned and operated community bank with an emphasis in providing banking services to legal professionals. We are experienced in handling the deposit and lending needs of attorneys and we understand your time is valuable.

Diane F. Fearon, President, CEO: 702-851-4201 www.bankofgeorge.com.

Bank of Nevada and First Independent Bank (Western Alliance Bancorp) 2.0% APY interest on IOLTA.

The Banks are also launching a new JURIS Banking program of services especially for attorneys. Attorneys who begin a relationship with Bank of Nevada or First Independent Bank for their IOLTA accounts are also eligible on a business money market account to receive a Preferred Interest Rate of 1/2% over the posted rate.

Bank of Nevada – Terry McConnell, Senior Vice President, (702) 252-6269 First Independent Bank – Gail Humphreys, Vice President/Branch Manager (775) 824-4351

Community Bank of Nevada (Community Bancorp) 2.0% APY interest on IOLTA.

Offer valid through 12/31/09 on all IOLTA accounts, with no fees.

Since 1995, Community Bank of Nevada has delivered financial products and services with an emphasis on customer relationships and personalized services to the greater Las Vegas valley. Community Bank of Nevada provides a full array of specialized services to law firms and attorneys. In addition to the preferred rates on IOLTA accounts, we can provide an increased Earnings Credit for your Analyzed Business Checking accounts and preferred lending rates for your owner-occupied real-estate loans.

Michelle Beck: (702) 429-6499

First Asian Bank

2.00 APY for account balances up to \$249,999
2.25 APY for account balances of \$250,000 and greater

Offer valid through January 14, 2010 on all IOLTA accounts, with no fees

Victor Berbano: (702) 405-2513 Fax (702) 889-9517

Irwin Union Bank

2.00 APY for account balances 0-\$24,999 (Rate is 1.98)

Rates and yields are subject to change at any time.

For more information on this offer or other bank services, please contact:

Las Vegas:

Addison R Thom, Business Advisor, Addison.Thom@irwinunion.com, 702.531.7747

Reno:
Christine Slothower (Chris), Vice President, Christine.Slothower@irwinunion.com 775.784.9708

Carson City:
Ellie Piazza, 775-886-6912

www.IrwinUnion.com

Meadows Bank

2.15 % APY

This rate offer is valid through October 31, 2009, and there are no associated monthly service charges.

Meadows Bank is a full service local commercial bank that offers loans, deposits and treasury / cash management programs designed to meet the unique needs of attorneys and other professionals. For more information, or to speak with a relationship officer, please call us at and ask for our

Kirk Pierce, Branch Manager, 702.471.BANK (2265) www.meadowsbank.com.

Mutual of Omaha Bank

2.00 % APY

Mutual of Omaha Bank is pleased to have the opportunity to be a part of the Nevada State IOLTA Program. Effective Monday, October 27, 2008, Mutual of Omaha Bank increased the interest rate paid on IOLTA deposit accounts to 2.00% APY (annual percentage yield) for all IOLTA Account deposit tiers. This rate is subject to change. Deposit products offered by Mutual of Omaha Bank, Member FDIC, Equal Housing Lender

Southern Nevada:

Ben Sillitoe Relationship Manager 702.492.5714

Northern Nevada:

Eunice Hylin Relationship Manager 775.321.5415 mutualofomahabank.com

Nevada Commerce Bank

2.02 APY

This rate of return is guaranteed for all IOLTA funds through December 31, 2009, regardless of minimum deposit balance and with a continued waiver of service charges. Nevada Commerce Bank is a community bank, experienced in handling the deposit and lending needs of attorneys.

Keely Nelson, Vice President, Bank Operations Officer, 702-257-7777 or visit www.ncbnv.com

Nevada State Bank

IOLTA interest rate equal to the 30-Day LIBOR index minus .50%.

The rate will adjust monthly based on any change to the 30-Day LIBOR rate.

702-383-0009 Southern Nevada/ 775-688-6966 in Northern Nevada.

Red Rock Community Bank

2% APY

Rate is offered through December 31, 2009, on IOLTA accounts, with no monthly service charge, no minimum required balance, and a \$25 credit towards initial check order

Red Rock Community Bank is a full service, locally managed bank that has been serving Las Vegas for more than 9 years, specializing in providing exemplary service with a wide array of financial products and services. The banking staff of dedicated professionals reports more than 350 years of combined banking experience and works to build long term client relationships.

Shahzad Ali, Sr. Vice President, 702-948-7500, www.redrockcommunity.com

Service 1st Bank of Nevada 2.00% APY

This rate is valid through December 31, 2009 on all IOLTA accounts, with not monthly service fees.

Service1st Bank of Nevada, locally owned and operated, is a well capitalized community bank committed to supporting the banking needs of the legal professional community in Nevada. We offer an array of Deposit, Treasury and Cash Management products designed to meet the needs of attorneys, law firms and professionals.

Marcela D. Custer, SVP/Operations Administrator, 702-966-7400, mcuster@servcie1stnevada.com www.service1stnevada.com

U.S. Bank

IOLTA interest equal to the Fed Funds Target Rate.

This rate will change as the Federal Reserve adjusts the Fed Funds Target Rate.

Additionally, U.S. Bank offers a variety of financial solutions to meet the complex needs of law firms and attorneys. If you have questions regarding IOLTAs or would like to speak to a banker regarding other products and services, you may reach us by: contacting any local U.S. Bank branch office, contact your U.S. Bank relationship manager, Deposit Products offered by U.S. Bank N.A. Member FDIC.

Pro Bono Opportunities Available for the Emeritus Program At Nevada Legal Services

Tenants' Rights Center

The Tenants' Rights Center provides legal advice and brief service to tenants regarding a wide range of issues, including: evictions, HOA issues, habitability issues, mortgage foreclosures, utility shutoffs, and illegal lockouts. Volunteers at the Center provide legal advice and brief service to the tenants who call the Center and to tenants who walk in. NLS staff provide training on Residential Landlord/Tenant Law, provides mentoring, and supervision. The Center is open Monday—Friday from 8:00 a.m. – 5:00 p.m. Volunteers are welcome at any time during the week that best suits their schedule. The Center is located in Las Vegas and serves Clark County.

Senior Helpline

The Senior Helpline provides legal advice and brief service to Seniors through the State of Nevada. Helpline staff members provide assistance in a wide range of issues, including: consumer law, fraud and scams, health law issues, family law issues, estate planning, and housing issues. Volunteers provide legal advice and brief service to Helpline callers. NLS staff provide training, mentoring, and supervision. The Senior Helpline is open Monday – Friday from 8:00 a.m. – 5:00 p.m.. Volunteers are welcome at any time during the week that best suits their schedule. Volunteers can provide assistance by telephone from anywhere in the State. NLS can simply transfer calls to the volunteers.

Nevada Legal Services also has need for a volunteer to coordinate and edit our quarterly Senior legal newsletter. The volunteer would solicit articles and would work with NLS staff on putting each edition together in Publisher. NLS provides the computer and other equipment needed, staff provides the support the Editor may need, and NLS arranges for distribution and mailing of the newsletter.

Low Income Tax Clinic

The LITC provides legal assistance to individuals with tax cases and controversies. Volunteers

provide legal assistance to individuals by giving advice, negotiating settlements with the IRS, preparing or amending tax returns for past years, or representing individuals in Tax Court. Individuals who qualify for the LITC are those with tax liabilities of less than \$50,000 and household incomes of less than \$50% of the federal poverty guidelines. Cases are referred to the volunteer by NLS staff who have completed the intake for the client. Volunteers are needed from around the State for this program.

Mortgage Foreclosure Program

Nevada Legal Services provides three tiers of assistance under our mortgage foreclosure program. Under the first tier of assistance, the volunteers provide legal advice to those with questions about foreclosure issues. Under the second tier of assistance, the volunteers provide assistance to those who are facing or are in foreclosure. The volunteer will be negotiating with lenders to refinance or rework a mortgage under the various programs available; advising about bankruptcy options; and negotiating payment plans. Under the third tier of assistance, the volunteer will be analyzing the clients' case for legal defenses such as TILA violations, fraud, or other legal defenses and then referring the client back to NLS for possible representation.

Volunteers are always welcome to take on a case where legal defenses are present, but are not required to. The funding source provided the funding only for advice, work-outs and analysis. Cases are referred to the volunteer after NLS staff have completed an intake for the client. NLS provides training and mentoring. This program serves Clark County.

Reduced Fee Panel

Nevada Legal Services maintains a reduced fee panel of Pro Bono attorneys for Washoe and Elko Counties. NLS staff complete the intake for the client and refers the case to the volunteer. Each case is initially approved for up to ten hours of assistance and NLS reimburses the volunteer for his or her time at \$75 per hour. The assistance provided may only be legal advice, preparation or review of pro se documents for the client, or

the volunteer can accept a case for limited legal representation. If the volunteer wishes to accept the case for extended representation, NLS must first give approval. The volunteer is still reimbursed for their time at \$75 per hour and reimbursed for possible litigation costs. Volunteers can accept cases in their field of expertise. Currently, the NLS reduced fee panel is made up of attorneys who take family law cases and housing cases. NLS will expand the types of cases to fit the volunteer's areas of preference.

Appellate and Federal Court Clark County

NLS would like volunteers to represent clients in appeals of evictions. Alarmingly frequently, tenants do not contact NLS until after the court has ordered their eviction. Just as alarmingly frequently, the tenant did have a legal defense and should not have been evicted. The tenant simply did not know how to make the appropriate legal argument. NLS needs volunteers to assist us in meeting the demand for appeals of evictions from Justice Court to District Court. NLS provides training, mentoring, supervision, and support.

In addition, NLS would greatly welcome volunteers with federal court experience to co-counsel with less experienced NLS attorneys in our federal court cases.

Contact

AnnaMarie Johnson, Executive Director 702-386-0404, Ext. 115 Until such time as our Pro Bono Coordinator is hired.



compose

inbox

mailbox view

folder view

pop accounts | printer friendly

Message 2 of 3 in (Emeritus)

Date Thursday, January 15, 2009 at 11:43 AM

From Renee Kelly <rkelly@washoelegalservices.org> [Add To Contacts] [Spam]

To kristinam@nvbar.org

CC

Subject Emeritus List

< Reply Reply To All Forward move Delete Show Header >>

Hi Kristina:

Here is our list:

The following pro bono opportunities are available to volunteers through the Emeritus Program:

At Washoe Legal Services Pro Bono Project:

Representation in a Case:

Volunteers are needs to represent clients on a pro bono basis in a wide variety of areas. While WLS provides mentoring and support, we do not supervise. The volunteer is the responsible attorney in the matter. WLS provides training, sample forms, fee waivers and other support services. If needed, volunteers can use WLS meeting space (as available) for client interviews. However, WLS does not provide computers or secretarial support for volunteers. Volunteers can be matched with cases in the following areas: Adoption, Bankruptcy, Child Abuse/Neglect (Representing Children); Child Custody; Civil/Consumer Matters; Divorce, Domestic Violence; Guardianship; Estate/Probate/Trust; Predatory Lending; Real Estate Fraud. Contact the Project for a list of clients currently awaiting placement with an attorney.

Ask A Lawyer:

Volunteers are needed each Tuesday (Family Law) and Wednesday (General Law) evenings from 5:00 to 7:00 p.m. to provide counsel and advice to pro se litigants. WLS and the Washoe County Law Library work together to provide free, brief (about 15 minute) consultations, to unrepresented litigants. Litigants begin signing up for the consultations at 4:30 p.m. and drawn by lottery for that evenings session. Volunteers are needed to staff any Tuesday or Wednesday they might have an hour or two to spare. Family law experience is necessary for the Tuesday evening clinics.

Clinics:

We are currently conducting bankruptcy clinics and self help forms completion clinics. The bankruptcy clinics are conducted once a month by an attorney. Self help forms completion clinics are instructional only any currently conducted by paralegals. We would like to expand the self help clinics to include brief consultation services as a part of the clinic process. Additionally WLS is expanding our educational clinics to provide limited consultation services and basic overview classes in the areas of family law, probate, guardianship, landlord tenant issues, consumer rights and sealing records.

Contact: Renee Kelly, Pro Bono Coordinator - 775-785-5721 or rkelly@washoelegalservices.org

Renee Kelly Washoe Legal Services Pro Bono Coordinator (775) 785-5721 299 South Arlington Avenue Reno, Nevada 89501

CONFIDENTIAL AND PRIVILEGED ATTORNEY/CLIENT COMMUNICATION AND WORK PRODUCT: This communication, including attachments, is for the exclusive use of addressee and may contain proprietary, confidential and/or privileged information. If you are not the intended recipient, any use, copying, disclosure, dissemination or distribution is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this communication and destroy all copies.

		,	
< Reply Reply To All	Forward move Delete	Show Header >>	



print

Message 3 of 3 in (Inbox/Emeritus))

Date Wednesday, January 14, 2009 at 3:18:42 PM GMT+00:00

From Kimberly Abbott <kabbott@lacsn.org>

To 'Renee Kelly' <rkelly@washoelegalservices.org>, 'Odessa Ramirez' <oramirez@varn.org>, 'Anna Marie Johnson' <ajohnson@nlslaw.net>, enielsen@washoecounty.us, 'Sugar Vogel' <svogel@ci.las-vegas.nv.us>

CC kristinam@nvbar.org , pelcano@washoelegalservices.org , 'Val Cooney'

Subject Emeritus Attorney Program

Hi All,

Kimberly

I'm working with Kristina on some marketing information about the Emeritus Attorney Program and I had promised to get this e-mail out to you all long ago, so please accept my apologies for the delay.

Rather than just asking retired and out-of-state attorneys to contact us for more information and then all of us, who are already so busy and over-worked, having to spend time screening each potential new volunteer to see how we might use them, we thought it was more efficient to have detailed marketing materials that clearly laid out the specific volunteer opportunities and the exact requirements and limitations of each program. (This stemmed from the fact that I spend about an hour with a volunteer who had very specific ideas about what he did and didn't want to do and would only volunteer if we provided him with a secretary, sent away for his certificates of good standing for him, etc.)

Accordingly, below can you please fill in detailed information below about the specific opportunities you will have available for volunteers through the Emeritus Program, and e-mail it to Kristina by January 21st? I encourage you to be as specific as possible. I've filled in our opportunities as an example.

We're anxious to finally start advertising these opportunities. Please e-mail Kristina and I if you have any questions.

Thanks everyone!

Pursuant to a recent Supreme Court Rule change, Rule 49.2 retired attorneys (on inactive status in

Pursuant to a recent Supreme Court Rule change, Rule 49.2 retired attorneys (on inactive status in Nevada or in another state, who retired in good standing) or attorneys licensed in another state and in good standing may apply through the Emeritus Attorney Program, to be approved by the State Bar to represent pro bono clients through an organized pro bono program. To find out more about this program or to obtain the application packet, please visit www.nvbar.org ???? All of the programs described below provide malpractice coverage for attorneys volunteering through these programs.

The following pro bono opportunities are available to volunteers through the Emeritus Program:

At Legal Aid Center of Southern Nevada (LACSN) Pro Bono Project:

Representation in a Case:

Volunteers are needs to represent clients on a pro bono basis in a wide variety of areas. While LACSN provides mentoring

and support, we do not supervise. The volunteer is the responsible attorney in the matter.

LACSN provides training, sample forms, fee waivers and other supports. If needed, volunteers can use LACSN meeting space (as available) for client interviews. However, LACSN does not provide computers or secretarial support for volunteers. Volunteers can be matched with cases in the following areas: Adoption, Bankruptcy Child Abuse/Neglect (Representing Children); Child Custody; Civil/Consumer Fraud; Divorce, Domestic Violence; Guardianship (Uncontested); Estate/Probate/Trust; Non-Profit Organizations; Predatory Lending; Real Estate Fraud. Contact the Project for

Ask A Lawyer:

Volunteers are needed each Thursday afternoon from 2:00 to 5:00 p.m. to provide counsel and advice to family court pro se litigants. LACSN and the Family Court Self-Help Center work together to provide free, brief (about 15 minute) consultations to unrepresented litigants. Litigants begin signing up for the consultations at 8:30 a.m. and each week the program is limited to the first 30 applicants to register. Volunteers are needed to staff any Thursday they might have an hour or two to spare. Some family law experience is necessary.

a list of clients currently awaiting placement with an attorney.

Bankruptcy Facilitator:

Volunteers are need to help triage unrepresented litigants in the bankruptcy court during court calendars and scheduling conferences to provide counsel and advice and referral. Facilitator shifts last about and hour and days and times vary each week. Contact the Project for a current list of available shifts. Bankruptcy experience is necessary.

Contact: Kimberly Abbott, Pro Bono Project Director – 702-386-1070, ext. 137 or probono@Jacsn.org

At Washoe Legal Services:

At Volunteer Attorneys for Rural Nevada:

At Nevada Legal Services:

At City of Las Vegas Senior Citizens Law Project:

Contact:

Sugar Vogel ???

*Provider Declaration must be signed by LACSN, which cosponsors the Senior Law Project's pro bono efforts and provides malpractice coverage to its volunteers.

Kimberly Mucha Abbott, Esq. Pro Bono Project Director Legal Aid Center of Southern Nevada 800 South Eighth Street Las Vegas, Nevada 89101 (702) 386-1070, ext. 137 (702) 388-1642 (fax) kabbott@lacsn.org www.lacsn.org

Please note my new e-mail address.

Legal Aid Center of Southern Nevada is a private, non-profit, 501(c)(3)organization and gladly accepts donations. Please go to http://www.lacsn.org to donate.

TAB 3



2008/2009 PROGRAMS AND PROJECTS ACCESS TO JUSTICE COMMISSION

Updated 1.12.09

- 501 (C) 3. ON HOLD pending NLF relationship decision
 - Develop conflict policy and scope of lobbying/legislative activities
- ATJC PR efforts
- Attorney recognition programs
 - o Tentative statewide event, April 2009
 - o National Pro Bono Week October 21, 2009. Plan state-wide events.
- Court posted fees
- Cy Pres funding
- Emeritus Attorney Program. Providers to develop working program and work with Director to implement operating rules and develop comprehensive plan to solicit participation. Tap eligible out of state attorney resources.
- **IOLTA Comparability.** Negotiate with banks to join preferred list. Recommend potential rule changes to enforce comparability through amendment to SCRs (likely 217). Expand marketing plan.
- Law firm initiatives
 - o Follow through with large law firms, responders and non-responders
 - o Identify future plan for medium and small firm meetings
- Lawyer recruitment and Retention
 - Loan repayment assistance program
 - Fellowships- One for 2009
 - Retirement/benefits/salary enhancement
 - Public Interest Lecture Series. Define goals and objectives of the series.
- Legal Needs Assessment
 - o Marketing plan development and roll-out
- NLF and the ATJC. Finalize forward relationship between NLF and the ATJC as potential investment and/or fundraising arm
- Rule changes (potential)
 - o IOLTA Comparability
 - Donations under 6.1
 - NLF as fundraising and investment arm of the Commission
 - Unbundled legal services (potential state-wide rule)
- Rural legal services delivery
 - o Create subcommittee and follow implementation of ADKT 424
- Self-Help initiatives
 - Participate in RJC Self-help roll-out
 - o Standardized Forms: Coordinate with Supreme Court Library Commission
- Statewide fundraising. (Pending 501(c)(3) decision)
- Uniform Reporting. Develop a standardized reporting system for legal services provider statistics
- Website. Director to work with Committees to develop consumer resource section (links to statewide available resources) with potential for separate website in future





<u>MEMORANDUM</u>

From: Kristina Marzec, Director

To: Access to Justice Commission

Date: February 3, 2009

Re: Senior Programs

Brief issue:

Due to the extreme budget cutbacks facing the senior programs in Nevada, the Development Committee joins with Sugar Vogel and Ernie Nielsen in requesting that the Commission consider sending a letter of support for these programs to relevant parties as outlined herein.

Request for letter from the Commission (co-chairs) directed to the Nevada Division for Aging Services (DAS) and Nevada Department of Human Services

Topic Discussion: Two funding sources for the states two senior law projects.

DAS, a division of the Department of Human Services, allocates two sources of funds to both Senior Law Projects: Federal Older American Act IIIB funds and state Independent Living Grants (ILG) funded by the tobacco settlement funds. The latter funds are used by both programs to represent persons subject to guardianship petitions (or in Las Vegas as Guardian ad Litem). In both cases the projects are appointed by the court. IIIB funds generally support a wide variety of legal work.

The tobacco fund revenue stream is reducing and various proposals leave its continued existence uncertain. That same climate is putting additional demand on Title IIIB funds. (Carol Sala is the division administrator)

The Development Committee asks the Commission consider send a letter signed by its chair persons to the Division with a copy to Mike Willden of the Department (and Mendy Elliot in the governors office) that the Commission views the legal services provided with these funds to be essential services and to encourage such sources to continue to fund the state's two senior legal service projects at no less than the current level with these two sources of funds.

Draft letter

Dear Ms Sala:

We are writing to you to on behalf of the Access to Justice Commission to emphasize the importance of the work performed by the Washoe County Senior law Project and the Las Vegas Senior Law Project and to request that you continue to fund them at no lower than their current rate from both Older Americans Act IIIB funds and from independent living grants.

The Commission commends and recognizes the City of Las Vegas and Washoe County for their respective support of these two critical programs to date. Given the unprecedented economy around the country and in Nevada specifically and the relatively low fiscal allocation to this growing and critical demographic of Nevadans, these programs cannot absorb any budget cuts and remain viable.

The 2008 Access to Justice Commission Civil Legal Needs Assessment states:

Research indicates that Nevada's population has exploded in the past 20 years and will continue to change in the near future. Growth of the state as a whole, coupled with changes to the demographic make-up, present unique issues for serving the state's needs for civil legal aid. Nevada's overall population growth has been accompanied with shifts to the demographic make-up of the state. One such shift is a significant jump in the number of older adults and seniors as a percentage of the total population. [emphasis added]

Summary, Civil Legal Needs Assemment, at page 4.

The legal representation and other legal assistance these two organizations provide are essential for those clients. For these poor elderly and frail citizens of this state their usually is no other legal resource. Representation these two projects provide assure that their clients obtain or retain resources without which they could not maintain independence or their dignity. The Projects assist seniors who face, among other dire circumstances, losing their homes or losing essential services needed to avoid institutionalization. They make it possible for their clients to exercise rights guaranteed by law.

The population they serve is vulnerable and often unaware that their situation is governed by law. Even with awareness, many are unable to assert their rights on their own. These two legal service programs provide legal services essential to these clients. Not only do they provide access to justice, they acquire justice for their clients.

Rights without access are no rights at all. The Access to Justice Commission supports all efforts, at all levels of government, to sustain existing funding for these critical programs supporting our seniors in these trying economic times.

NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION STANDING COMMITTEES Updated 01.2009

All committees are appointed under the general powers- and work under the direction- of the Access to Justice Commission, which may expand or reduce membership as deemed appropriate and necessary. SCR 15.

COMMUNICATIONS

Focus: research and develop marketing and communication of Commission programs and initiatives to the membership and the public were appropriate.

David Thronson
Judge Elizabeth Gonzalez
Kimberly Abbott
Brett Kandt
Judge Francis Doherty
Christine Smith
William Heavilin
Trevor Hayes

Scott Roedder- ex officio

DEVELOPMENT

Focus: research, recommend, and where assigned develop viability of funding for new programs, or identify potential sources of future funding from existing sources for Commission initiatives

LRAP
Division of Aging Funding concerns
Court Posted Fees
Nye County
Real Estate Escrow Funds
Recruitment/Retention
2009 Fellowship- Thronson
LRAP- work group Lynn, Anna, Val, ask Judge Dahl)
Retirement/benefits/salaries- Paul
Cy Pres-Paul

Ernie Nielsen- Chair Paul Elcano Valerie Cooney Nancy Becker Anna Johnson Cam Ferenbach Tom Warden Lynn Etkins Suzy Baucum David Thronson

LEGAL SERVICES DELIVERY

Focus: Discuss, develop, and coordinate the state-wide delivery of civil legal services, recognition programs for pro bono programs and attorneys, and outreach to the legal community on emergent issues. This Committee is generally intended for legal services professionals currently involved in part of the continuum of care for civil legal aid in Nevada.

Pro Bono Recognition
Pro Bono Week- also with Communications
State Wide Award- Renee
Nevada Lawyer
Emeritus- Kimberly
Self Help

Standardized Forms-Justice Douglas, Chair, Supreme Court Library Commission Hotlines, continuum of care issues
Standardized Reporting (provider statistics)
Law Firm initiatives

Paul Elcano (ED) Sugar Vogel (ED) John Desmond Kimberly Abbott Judge Connie Steinheimer AnnaMarie Johnson (ED) Ernie Nielsen (ED)-Chair Valerie Cooney (ED) Judge Andrew Puccinelli Barbara Buckley (ED) Lynn Etkins Odessa Ramirez Renee Kelly Kendal Sue Bird Christopher Reade Amber Candelaria

RURAL SERVICES DELIVERY (proposed)

Anticipated focus will be on the provision of legal services to rural communities, with emphasis on technology based solutions and increased pro bono lawyer participation.

Judge Stephen Dahl Valerie Cooney Anna Marie Johnson

FUND DISTRIBUTION (closed)

Future Committee which may be populated in the event the Commission elects to engage in direct fundraising.

**Bold = Current ATJ Commission members.



NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION APPLICATION FORM 2009

The Supreme Court Access to Justice Commission (AJC) is seeking lawyers to participate on established Standing Committees which are part of this Commission. Participation will be by appointment only. AJC is seeking lawyers who have the time and interest in the work of the AJC. No prior experience working on a local or state committee is required. The AJC requires an eagerness to help those less fortunate in Nevada get access to the courts and the legal system.

The AJC was created to:

- 1) Assess current and future needs for civil legal services for persons of limited means in Nevada.
- 2) Develop statewide policies designed to support and improve the delivery of legal services.
- 3) Improve self-help services and opportunities for proper person litigants and increase pro bono activities.
- 4) Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.
- 5) Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.
- 6) Recommend legislation or rules affecting access to justice to the Supreme Court.

Information on existing Committees, including rosters and current projects, is attached.

NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION APPLICATION FORM 2009

Name: Bar Number, if applicable:
Name of Standing Committee (list in order of preference, if interested in more than one): 1
imployer/Firm/Agency:
Address:
City: Zip: Daytime phone:
ist current or prior service on State Bar Committees (name of committee, years served):
ist the State Bar Sections of which you are a member:
ist community activities in which you have been recently or are currently engaged:
ields in which you practice:
Ouring the past 36 months, how many hours of <i>pro bono</i> time did you perform either free or at ceduced fee?
hrough which legal services provider did you perform these pro bono services?
Pate admitted to State Bar of Nevada or in other jurisdictions:

any other jurisdiction? If so, please explain. Use a separate sheet of paper.				
		. 9		
Date:	Signature:			

Please attach a brief statement indicating why you wish to serve on this Commission and what you can contribute. You may also attach a resume or biography which may include the following information: business, occupational or professional licenses; legal and general educational background; academic, professional or civic honors; articles or publications authored; accomplishments of note; proven commitment to volunteer work/capacity to make expected time commitment; national, state and/or local bar committee service; professional and/or community association memberships; and, personal and/or organizational references. Mail your completed application form in confidence to:

Kristina Marzec Executive Director Access to Justice Commission 600 E. Charleston Blvd. Las Vegas, NV 89104

If you have any questions, please contact Kristina Marzec at 702-317-1404 or 800-254-2797 ext. 404 or at Kristinam@nvbar.org

-DRAFT-

REPORT ON ACCESS TO JUSTICE QUESTIONNAIRE SENT TO RURAL JUSTICE AND MUNICIPAL COURTS

(Judge Stephen Dahl)

Questionnaires were sent out to every justice and municipal court outside of Las Vegas, North Las Vegas, Henderson, Reno and Sparks. 41 questionnaires were sent out and 37 courts from throughout the State responded. 32 of those responses came from Justice Courts. This report will focus on those 32 responses, because the justice courts deal most directly with the issues that this Commission is attempting to address. This report will follow the format of the questionnaire and report the answers received from the various courts.

1. Where is your court located?

Responses were received from justice courts in the following townships: (Several of the judges responding also act as municipal court judges. Only the responses relevant to justice court were used in preparing this report.)

mee court were used in preparing this report.	,	
-Argenta (Battle Mountain)	-Jackpot	
-Austin	-Laughlin	
-Beatty	-Meadow Valley (Pioche)	
-Beowawe (Crescent Valley)	-Mesquite	
-Boulder (Boulder City)	-Moapa	
-Canal (Fernly)	-Moapa Valley	
-Carlin	-New River (Fallon)	
-Carson City	-Pahrump	
-East Fork (Minden)	-Pahranagat Valley (Alamo)	
-East Line (West Wendover)	-Searchlight	
-Elko	-Tonopah	
-Ely	-Tahoe	
-Esmeralda (Goldfield)	-Union (Winnemucca)	
-Eureka	-Virginia City	
-Hawthorne	-Walker River (Yerrington)	
-Incline Village	-Wells	

Six of the rural justice courts did not respond to the questionnaire. (Again, several of the judges involved in this survey act as both justice and municipal court judges, so even though the numbers may not appear to add up, they do.) Those justice courts are among the smaller and most remote justice courts, so the population and mileage figures discussed below should be adjusted accordingly.

How many departments are in your court?

With the exception of Carson City and, very recently, Pahrump, which both have two departments, all of the courts responding are one judge courts.

2. What are your court's days and hours of operation?

The vast majority of courts responding are open five days a week during regular business hours (around 8:00-5:00). Most of the rest are open Monday through Thursday during regular business hours. A couple are open daily with reduced hours.

3. Other than judges, what is the size of your court staff? (If more than one, please provide a breakdown by job category. Also, please indicate if court employees are part-time or full-time employees.)

One of the courts responding has only one part-time employee in addition to the judge. Another has two part-time employees, and a third has one full-time employee. All of the others reporting have at least one full-time and one part-time employee, ranging up to 14 full-time employees. Nine courts report having one full-time employee and one or two part-time employees. The majority of the remaining courts have between two and six full-time employees with different numbers of part-time employees.

Several of the courts reported listed time constraints on staff as a barrier to assisting court customers with access to justice issues/problems.

4. What is the approximate population served by your court?

The populations served by the justice courts responding to the survey range from 500 to over 52,000. The average population is about 11,300. However, if the populations of three of the larger townships (Carson City, Minden and Pahrump) are taken out, the average population is reduced to about 7300. (One of the larger townships reporting did not provide a population figure, so both of the averages would be a little higher. However, the courts that did not respond are among the smaller justice courts, so the averages would actually be lower if all population figures were provided.)

5. What is the approximate mileage from your court to the farthest point away in your jurisdiction?

Of the courts reporting, distance between the court and the farthest point away in that court's jurisdiction ranged from 9 to 200 miles. The average distance is around 57 miles. The breakdown is as follows: 1-25 miles – 6 courts; 26-50 miles – 11; 51-100 miles – 9; 100-200 miles – 3. It should be kept in mind that these mileage figures are not to some uninhabited point in the middle of the desert. See, for example, Fish Lake Valley on the Nevada/California border, northeast of Bishop, CA (many farms and ranches are located in this valley in the Esmeralda Township); Gerlach and all points north in northeast Nevada that now lie in the Reno Township (I think); and the many remote small towns located throughout the State such as Baker and Currant.

6. What is the approximate distance between your court and the closest court of similar jurisdiction?

Of the courts reporting, the distance between that court and the nearest court of similar jurisdiction ranges from 3 to 150 miles. The average distance is about 47 miles. The breakdown is as follows: 1-25 miles -10 courts; 26-50 miles -9; 51-100-10: 100-150 miles -2. The average distance between justice courts is growing, because several justice courts have been shut down in the past few years.

- 7. What are the days and times that your court hears the following types of cases?
 - -criminal:
 - -small claims:
 - -eviction related matters:
 - -other civil matters (please describe):
 - -other types of cases (please describe):

The court schedules vary greatly between the different rural justice courts. For example, some have scheduled criminal calendars every day, others once or twice a week, others twice a month, and others schedule hearings "as needed." The same is true for civil cases. Most of the courts appear to schedule their small claims and eviction calendars once a week on the same day. However, many schedule hearings in those cases as needed, some have scheduled hearings once or twice a month, and a few have schedule proceedings more than once a week. The obvious determining factor appears to be the size of the court. (If you are interested in the case load for each court, those figures are available in the recently released Annual Report on the Nevada Judiciary.)

Even with all the different schedules, it does appear that there would be enough flexibility to allow the courts to schedule court proceedings in a way that could facilitate more involvement and assistance from legal services or pro bono attorneys. However, in almost all cases this would require more technology than is currently available at those courts.

8. Does your court have a website?

21 of the courts responding said that they have either a court website or access to a local government website. Several of the courts without websites said that they were making efforts to start a website. Most of the courts without websites are in smaller jurisdictions. One of the problems they expressed with getting a website, or making other technological advances was that it was not cost efficient for their courts to improve technology on their own. Due to small case loads, local government budget problems, etc., it just isn't feasible for their court to make large expenditures on technology that would assist with access to justice issues.

-Automated forms?

I think there was some confusion over this question. (Probably because I'm a little confused.) By automated forms, I meant forms that could be filled out on a computer, and then be printed out for filing or be submitted through e-filing. None of the courts reported that kind of capability. Some of the courts, however, made reference to the forms available on various court and legal services websites. I don't know if the other courts are not fully aware of those forms, or don't consider those to be automated forms, so it is difficult to give an accurate assessment on this question.

I do think this points out a need that comes up in other areas of this questionnaire. That is the need for greater judicial and court education regarding access to justice and the resources that are available. For example, in listing the resources available to their courts, some judges listed the websites for Legal Aid Center of Southern Nevada (hereinafter Legal Aid), and Washoe Legal Services. This included courts far away from either Clark or Washoe Counties. On the other hand, other courts said that there were no resources available in their communities. There are other issues like this that will be discussed later, but I think this points to a need for a statewide effort to help educate judges and courts about all the resources available in the State and how to access those resources. I think this could best be accomplished through published guides and face-to-face training.

Suggestion: This Commission should undertake to prepare, publish and distribute a one page information sheet for the courts and their customers which contains website and other information for all legal services organizations, self-help centers, websites where documents can be obtained, etc. That way, anyone with a computer would at least have access to the information and help in those websites. I do not believe that this has ever been done. If it has, it never worked its way into the consciousness of the judiciary and the court system. There was also a suggestion in one of the responses that we set up a website for the entire court system in the State, with links to the individual courts, and the legal service providers, self-help centers, etc. That would probably be more difficult than producing a one page information sheet, but I believe it would be a good longer-term goal.

-E-filing?

No court reporting said that it has e-filing.

-Accept filing by fax?

Almost every court that responded said that they accept filing by fax. With the new Supreme Court Rule regarding electronic filing, etc., I imagine that the courts that don't will start.

If not, please explain why?

Those that responded cited a lack of technology, a lack of staff, a lack of funding, a lack of training, and a lack of demand.

9. Does your court currently have teleconferencing or videoconferencing capabilities?

Most of the courts reporting, stated that they have teleconferencing and/or video-conferencing capabilities, however most of the courts that reporting having video-conferencing capabilities are limited to a county system that links the courts and other government agencies, or whatever type of videoconferencing that can be accomplished through JAVS. No court reported having true statewide video conference capabilities. True teleconferencing capabilities seem to be more wide-spread, but a significant minority of the courts (12) reported having neither video nor teleconferencing capabilities.

The reasons given for not having such capabilities were, again, lack of equipment, lack of money, lack of demand, etc. One judge noted that the volume of cases in that court wouldn't justify the expense if the necessary equipment was being purchased for that court alone. That observation probably holds true for many of the rural justice courts, and a statewide project would probably be necessary to properly supply those courts with the necessary equipment for any kind of conferencing. There may also be technical problems involved. A few courts reported that there was no high speed internet available in their area, or that they had "limited connectivity," or a lack of telephone lines. Someone with more technical expertise than me (that means almost anyone) would have to access those kinds of problems. (Someone also mentioned having no broadband capabilities.)

If you have/had that capability, would you be willing to allow attorneys to appear via telephone or videoconference in civil cases?

Almost every court that responded said yes. I'm sure that we could work with those very few courts who didn't.

10. Do litigants in your court have easy access to legal service providers and/or a self-help center?

5 courts responded yes. Every other court responded no. One responded <u>NO</u>. A few courts also said that it hasn't really been an issue. (That may be one of those education issues I was talking about.) The 5 courts that responded yes were the 5 largest justice courts responding to the survey.

If not, please explain what access, if any, is available in your area.

This is where the need for statewide judicial and court education and information, and this Commission and the legal services providers, etc., needing to reach out to the rural courts, becomes perhaps most evident. I will simply list some of the responses to this question and let them speak for themselves.

- -Local law library. Clark and Washoe websites for self-help.
- -Public internet access. NRS at local library.
- -Internet. Court provides website info.

- -Internet. Public library has computers.
- -Information sheets. Travel to Las Vegas.
- -Nearest legal services provider over 100 miles away.
- -Phone book. No service available.
- -None.
- -Nothing.
- -Las Vegas is 180 miles away. Elko is 130 miles away.
- -Virtually none. Self-help.
- -Court has handouts for small claims, evictions, etc.
- -Refer people to Washoe and Clark County self-help sites.
- -None.
- -Rural Clark County is forgotten.
- -Personal computer.

I lied. I am going to comment. From these answers, and others, it is evident that whatever help might be out there, the message isn't getting out to most of the rural courts. My guess is that access to justice would improve markedly in the rural areas of the State, if a better job was being done at providing those courts with the relevant information, and making sure they can put that information into practice.

11. Does your court have the space and capability for a self-help "center" for litigants? Examples:

Equipment and space for a litigant to speak confidentially with a legal services representative either in person or by telephone or videoconference.

This was a poorly drafted question, because it asks if the courts have equipment and space. Many courts answered no to this question when it became obvious from later answers that a substantial number of those courts might be able to find the space if they had the proper equipment. However, there are also quite a few rural justice courts that are working under severe space limitations, and cannot accomodate anything suggested in the question. One bright spot in all this is Beowawe Justice Court. I am not mentioning many courts by name in this report, but Beowawe turned its break room into a attorney client conference area, with telephone and computer connections.

The answers provided to this and the other sub-parts of this question suggest the need for this Commission, or someone, to try to create partnerships with local libraries, community colleges, high schools, etc., in trying to create better access to justice in the rural areas. (That's assuming there are any left after..... Never mind.) Many of the courts that said they lacked the space and /or equipment to provide these services said that computers are available at the local libraries, schools or community centers. I should also add that there appears to be no lack of willingness with the rural court judges to assist with our efforts. Over and over, the answers were something like, "We would be happy to do this if we just had the (space, money, equipment, etc.)."

A computer available to the public for access to self-help websites, to fill out computer generated court forms, etc.

Two courts answered yes to this question, with a couple of others saying there were plans to do it when they got into their new facilities. Again, quite a few courts said that public access computers were available at other places in the community.

A high speed internet connection.

About half the courts reporting said they had high speed internet access.

If yes, please describe what is available in your court.

There were no responses to this subpart. For the most part, there isn't very much available. Also, those responding answered this subpart while answering the previous subparts.

If no, please explain why.

The reasons provided have already been discussed earlier in this report: lack of funding, lack of space, technical problems, lack of demand, etc.

12. If you lack the equipment or technology described above, what do you think would be the most helpful or important technology that could be provided to your court?

I will just list many of the answers provided. They tell a pretty consistent story.

- -Kiosk or website for self-help.
- -More space, website, and more information to provide to litigants.
- -Computers customers could use to contact self-help center, etc.
- -Money for computers and additional phone lines.
- -Computer and printers.
- -Computers and better access to self-help programs and forms.
- -Someway for litigants to communicate directly with legal services.
- -Computer access for self-help.

BUT WAIT! THERE'S MORE!

- -Court and staff training. Computer and internet access for litigants.
- -Legal services representation. Space and computers.
- -Money for computers and up to date technology.
- -Websites with forms and links to legal services.
- -Self-help websites. Computers. "Legal services of any kind."
- -More access to legal services attorneys.
- -Easy forms available for customers.
- -Public computer terminals and space for self-help center.

Suggestion: I believe that it was Justice Hardesty who talked about law firms and other organizations getting rid of their old computers. I know that Clark County traded out my old computer last year, and I thought the old one was just fine. There is apparently a lot of this going on. This Commission should take the lead in some kind of "computers for courts" program that could supply the rural justice courts with functional computers that could be used by their customers. The various bar associations could assist us with publicizing this in the legal community. We need to understand that the counties with rural justice courts are not going to purchase computers for the customers of those courts to use for their own legal problems. Even if the desire were there, the money isn't.

13. Do attorneys from legal services providers ever appear in your court?

The good news is that 12 courts answered yes to this question. (I thought it would be lower.) The bad news is that several of those court followed up their "yes" with something like "once in the last 8 years," or, "one time since I've been a judge" (over ten years), or, "very rarely." There appear to be only four or five of the courts that regularly see attorneys from a legal services organization.

If yes, please list the legal services providers that have sent attorneys to your court.

Because of the rural nature of the survey, all of the courts responding had attorneys from either Nevada Legal Services or VARN. Only one of the Clark County justice courts reported having a legal services attorney appear. That was on one occasion. I say this only to point out that the problems for access to justice in rural Clark County, or Washoe County, appear to be as serious as most of the rest of the State.

If yes, please summarize your experiences, positive and negative, in working with those attorneys (attach a separate sheet if necessary).

All of the comments were on the positive side. There weren't many.

- -Positive. The attorney was qualified and represented the client effectively.
- -OK
- -Positive.
- -NLS handled cases professionally and competently.
- -A little overzealous, but capable and respectful. (If this gets back to the attorneys in the Las Vegas office of Nevada Legal Services, please tell them I didn't say this. I didn't even answer the questionnaire. Besides, I would have said very capable.)
 - -Prepared. Did a good job.
 - -Acceptable.
 - -Positive.
 - -Excellent.
- 14. Have you requested assistance from a legal service provider for litigants in your court in the past two years?

This was a bad/unclear question on my part. When I wrote it, I was thinking of how, when I wanted information to provide to litigants in eviction and small claims cases, I contact Clark County Legal Services and Nevada Legal Services for help, and they provided me brochures and other information, including information about classes, that was very helpful. Unfortunately, my question was interpreted as asking whether assistance had been requested from legal services on a particular case. The answer to that question was no, usually with a follow up that the court refers litigants to legal services, but does not get directly involved in the process.

That being said, there were some courts that had requested that legal services provide attorneys for their courts, or who explained why they had never made such a request. Their answers provide further insight into why we need to modernize, streamline and facilitate the way legal services are provided in this State. Please do not assume that all these answers came from the most rural parts of the State.

- -Most people turned away due to case type, scheduling, logistics, etc.
- -Never asked to or never felt the need to do so. (There were several answers like this.)
- -We quit requesting assistance as we were routinely turned down due to low volume and high mileage involved.
 - -Legal services won't travel this far.
 - -Low case load, and not knowing what's available.
 - -Legal services not available in this area.

If yes, please list the legal services providers from whom you have requested assistance?

There was only one answer to this question. It involved VARN, and the response was positive.

If yes, what was the result of your request for assistance?

-Answered above.

If you have never requested such assistance, please explain why?

- -Already answered above. (Oops.)
- 15. Are there any workshops, classes or clinics available in your community to help people address their legal needs?

An overwhelming number of courts answered no. A handful answered yes.

If yes, please describe:

The programs listed by that handful of courts included:

- -UNR occasionally offers such classes which are videoconferenced through the 4H facility and the school district. (Add 4 H to our potential list of partners.)
 - -Supreme Court Lawyer in the library program. (I wonder where that is.)
 - -Two courts listed programs at the local Senior Citizens Center.
 - -VARN.

If no, could your courtroom be used for classes offered by videoconference?

Most of the courts answered yes, but a significant minority said no due to space constraints. Several of our rural justice courts do not have a real courtroom.

If no, is there a place in your community that could be used for such classes?

Almost every court that does not have the space to hold workshops or classes was able to provide other possibilities in the community for such activities. Those locations included libraries, local school and community colleges and community centers. However, those courts also noted that while those facilities might have the space, many of them don't have the necessary equipment either.

16. Would you be willing to coordinate your court calendars with other courts in your area, if it would increase the availability of legal services providers to litigants in your court?

Almost every court responded yes to this question. My idea behind this question was that if some of the rural courts, especially those who have civil calendars only once or twice a month, were able to have those calendars at different times on the same day, a legal services or pro bono attorney might be available to assist litigants for those calendars, either in person if the courts are located fairly close to each other, or through videoconferencing. Obviously, the coordination might not be easy, and might involve arranging for the review of documents, etc., but I think it is an idea worth exploring.

17. Please state what you think would be the most important/beneficial thing that could be done to help litigants in your court address their cases, and people in your community address their legal needs?

Most of the answers to this question were similar to the answers given to question 12. (I was going for two bites of the apple.) I will not repeat all those answers here, but I will list a few additional responses.

- -True availability of legal services/pro bono representation.
- -A universal self-help website that would apply to all courts. (I knew I got that idea from somewhere.)

- -More attorneys. (Let me pause her to say that the only way our efforts in the rural courts are going to work is if we can increase the level of pro bono work from attorneys in the urban areas, or increase the number of attorneys working for legal services, so that we can poach some of those attorneys to assist with our efforts in the rurals. It's not like the current employees of legal services, or those already doing pro bono work, are sitting around with spare time on their hands. One goal of this Commission has got to be to increase the level of pro bono work and increase the staffing at our legal services agencies.)
- -A legal services or pro bono attorney present in the community one time/month for an "Ask the Lawyer" type program.
 - -Workshops with access to self-help materials and web-based instruction.
 - -Classes in landlord-tenant, especially for the landlords, so they can learn the law.
 - -Greater access to low cost legal services.
- -Training. We don't know what's out there, so we can't be much help. (See, I'm not making this up.)
 - -Access to legal services attorneys. More than self-help info and forms on internet.
 - -More legal clinics.
- -We need more legal assistance, but our community is too small to support it on our own.
- 18. Does your court have any funding, including administrative assessment fees, which could be used to help pay for equipment or other items that would help to improve the delivery of legal services to people in your community?

A large majority of the courts responded yes to this question. Those that answered no have already committed all of their available funds for the near future to ongoing court improvement projects, case management systems, etc. While many of the courts do have funds available, they also made it clear that the funds are limited. Most courts do not have the funds necessary to put computers and conferencing equipment into their courts. Their available funds would be more along the lines of paying for fees and upkeep once that equipment goes in. This Commission cannot expect a large infusion of cash coming in from the rural justice courts to make any kind of real dent in what we need to accomplish our goals. This would need to be reviewed on a court by court basis.

If your administrative assessment fees are already encumbered, please explain why: (Example: Does your local government expect your court to pay normal operating expenses out of administrative assessment fees?)

Very few courts reported county governments making improper moves on their AA fees. However, there are a few courts where this might be a problem. One court reported that it is paying its utility bills out of AA fees. Another reported that the county just took tens of thousands of dollars in unexpired AA fees and put them into the county general fund. A few others reported that they are being forced to use AA fees to pay for some things that other courts get from their county governments in their general budget. I know it's not the job of this Commission to get involved in these kinds of

problems, but perhaps we could encourage someone else (AOC?) to assist the rural courts with these kinds of questions, since any money being taken away from those courts improperly is money that could be going towards helping with access to justice.

19. Any other thoughts or suggestions?

After all this, there weren't a lot of other thoughts or suggestions, but we did receive a few:

- -Money is the issue, and there appears to be no relief in sight.
- -We need to all work together, because it is not cost effective for our court to spend so much money on its own when our case load is so small.
- -I like the idea of getting things set up to where we could do video-conferencing or court by video. Seems like it would save money (travel expenses) and make a larger supply of info., attorneys and resources available to everyone involved.
- -The public feels very helpless when they come to our court, because they think they can resolve their issues at our court, and the best we can do is tell them it is handled at another court and give out Nevada Legal Services' telephone number. They often come back and tell us they just get the run around and no progress ever happens. . . . If someone were able to produce packets or brochures that were standardized, this would be very helpful.
- 20. Would you be willing to serve on a committee that would work to bring better access to legal services to residents in the rural areas of Nevada?

Most of the judges responding answered this question favorably. Others politely declined: "No, thank you." Others were a little more forceful. At any rate, it is clear that there is a group of rural judges that are concerned about this issues and are willing to help. They could be a valuable resource to this Commission.

In conclusion, I want to reiterate that the rural judges are concerned about these issues. They want to do more, and are frustrated that they can't. Two years ago, I was president of the Nevada Judges of Limited Jurisdiction. It was during a legislative year, and we had several important issues come up during the year. As a result, I sent out several letters and questionnaires to the judges requesting their thoughts and opinions. I can tell you that during that time, I never received a response to any letter or questionnaire like I received to this one, both in the number and the quality of responses. Most of the judges who responded to this questionnaire took some time in doing so. They gave thoughtful, and often lengthy responses to the questions, and demonstrated that there is a concern about access to justice issues in the rural courts. Those courts often represent the only "government" to the citizens of our State for miles around. The judges understand their role in their communities, and they seem anxious to want to help the people in their communities receive quality legal services in all areas of their jurisdiction. If there was ever a good time for everyone to quit talking and start doing, now would be a good time.

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION OF A UNIFORM RULE GOVERNING TELEPHONIC AND AUDIOVISUAL PARTICIPATION IN CIVIL, CRIMINAL AND FAMILY LAW CASES IN ALL COURTS IN THE STATE OF NEVADA.

ADKT No. 424

FILED

ULC 18 2008

CHEROF SUPPER COURT

ORDER ADOPTING PART IX OF THE SUPREME COURT RULES

WHEREAS, on April 2, 2008, the Hon. Mark Gibbons, Chief Justice of the Nevada Supreme Court, filed a petition in this court requesting the adoption of uniform rules to govern telephonic and audiovisual participation in Nevada courts, and

WHEREAS, this court conducted a public hearing on the proposed rules on Tuesday, December 9, 2008, and

WHEREAS, this court has concluded that adoption of the rules is warranted, accordingly

IT IS HEREBY ORDERED that Part IX of the Supreme Court Rules is adopted as set forth in Exhibit A.

IT IS FURTHER ORDERED that these rules shall be effective March 1, 2009. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court that she has accomplished the above-described

SUPREME COURT OF NEVADA

D) 1947A ----

publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 18th day of December, 2008.

Maupin

Gibbons

J.

Gibbons

J.

Hardesty

Parraguirre

J.

Douglas,

Cherry
Saitta

J.

cc: Bruce Beesley, President, State Bar of Nevada Kimberly K. Farmer, Executive Director, State Bar of Nevada All District Court Judges All District Court Clerks Administrative Office of the Courts

SUPREME COURT OF NEVADA



ADKT 424 - Exhibit A

PART IX. RULES GOVERNING APPEARANCE BY COMMUNICATION EQUIPMENT

Rule 1. Definitions. In these rules, unless the context or subject matter otherwise requires:

- 1. "Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.
 - 2. "Court" means either a general or limited jurisdiction court.
 - 3. "Party" shall include and apply to such party's attorney of record.
 - 4. "Shall" is mandatory and "may" is permissive.
- Rule 2. Policy favoring communication equipment appearances. The intent of this rule is to promote uniformity in the practices and procedures relating to communication equipment appearances in civil cases. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by communication equipment at appropriate conferences, hearings, and proceedings in civil cases.
- Rule 3. Application. This rule applies to all cases except criminal, juvenile, and appellate proceedings.

Rule 4. Appearance by communication equipment.

- 1. Circumstances in which appearance by communication equipment shall be allowed. Except as provided in subsection 4, parties shall be allowed to appear before a court or master using communication equipment in the following matters:
- (a) Case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date;
 - (b) Trial setting conferences;
 - (c) Hearings on law and motion, except motions in limine;
- (d) Hearings on discovery motions, except where the discovery commissioner determines that it is necessary for parties to meet personally regarding discovery disputes or scheduling matters;
- (e) Status conferences, including conferences to review the status of an arbitration or a mediation;
 - (f) Hearings to review the dismissal of an action; and
 - (g) Any other hearing that is scheduled for not more than 15 minutes.
 - 2. Required personal appearances.
- (a) Except as provided in subsection 3(c), a personal appearance is required for hearings, conferences, and proceedings not listed in subsection 1, including the following:
 - (1) Trials and hearings at which witnesses are expected to testify;
 - (2) Hearings on temporary restraining orders;

- (3) Settlement conferences:
- (4) Trial management conferences;
- (5) Hearings on motions in limine;
- (6) Hearings on petitions to confirm the sale of property under NRS Title 12; and
- (7) Any hearing in which the discovery commissioner determines that the presence of the parties is necessary to resolve discovery disputes or scheduling matters.
- (b) In addition, except as provided in subsection 3(c), a personal appearance is required for the following persons:
- (1) Applicants seeking an ex parte order, except when the applicant is seeking an order:
- (i) For permission to file a memorandum in excess of the applicable page limits;
 - (ii) For an extension of time to serve pleadings;
 - (iii) To set hearing dates on alternative writs and orders to show

(iv) By stipulation of the parties;

- (2) Persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or a rule; or
- (3) Persons ordered to appear in an order or citation issued under NRS Title 12.

At the proceedings listed in (1), (2), and (3), parties who are not required to appear in person under this rule may appear by communication equipment.

- 3. Court discretion to modify rule.
- (a) In exercising its discretion under this provision, the court should consider the general policy favoring communication equipment appearances in civil cases.
- (b) Court may require personal appearances. Upon a showing of good cause either by motion of a party or upon its own motion, the court may require a party to appear in person at a hearing, conference, or proceeding listed in subsection 1 if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.
- (c) Court may permit appearances by communication equipment. The court may permit a party to appear by communication equipment at a hearing, conference, or proceeding listed in subsection 2 if the court determines that a communication equipment appearance is appropriate.
- 4. Need for personal appearance. If, at any time during a hearing, conference, or proceeding conducted by communication equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.
 - 5. Notice by party.

cause; or

- (a) A party choosing to appear by communication equipment at a hearing, conference, or proceeding under this rule must either:
- (1) Place the phrase "Communication Equipment Appearance" below the title of the moving, opposing, or reply papers; or

- (2) At least three court days before the appearance, notify the court and all other parties of the party's intent to appear by communication equipment. If the notice is oral, it must be given either in person or by communication equipment. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Communication Equipment" with the court at least three court days before the appearance and by serving the notice at the same time on all other parties by personal delivery, fax transmission, express mail, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.
- (b) If after receiving notice from another party as provided under subsection 5(a) a party that has not given notice also decides to appear by communication equipment, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by communication equipment.
- (c) If a party that has given notice that it intends to appear by communication equipment under subsection 5(a) subsequently chooses to appear in person, the party must so notify the court and all other parties that have appeared in the action, by communication equipment, at least two court days before the appearance.
- (d) The court, on a showing of good cause, may permit a party to appear by communication equipment at a conference, hearing, or proceeding even if a party has not given the notice required under subsection 5(a) or (b) and may permit a party to appear in person even if the party has not given the notice required in subsection 5(c).
- 6. Notice by court. After a party has requested a communication equipment appearance under subsection 5, if the court requires the personal appearance of the party, the court must give reasonable notice to all parties before the hearing and may continue the hearing if necessary to accommodate the personal appearance. The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.
- 7. Private vendor; charges for service. A court may provide teleconferencing for court appearances by entering into a contract with a private vendor. The contract may provide that the vendor may charge the party appearing by communication equipment a reasonable fee, specified in the contract, for its services.

8. Audibility and procedure.

- (a) The court must ensure that the statements of participants are audible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant.
 - (b) Upon convening a telephonic or audiovisual proceeding, the judge shall:
- (1) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;
- (2) Ascertain that all statements of all parties are audible to all participants;
- (3) Give instructions on how the hearing is to be conducted, including notice that in order to preserve the record speakers must identify themselves each time they speak.
- 9. **Reporting.** All proceedings involving communication equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

- 10. Conference call provider. A court, by local rule, may designate a particular conference call provider that must be used for communication equipment appearances.
- 11. Information on communication equipment appearances. The court must publish a notice providing parties with the particular information necessary for them to appear by communication equipment at conferences, hearings, and proceedings in that court under this rule.
- 12. Public access. The right of public access to court proceedings must be preserved in accordance with law.

MEMORANDUM

TO:

Board of Governors

FROM:

Marc Mersol, Director of Finance and Information Systems

DATE:

January 21, 2009

RE:

Rural Court Video Conferencing

MESSAGE

Rural Court Teleconferencing/Video Conferencing Report.

I have included a report from Anne Heck from the Administrative Office of the Courts showing the current status of the Supreme Court of Nevada's rural court teleconferencing and video conferencing project. We have found the courts and other entities to be excited to participate in this project and we have also found several funding sources. We hope to have the first court online by the end of February 2009. For those Board members that may be interested, I have detailed documentation of the project scope and progress.

The First Five participants will be;

Battle Mountain-Judge Max Bunch Sparks Justice-Judge Kevin Higgins Lovelock, Lake Justice-Judge Nelson Winnemucca, Union Justice-Judge Wambolt Fallon, New River Justice-Judge Richards

The commission is also planning on connecting jails, crime labs, and other entities that may require staff to appear in court.



Court Selection and Criteria Court Rollout Plan Recommendation

Purpose

The Purpose of Phase I was to develop a list of rural courts that would benefit from the use of video teleconferencing equipment. Phase I also provided the discovery period to gauge the feasibility for a statewide project. This report is a recommendation on the initial courts selected for Phase I.

Method-Phase I Court Selection

An initial list was created at the project stakeholders meeting, October 27th, 2008. The following list does not represent a sequence or order:

- 1. Carson City
- 2. Sparks Justice
- 3. Canal Justice
- 4. Dayton
- 5. Walker River Justice
- 6. New River Justice
- 7. Pahrump Justice
- 8. Indian Springs
- 9. Argenta
- 10. Lake Justice
- 11. Union Justice
- 12. Clark County Crime Lab
- 13. Mesquite

Establish Criteria

A list of survey questions were developed to use during site visits, telephone interviews and for scoring purpose:

Funding

Do you have the funds to purchase? 12k

Do you have the funds to match?

Can you support the system?

Network

Vendor Service Agreement

FTE

Do you realize we are "partnering" with you?

<u>Use</u>

What do you think you would want?
Fixed, Cart
Where do you want a system installed?
Size of the room
Who do you want to connect to?
Would multipoint be an option?
How many hours per week -system operational?
Is this a shared space?

Network

Slow? OK?
Who is the IT contact?
Who is the POC interested in this project?

Site Visits

Multiple site visits were accomplished between November 18th and December 5th, leaving Mesquite and the Clark County Crime Lab contacted by telephone.

Robert Kastelitz and Steve Tuttle made the I-95 corridor trip that included: Dayton Justice, Walker River Justice, Hawthorne Justice, Tonopah Justice, Pahrump Justice, Beatty Justice and Esmeralda Justice.

Rick Stefani completed the Highway 50 loop with stops in New River Justice and Canal Justice. The judges from Battle Mountain, Union Justice and Lake Justice were interviewed during a NJC meeting held in Winnemucca.

Summary

This project continues to get enthusiastic feedback and desired momentum.

Funding

Courts who have expressed interest also have the ability to participate in a supplement of funds through the USJR Grant process.

Use

The initial need has been verified for court appearances between courts and other agencies. In the interviews we have found a substantial request for video teleconferencing in site to site education and training classes.

Network

We have verified the anticipated networking issues of speed and infrastructure. JAVS systems have been installed in numerous courts across the state. Integrating video recording and connectivity to existing JAVS system is a significant concern at this time.

Selection Process

Courts without equipment were selected as the greatest need. Courts with full funds and courts with available funds were selected. Courts with the most enthusiasm in the partnership were considered.

Court Recommendation Rollout Plan

- 1. Winnemucca, Union Justice
- 2. Sparks Justice
- 3. Battle Mountain, Argenta
- 4. Lovelock, Lake Justice
- 5. Fallon, New River Justice
- 6. Clark County Crime Lab

Remaining Courts to (Re) Survey February 2009

- 1. Carson City
- 2. Fernley, Canal Justice
- 3. Dayton
- 4. Yerington, Walker River Justice
- 5. Pahrump
- 6. Mesquite/Bunkerville
- 7. Indian Springs

Timeline

To date the project is on target to have Phase I Courts equipment installed by the end of February, 2009. 75% of Phase II has been completed to date, with training, policy and procedure for the conferencing bridge-pending.

Phase III- The funding for these initial courts and equipment purchase is expected to meet the January 30, 2009 deadline.

Phase IV-Installation is expected to begin in February 2009.



NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION PREFERRED IOLTA INTEREST BANKS

Current as of 1.27.09

BRIDGING THE JUSTICE GAP

Chief Justice James Hardesty, Co-Chair Justice Michael Douglas, Co-Chair

Congratulations on your admission to the Nevada Bar! You now have a unique opportunity to support Nevada's community needs through the simple decision of placing your trust accounts in a preferred interest bank.

IOLTA funds support Nevada's civil legal aid providers, tasked with providing the continuum of care for the civil legal aid needs of our entire state. In 2007, before the current economic crisis, there was an average of almost 5,000 qualifying cases per legal aid lawyer. Imagine the need today.

In these extraordinarily challenging times, the civil legal needs of the most vulnerable Nevadans whom the legal aid providers serve-victims of domestic violence, children, seniors, and the poor- are more overwhelming than ever.

Your involvement changes lives and your compassion for those less fortunate will translate into direct help for Nevadans who desperately need our help. Please show our commitment to access to justice for all Nevadans in need by choosing a preferred interest bank for your trust accounts. We thank you!

Kristina Marzec
Director, Access to Justice Commission
kristinam@nvbar.org
800.254.2797 * 702.317.1404

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Bank of George Bank of Nevada Community Bank of Nevada First Asian Bank First Independent Bank

Meadows Bank Mutual of Omaha Bank Nevada Commerce Bank Nevada State Bank

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Irwin Union Bank

Red Rock Community Bank Service 1st Bank of Nevada U.S. Bank

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List of updated complete offers and contact information on preferred interest banks: www.nvbar.org

FDIC emergency IOLTA coverage: client funds deposited in IOLTA accounts, regardless of amount, are eligible for full deposit insurance coverage under the Temporary Liquidity Guarantee Program (TLGP) through December 31, 2009. http://www.fdic.gov/news/board/08BODtlgp.PDF

ing salah Pungkat Jawa Baranga Reform Lawa Baranga

TAB 4

Name of Bank	High Interest Rate	Low Interest Rate	# of Accounts
Bank of America	0.0120%	0.0050%	447
Bank of George	1.73%	0.74%	9
*Interest Rate will increase to 2.	14% as of 01/01/2009		
Bank of Las Vegas	0.25%	0.25%	8
Bank of Nevada	2.00%	1.50%	191
Bank of North Las Vegas	0.50%	0.50%	4
Bank of the West	1.50%	0.10%	29
Black Mountain Community Bank	0.0050%	0.0050%	6
Carson River Community Bank	0.75%	0.75%	1
Citibank	1.98%	0.50%	31
City National Bank	0.50%	0.20%	29
Clark County Credit Union	1.00%	0.50%	2
Clearstar Credit Union	2.44%	0.49%	1
Colonial Bank	2.97%	2.97%	8
Community Bank of Nevada	0.20%	0.20%	. 42
*Interest Rate will increase to 2	.0% as of 01/01/2009		
Desert Community Bank	1.30%	0.50%	6
Financial Horizons Credit Union	1.34%	0.25%	1
First Asian Bank	1.27%	1.27%	3
First Commerce Bank	0.5	0.5	1
First Independent Bank	1.98%	1.98%	15
First Republic Bank	1.00%	1.00%	2
First Security Bank of Nevada	0.25%	0.25%	4
Heritage Bank	0.50%	0.50%	18
Irwin Union	1.13%	0.98%	11
Meadows Bank	2.13%	2.13%	1
M&I Bank	0.25%	0.25%	4
Mutual of Omaha Bank(1st national)	1.12%	0.53%	21
Nevada Bank & Trust	0.20%	0.20%	2
Nevada Commerce Bank	0.75%	0.30%	5
Nevada Security Bank	0.30%	0.30%	. 2
Nevada State Bank	1.40%	1.40%	
*Interest rate is .3875 as	of 12/22/2008		
Paramount Bank	0.75%	0.75%	1
Red Rock Community Bank	0.20%	0.20%	8
Service First Bank	0.25%	0.25%	4
Southwest USA	2.00%	2.00%	2
Sun West	0.50%	0.50%	0.005
U.S. Bank	0.9040%	0.4998%	133
Washington Mutual	0.60%	0.01%	46
Wells Fargo	1.00%	1.00%	555

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Bank of America	0.0120%	0.0050%	447
Bank of George	1.73%	0.74%	9
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Carson River Community Bank	0.75%	0.75%	1
Citibank	1.98%	0.50%	31
City National Bank	0.50%	0.20%	29
Clark County Credit Union	1.00%	0.50%	2
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First Commerce Bank	0.5	0.5	1
First Independent Bank	1.98%	1.98%	15
First Republic Bank	1.00%	1.00%	2
First Security Bank of Nevada	0.25%	0.25%	4
Heritage Bank	0.50%	0.50%	18
Irwin Union	1.13%	0.98%	11
Meadows Bank	2.13%	2.13%	1
M&I Bank	0.25%	0.25%	4
Mutual of Omaha Bank(1st national)	1.12%	0.53%	21
Nevada Bank & Trust	0.20%	0.20%	2
Nevada Commerce Bank	0.75%	0.30%	5
Nevada Security Bank	0.30%	0.30%	2
Nevada State Bank	1.40%	1.40%	
*Interest rate is .3875 as	of 12/22/2008		
Paramount Bank	0.75%	0.75%	1
Red Rock Community Bank	0.20%	0.20%	8
Service First Bank	0.25%	0.25%	4
Southwest USA	2.00%	2.00%	2
Sun West	0.50%	0.50%	0.005
U.S. Bank	0.9040%	0.4998%	133
Washington Mutual	0.60%	0.01%	46
Wells Fargo	1.00%	1.00%	555

Strategic Goal

Strategic Goal: Developed December 4, 2008 and December 5, 2008 to address all issues related to IOLTA and its relationship to the NLF.

Strategic Goal includes three objections:

- 1. IOLTA Campaign: Develop an IOLTA campaign plan that will ensure immediate contact with banks and lawyers to ncrease IOLTA income.
- IOLTA Operations: Assess the functional operation of the IOLTA and the NLF and to provide recommendations.
- **IOLTA Distribution Formula/Reserve Policy: Develop** recommendations for a distribution formula and reserve policy for the NLF.

IOLTA Campaign Goals

Enroll as many banks as possible in the preferred bank

(Paying 2% or above or at least .50% off the 30 LIBOR on

IOLTA)

(Written commitments through December 2009)

Persuade lawyers/law firms to move their client trust accounts to a preferred bank partner.

(Persuade five to ten lawyers/law firms per week)

(Obtain written commitments)

Increase IOLTA income by a minimum of 25% over 2008 income in 2009, minimum of 50% in 2010, minimum of 75% in 2011, minimum of 85% in 2012, minimum of 90% in 2013 and minimum of 100% in 2014. Have minimum of 50% of client trust funds with preferred bank partners by December 2009, 65% by December 2010, 75% by December 2011, 85% by December 2012, 90% by December 2013 and 95% by December 2014.

Maintain a minimum of 95% of client trust funds with preferred bank partners after December 2014.

to Ba

January 4, 2009

Contacts

Dear

is one of the largest banks in Nevada that participates in the Interest on Lawyer Trust Accounts (IOLTA) program. Not only is the bunk sizable in terms of the number of accounts held, it also holds a substantial percentage of the principal balances in all of the state's IOLTA accounts. For this reason, has a profound impact on providing basic access to civil justice for Let us begin by saying thank you!

low-income citizens and offering law-related education opportunities for the next generation of leaders. We certainly are grateful for your participation throughout the

increasingly critical for us. This letter outlines the issue, briefly illustrates implications We request that you meet with representatives of the Nevada Law Foundation in the coming weeks to explore collaborative ways of addressing a situation that has become for the IOLTA program and shares some potential options for addressing the concern.

depending on average principal balance. As it stands, the gap between the IOLTA rate . These accounts currently earn a net of these accounts have average principal on accounts with the highest balances and what non-IOLTA customers at Nevada 10LTA accounts at balances of more than \$100,000, for a total principal balance of S. These large balance accounts pay interest at a rate between on accounts of comparable size is staggering. combined principal balance of S About There are approximately

As you may be aware, _____has responded positively to other IOLTA programs regarding the need for interest rate comparability. While the methods used among states vary, we would like to explore the options for a collaborative solution that considers all the legitimate interests at stake, including those of

Based on reports from IOLTA programs in other states, there are several atternatives including

- Offering sweep account/REPO rates on large-balance IOLTA accounts, but not setting up the accounts in those actual products. The Foundation would consider it appropriate for the bank to discount the rate to account for any revenue the bank normally would derive from sweep fees and other service charges associated with 10LTA accounts holding \$100K or more, leaving accounts of that size. By the Foundation's calculations, a rate of other IOLTA tier rates and fees unchanged, would achieve that result. percent on all
- IOLTA accounts. (The Foundation would request, however, that a floor be set to Institute a tiered rate that is equal to a percentage of the Fed Funds rate for all prevent an IOLTA crisis if rates should drop. For example, an IOLTA rate ٠

percent of the Fed Funds rate would provide a net yield is paying its non-IOLTA customers holding accounts having comparable principal balances and other requirements. equivalent to the rates

In Nevada, the Access to Justice Commission has set the following bench marks for financial institutions to become a Preferred Banking Partner.

- Paying a flat 2% APY on IOLTAs for a period of one year, or
 Paying .5% of the 30 day Libor rate on IOLTAs.

the need for more funding is dire. The American Bar Association estimates that legat aid programs are able to address less than 20 percent of the critical legal problems experienced each year by those living in poverty. While we are able to reach thousands of tomorrow's leaders through law-related education, we know that current funding levels prevent us from reaching the majority of our young people. Programs that enhance justice can only be as successful as the resources will allow. With comparable returns on IOLTA would make an enormous difference in addressing more of We are proud of the work that is accomplished with current IOLTA revenues. However, the unmet needs in our state.

IOLTA product. We are hopeful that you will continue to be an industry leader as the Bar leadership in Nevada in terms of its Foundation approaches other banks in Nevada with a request similar to the one heing We certainly have appreciated nade of you.

Suzan Baucum, Esq. Executive Director

Nevada Law Foundation Fact Sheet

- The Nevada Law Foundation was incorporated as a 501 c (3) non-profit organization in
 December of 1982 and Supreme Court Rules were put in place in 1983 to address the
 unique legal needs of Nevada's indigent and disadvantaged citizens. These rules enable
 the Foundation to collect inferest from lawyers' trust accounts, called IOLTAs and allow
 the Foundation to disburse funds to organizations that deal first-hand with those in need
 of leval assistance.
- The primary goal of the Nevada Law Foundation is to develop and maintain programs that provide legal-related services to the poor, to victims of domestic violence, and for children protected by, or in need of protection by, the juvenile court
- Initially, participation in IOLTA was strictly voluntary. Today the program is mandatory which means 100 percent of Nevada's eligible attorneys are required to participate in the program
- For 2009, the Board granted \$1.071,500.00 to programs representing Nevada's indigent. Since its inception, the Foundation has awarded more than \$8 million dollars for programs for the disenfranchised in Nevada

Some of the organizations and clients of the Nevada Law Foundation funding helps are the following:

- Legal Aid Center of Southern Nevada: A client of LACSN. Suzanne, (name changed), is a member of an American Indian tribe, who came to LACSN for assistance in a custody proceeding concerning her child Suzanne had been sexually assaulted by her live in boyfriend in front of their 5 year old son. The boyfriend was arrested, convicted of sexual assault and sentenced to 90 months in jail. To secure the child's future, LACSN filed a motion on Suzanne's behalf for sole legal and physical custody. However, during the proceeding, the ex boyfriend ricd to obtain joint legal custody and be allowed to correspond with the child while he was in jail and awaiting possible deportation, LACSN convinced the court that the ex boyfriend could not co-parent and that his contact would constitute domestic violence against Suzanne. The judge agreed with LACSN's position and Suzanne was awarded sole legal and sole physical custody of her son.
- Washoe Legal Services: A Fourteen year old female client was removed from her mother for medical neglect. The client had diabetes and the mother failed to monitor her for almost two months. The child suffered severe medical complications and was hospitalized. The client had also alleged that the mother's boyfriend and stepbroher (who were living with family) had sexually molested her. The Mother refused to give any credence to the allegations and chose to continue living with them The Court granted permanency plan of Another Permanent Planned Living Arrangemen. ("APPLA") The client is now living in a family foster care setting with foster parents who have indicated their long-term intention to provide a family for her. The client has maintained contact with her half-siblings, is doing well in school, and is working on sorting out her feetings and desires as regards her mother

- The City of Las Vegas SCLP: is working in conjunction with State of Nevada AG's office to assist a 69 year woman who is the victim of a mortgage loan scam and is in immediate danger of losing her home. The alleged scheme involved the forging of the elderly person's loan application, forging of notary, and fraudulently submitting the loan for funding, in order to collect a commission on the loan. This is the 1st criminal prosecution by The AG's office under the new mortgage fraud statute (NRS 205.372) and The SCLP is representing the elderly victim in a Trustee sale to prevent foreclosure. Prelim hearing scheduled for March 31, 2009
- VARN: A Client of Volunteer Attorneys for Rural Nevada, states. I am a former victim, but now I am now a survivor I know in my heart that my success, and the fact that I am still alive, is because of VARN. For my family, VARN has given us hope. We have even purchased a home and have a dog. A dog that isn't beaten or thrown against the walf in front of the children. I now realize that there are many victims out there who are not getting the assistance that they need. While Domestic Violence is horriffe no matter the location, rural communities are especially faced with substantial deterrents. I know that with continued (and, hopefully, increased) funding VARN can make a difference

Nevada Law Foundation Programs include:

- IOLTA Program: constitutes the majority of the Nevada Law Foundation's funding, which goes to support the programs highlighted above
- Colleague Program was created to endow the Foundation by allowing those in the legal
 community that want to assist further, to do so by giving through three levels of funding
- Silver Ball: honors the Colleagues, and treats our denors to an evening of fine dining and
 great company. This gala event gathers many of our legal community's most
 accomplished members, and past Keynote Speakers have included many of Nevada's
 most influential citizens, such as Senators Harry Reid and John Ensign, Governors Kenny
 Guinn and Jim Gibbons, Jim Rogers and Mayor Oscar Goodman
- Friends of the Foundation: allows individuals and businesses outside the legal community to further the mission of the foundation in several different ways.
- Nevada's legal community makes justice come alive for those who might otherwise be forgotten. With the dedication of Foundation volunteers, and the generosity of supporters, the Nevada Law Foundation moves closer to its goals. The good work of the Foundation benefits both our state, and the legal profession. With your help, we will continue to see to it that Nevada's disenfranchised will be granted the vital legal services they so desperately need.

FINANCIAL INSTITUTIONS HELP THE NEVADA LAW FOUNDATION

Nevada Banks respond to Interest Rate Crisis:

- Interest paid on lawyer trust accounts provides needed revenue to fund programs to those in need. With the federal interest rates at the lowest in years, a large portion of Nevada's IOLTA funds have paid nationally low yields, recently as low as .0010 percent.
- The Nevada Law Foundation in conjunction with the Access to Justice Commission is negotiating with the Nevada banking industry to significantly increase rates being paid on 101, TAs. Help us to help the indigent in Nevada!
- Nevada Law Foundation, the State Bar of Nevada and on the Access to Justice and advertising at little or no cost to the bank. Preferred Bank Partners will also All financial institutions that raise interest rates paid on IOLTAs to a minimum 2.0% APY for one year will be listed as a Preferred Bank on various web sites including the receive recognition in the Nevada Law Foundation Perspective and Silver Ball Commission web page. Preferred Bank Partners will also have access to mailing lists,

Preferred Pariner Banks include:

- Bank of George
- Bank of Nevada
- City National Bank
- Community Bank of Nevada First Independent Bank
- First Asian Bank
 - Heritage Bank
- Irwin Union Bank
- Meadows Bank
- Mutual of Omaha Bank
- Nevada Commerce Bank
 - Nevada State Bank
- Red Rock Community Bank
 - Service 1st Bank of Nevada US Bank

Nevada Law Foundation Talking Points

- legal needs of Nevada's indigent and disadvantaged citizens. 1. The Nevada Law Foundation was incorporated as a 501 c (3) Foundation to disperse funds to organizations that deal first-Court Rules were put in place in 1983 to address the unique non-profit organization in December of 1982 and Supreme These rules enable the Foundation to collect interest from lawyers' trust accounts, called IOLTAs and allow the hand with those in need of legal assistance.
- 2. The primary goal of the Nevada Law Foundation is to develop and maintain programs that provide legal-related services to protected by, or in need of protection by, the juvenile court. the poor, to victims of domestic violence, and for children
- 3. For 2009, the Board granted \$1,071,500.00 to programs Foundation has awarded more than \$8 million dollars for representing Nevada's indigent. Since its inception, the programs for the disenfranchised in Nevada.

Nevada Law Foundation Talking Points

- 4. Interest paid on lawyer trust accounts provides needed revenue to fund programs to those in need. With the federal interest rates have paid nationally low yields, recently as low as .0010 percent at the lowest in years, a large portion of Nevada's IOLTA funds
- The Nevada Law Foundation in conjunction with the Supreme Court banking industry to significantly increase rates being paid on Access to Justice Commission is negotiating with the Nevada IOLTAs. Help us to help the indigent in Nevada! . .
- 6. All financial institutions that raise interest rates paid on IOLTAs to a Bank on various web sites including the Nevada Law Foundation, the State Bar of Nevada and on the Access to Justice Commission Preferred Bank Partners will also have access to mailing lists, and advertising at little or no cost to the bank. Preferred Bank web page. Preferred Bank Partners receive credit under CRA minimum 2.0% APY for one year will be listed as a **Preferred** (Community Redevelopment Act) for participating in IOLTA. Partners will also receive recognition in the Nevada Law Foundation Perspective and Silver Ball publications.

Nevada Law Foundation Talking Points

Preferred Partner Banks currently include:

Bank of George

Bank of Nevada

City National Bank

Community Bank of Nevada

First Independent Bank

First Asian Bank

Heritage Bank

Irwin Union Bank

Meadows Bank

Mutual of Omaha Bank

Nevada Commerce Bank

Nevada State Bank

Red Rock Community Bank

Service 1st Bank of Nevada

U S Bank

Sample Thank You Letter to Bank

January 28, 2009

Diane Fearon
President/CEO
Bank of George
9115 W. Russell Road, Suite 110
Las Vegas, NV 89148

Dear Diane,

On behalf of the Nevada Law Foundation and the programs we serve, I would like to thank you for becoming a Preferred Banking Partner. Bank of George's commitment to pay 2.15%APY on all IOLTA accounts through December 31, 2009 will enable the Foundation to meet its mission of providing funding for Nevada's disenfranchised.

As we discussed, being a Preferred Banking Partner not only allows your institution to increase its CRA commitment in Nevada, but as a Preferred Partner you are listed on Nevada Law Foundation, State Bar of Nevada and Access to Justice Commission Web-sites. You will also be listed in the Nevada Law Foundation *Perspective* and *Silver Ball* publications as a Preferred Partner. In addition, Preferred Banking status allows you access to mailing databases and other advertisement opportunities at reduced or no cost to your bank.

If you have any questions, or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

Suzan Baucum, Esq, Executive Director

December 2008 Interest Rates Report

Name of Bank	High Interest Rate	Low Interest Rate	# of Accounts
Bank of America	0.0126%	0,0050%	Fig.
Bank of George	1.73%	074%	\$
'inferest Rate will increase to	2,14% as of 01/01/2009		
Bank of Las Vegas	0.25%	025%	a
Bank of Nevada	2.06%	200%	TE GO TE
Bank of North Las Veges	%35.0	%0£0	4
Bank of the West	1.56%	0 10%	8
Black Mountain Community Bank	0.005C%	0.0050%	9
Carson River Community Bank	0.75%	0.75%	₩.v.
Cilibank	1.01%	020%	F. (2)
City Navonal Bank	%35.0	020%	62
Clark County Credit Union	1.00%	1 00%	2
Clearstar Credii Union	2,44%	0 49%	40.
Colonial Bank	920%	019%	80
Community Bank of Nevada	0.26%	020%	5
"Interest Rate wit increase to 2.6% as of 01/01/2009	2.6% as of 01/01/2009		
Desert Community Bank	1.25%	025%	Ф
Financial Honzons Credit Union	% P. C. C.	025%	W -to
First Asian Bank	1.27%	127%	ts)
* Interest Rate will increase to 2.0%	as of 0 t/01/09		
First Commerce Bank	0.50%	%0s0	****

		1806 6	L.
	2-00%	Z.0D%	<u> </u>
First Republic Bank	1.00%	1,00%	N
First Security Earth of Neveds	0.25%	0.25%	4
Herlige Bank	0.10%	0.10%	50
krytin Linžon	1.10%	0.98%	क् इ.स.
Meadows Bank	2.13%	2,13%	673
W& Benk	0.15%	0.15%	म
Mutual of Omere Bank (1st rictional)	2.00%	2.00%	Z
Meveda Bank & Trust	0.20%	0.20%	C)
Meveda Commerce Bank	0.75%	0.46%	ĿŢ.
*Interes: Rate will increase to 2.0% as of 1/25/06	26,000		
Newsda Security Bank	0.30%	0.05%	(VI
Nevade State Bank	1.40%	1.40%	कार हिंदी क
Paraneud: Bank	0.75%	0.75%	▼
Red Rock Community Bank	0.20%	0.20%	9
"Interes: Rate will increase to 2.0% as of 1/22/06	22/05	-	
Service First Bank	0.25%	0.25%	**
"Interes: Rate will increase to 2.0% as of 1/8/09	900		
Southwest LiSA	2.00%	2.00%	N
Sun West	¥05.0	0.50%	0.005
U.S. Bank	0.9040%	0.4998%	133
Washington Mutual	O.000%	0.01%	₩.
Wells Fargo	1.00%	1.00%	ហ ទា ហ

BANKS	ORAL	WRITTIEN	% RATE	NI	TEAM MEMBER
CONTACTED	COMMITMENT	AGREEMENT	OFFERED	NEGOTIATIONS	CONTACT
Bank of Nevada	<u>Yes</u> ,	Ĭœs	2,00	<u>î</u> MA	Chief Instite: Filishdesty and Pault. Bleano
First Independent Bank	Yes	Yes	2.00	N/A	Chief Justice Hardesty and Paul Elcano
jrvvija (Jinjkon ඕනෝ k	Ĭſes	Yes	1,13		Christ Districe Hendesty and Paul
Meadows Bank	Yes	Yes	2.13	N/A	Chief Justice Hardesty and Paul Elcano
Minnal Of Onn ala Bank	Yes	Yes	2.00	N/A	(Clinef Justice Heriotesty and Paul
Nevada State Bank	Yes	Yes	.50% off the 30 day LIBOR	i	Chief Justice Hardesty and Paul Elcano
Ui S. Bemik	ୁ ଜଣ୍ଣ	Ýœs	0,90	6	Chrief Justice : Herdesity and Paul
Bank of George	Yes	Yes	2.14	N/A	Suzan Baucum
Community Benik of Nevade	Ýes	ĬſĠŝ	2,00	<u>M/A</u>	Svizan Baucum And Roben Eglei
First Asian Bank	Yes	Yes	2.00	N/A	Robert Eglet and Suzan Baucum
Nievada Commerce Ba <u>mik</u>	<u>"Yēs</u>	Yes	2,00	ŇA	SuzaniBatioum

BANKS CONTACTED	ORAL COMMITMENT	WRITTEN AGREEMENT	% RATE OFFERED	IN NEGOTIATIONS	TEAM MEMBER CONTACT
Red Rock Commonitie Benk	Yes	Yes	2.00	ÌÌV/A	Sivzan Baucum
Service 1st Bank of Nevada	Yes	Yes	2.00	N/A	Suzan Baucum
iFlerifilage Banik	<u>Yes</u>	<u> N</u> 0	2.00	<u> 1</u> W/A	SuzanBaucum
City National Bank	Yes	Being drafted	25% off the 90 day LIBOR with floor of 1% and cap of 2%	Yes	Robert Eglet
Citilibannik	Ño	@ <u>\$</u> Zi	L. L.	Yes	SuzantBancopm
Bank of Las Vegas	No	No	Ċ	Yes	Suzan Baucum
Ramik of M. Las Vegas	<u>M</u> o	Ño	je je	<u>Yes</u>	Svizan Bancum
Black Mountain Community Bank	No	N o.	Ċ	Yes	Suzan Baucum
Deneminaniania Benik	©.W.	<u>©</u>	l. L.	$\mathcal{L}_{\mathcal{L}}$	Suzan Baucum
Will Packer Nevada State	No	No	ċ		Suzan Baucum

How do we recognize our current preferred

interest bank partners?

Nevada Bar website

Access to Justice web page

NLF website

NLF Prospective

State bar provides banks member mailing list NLF provides banks free member mailing list for a fee

Silver Ball program

Publicly recognize banks at Silver Ball in video presentation

7

LAW FIRMS CONTACTED	STATUS
SINCE 12/4/08	
1. Asiron & Paternoster	Willi Change of Ane vi/ Pref. Benik Pariner
2. Benson, Bertoldo, Baker & Carter	Will Change or Are w/ Pref. Bank Partner
3. Daillas Hortom & Associates	Will Change or Are w/Pref. Bank Parimen
4. Gage & Gage	Will Change or Are w/ Pref. Bank Partner
S. Canz & Hauff	Will Change of Ane W/ Pref. Bank Parimer
6. George Bochanis & Associates	Will Change or Are w/ Pref. Bank Partner
7. Cerry Cilliock	Will Change of Aic W/Pref. Bailk Pariner
8. Henness & Haight	Will Change or Are w/ Pref. Bank Partner
9. Huuchimson & Sveffen	Will Change of Are w/ Pref. Bank Pationer
10. Jimmerson & Hansen	Will Change or Are w/ Pref. Bank Partner
11. Mahnor Egilet Cottile	Wrill Change or Are w//Pref. Bank Pariner
12. Manny Arin & Associates	Will Change or Are w/ Pref. Bank Partner
13. Menguils & Awribach	Will Change of Air w/Pref. Bank Panoer
14. Muije & Varricchio	Will Change or Are w/ Pref. Bank Partner
15. Powell Linganion Group	Will Change of And W// Pref. Bank Pariner
16. Richard Harris & Associates	Will Change or Are w/ Pref. Bank Partner

LAW FIRMS CONTACTED	STATUS
SINCE 12/4/08	
17. Robert Marshall & Associates	Will Change of Are w/ Pref. Bank Pariner
18. Robert Murdock	Will Change or Are w/ Pref. Bank Partner
19. Shook & Swane	Will Change or Ane W/ Pref. Bank Pariner
20. Vannah & Vannah	Will Change or Are w/ Pref. Bank Partner
21. Tilngsy & Tilngsy	Willi Change or Aire w/ Pref. Bank Pariner
22. Parker & Nelson	Will Change or Are w/ Pref. Bank Partner
23. Levins & Rocha	Will Change of And W/ Prof. Bank Parinor
24. Jones Vargas	Will Change or Are w/ Pref. Bank Partner
25. Dee Hopper	Will Change of Ane w/ Pref. Bank Pariner
26. Harrison, Kemp & Jones	Will Change or Are w/ Pref. Bank Partner
27. Cameba, Rikediy & Rwbino	Will Change or Are w/ Pref. Bank Parmer
28. Sergio Salzano	Will Change or Are w/ Pref. Bank Partner
29. Kent Robison	Will Change or Are w//Pref: Bank Panner
30. Curis Coulter	Will Change or Are w/ Pref. Bank Partner
31. Aim Price McCartiny	Will Change of Ane w/ Pref. Bank Parimer

LAW FIRMS CONTACTED	STATUS
SINCE 12/4/08	
32, Megan Dorsey	Will Change of And W/ Pief. Bahik Parinter
33. Koeller Nebeker	Will Change or Are w/ Pref. Bank Partner
34., Joilley, Unga, Wilth, Woodbunry & Standlish	Will Change of And W/ Prof. Bank Partiner
35. Atkin, Winner & Sherrod	Will Change or Are w/ Pref. Bank Partner
36. Morem Lew Printh	Widll Change or Aue w/Pref. Bank Parimer
37. Thorndal, Armstrong, Delk, Balkenbush & eisinger	Will Change or Are w/ Pref. Bank Partner
38, Kaihile & Associaites	Will Change of Aire w/ Pref. Bank Pariner
39. Kummer, Kaempfer, Bonner, Renshaw & Ferrario	Will Change or Are w/ Pref. Bank Partner
410. Lowins Prinzzzo	Will Change of Are w//Pref. Bank Pariner
41. Pyatt, Silvestri & Hanlon	Will Change or Are w/ Pref. Bank Partner
4.2. Weimberg, Wincelet, Hindighas, Gunn & Dial	Will Change of Are W// Prof. Bank Partirer
43. Wolfenzon, Schulman & Ryan	Will Change or Are w/ Pref. Bank Partner
44. Primce & Keriting	Wrill Change of Ale w// Pref. Bank Patiner

Sample Law Firm Follow-up Let

_23 -23

anuary 29, 2009

Robert Eglet, Esq.
Mainor Eglet Cottle, LLP
400 S. 4th Street, 6th Floor
Las Vegas, NV 89101

Dear Mr. Eglet,

On behalf of the Nevada Law Foundation and the Access to Justice Commission, thank you for agreeing to move your law firm's trust account to one of our Preferred Partner Banks. I have listed those banks below for your convenience.

- Bank of George
- Bank of Nevada
- Community Bank of Nevada
- First Independent Bank
 - First Asian Bank
- Irwin Union Bank
- Meadows Bank
- Mutual of Omaba Bank
- Nevada Commerce Bank
 - Nevada State Bank
- Red Rock Community Bank
- Service 1" Bank of Nevada U S Bank

The Nevada Law Foundation and the Access to Justice Commission commends your firm for your leadership in agreeing to change your trust account to one of these fine banks. Your commitment to improving the IOLTA interest revenue to benefit Nevada's legal aid providers and disenfranchised citizens is very much appreciated.

If I may provide you with any assistance in the future, please do not hesitate to contact

Sincerely,

Suzan Baucum, Esq. Executive Director

IOLTA Operations Goals

Increase revenue through the IOLTA Campaign

Decrease costs of running IOLTA

Increase revenue through fundraising outside of IOLTA

operations and value added operations Provide an assessment between basic of the program

Io assess and reorganize the NLF to increase revenues provided to the community

Direct IOLTA Overhead

EXPENSES	2007	2008
[Rosind Thewell (30%)	852,20	524.715
Comitracti Assistance	(600.00)	000009
Executive Director Expenses		
-Salloury (75%)	83,555,55	86,062,14
-Payiolii Taxes (75%)	5,911,75	5,733,97
- Hieralina Imraumainee (7/5%)	3,513,29	4,192,20
* - Einipplinyvee Benefflus (75%)	0	20,654,93
Miereviimg Expredisses	0	9119,344
Office Expenses	184.00	0
Online: Wagens		
= IOLTA Deta Biotify	8,304,60	8,365,20
- IOLTA Assistance/Pilling/	15,655,50 🐇 👙	16,066,000 平平
Fax ing/Phone		A STATE OF THE STA
Otther Payrolli Taxes	4415.77 5	
Postage/INevvsletter	6,552.84	1. S.
<u>ந</u> ாள்ளும்]நூ	5,803	3,4441168
Pepalins & Maintenance	0	5,922,92
Service Charges	0	1[1]911.76
Swippilies & Equippinent	186.50	347.37
Telkspinome (42,5%)	3,294,64	4320.65
Utibilitities ((50%))	2,0114,42	2,0731811
Total Direct Expenses	\$136,874.04	\$164,683.57
Totali Direct Brigaises Wilter Bimployee Benefits Divided Bourally Reimean 2007 & 2008	<u> </u>	<u> </u>

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Indirect TOLTA Overhead	

EXPENSES	2007	2008
Second Transfer (Single)	WE 650	CONT.
Comfiguraçore/Travel 18,10.	<i>@\$2077.</i> CO	2024H/(19)
L onnieneance	1,426,65	
AIBA	1,950,52	2,604,03
- Straine Boil	1,143,74	0
	(0)2(0)	0
	211.55	907, 22
" Authorize w Aunglin 1760		10,000,000 🚈 🚾
Aughing & Accomming	0.68 01	10,345,00
Engravione Dingelator Bingonaes		
Selfany (117%)	18,939,26	19,507,42
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Printing	5,803,00	8,4411,68
Repairs & Maintenance	7,911,29	4,765,000
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Service Changes	0	[47,6]
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enoti	<u>5,704,98</u>	2,956.79
(%)	3,294.64	4,320)65
	<u>"Foglis"i</u>	1,866.42
Milkscellemegnis	2,336,59	2,449,68
Tawes	1,520,29	4,513,02
TOTAL	\$97,765	\$116,948
Trivier) Undfiredt <u>Bapenses Wilden Bimplogee</u> Brineffer Dtivided <u>Bepellly Botricen 2007 & 2008</u>	\$1 <u>j00,10</u> 5	<u>\$107,4607</u>
	7000 22 2000	
TNOTI-KEOCCULTING EXPENSE **AII P	Pald in 2008 for 2007 and 2008	

Colleague / Silver Ball Overhead

EXPENSES	2007	2008
Conduract Assistance Executive Director Exipenses	4.50	1,800
Salary (8%)	8,912,59	9,179,96
Payrolli Taxes (8%)	630,58	611.62
iffeelith Insurance	374,73	4497.17
(8%)	(
· Employee Beneiilus	()	2,203,19
Mieetiling Bxpenses	0	$70 \mu_0 T H$
Office Bappenses	4120,96	.0
Ouher Wigges	10,352,30	6,697,15
Other Payroll Trixes	251.72	0.2
Postage/Newsletter	1,445,24	0
Printing	8,987,78	<u>\$,4411.68</u>
Service Changes	0	810.13
<u>ી</u> િકોલ્ણોતાલા (5%)	1,162,82	11,524,93
Untilification (15%)	201,44	207.38
Shilver Baill Direct Cost		65,0414.07
TOTAL	\$120,229.93	\$92,039
Total when employee benefits divided	\$119,128	\$93,141
equally between 2007 and 2000		

*All Paid in 2008 for 2007 and 2008

•All Silver Ball and Colleague overhead is and always has been paid from Silver Ball Colleague revenue.

No IOLTA funds have ever been used for Silver Ball or Colleague expenses.

Building Overhead

EXPENSES	2007	2008
Repairs and Maintenance Mortigage and Interest	175.00 62,191.62	0 59,559,34
TOTAL	\$62,366.62	\$59,559.34

•All building overhead is and always has been paid from the building fund which has come from NLF fundraising.

•No IOLTA funds have ever been used for building expenses.

IOLTA Income, Grants and Direct IOLTA Overhead Analysis

	2006	2007	2008	2009
*IOILIA Incomè	764,746	1,031,116	1,326,498	1,536,890
Grants Approved	359,500	900,525	000'096	1,083,500
Grants Paid	359,500	900,525	*****921,300	1,088,500
Direct IOLTA Expenses	**204,000	147,201	154,356	****140,000
Reseitwe	201,000	<114,375>	133,894	********************

*IOLTA Income is income from the previous year, i.e., 2006 column is 2005 IOLTA income, 2007 is 2006 IOLTA income, etc.

**Direct and indirect IOLTA expenses were not separated for 2006. Thus, this number is Total IOLTA expenses.

 *** Two grantees did not receive second half grants because of noncompliance with reporting. ****These are budget projections.

IOLTA Income, Grants and Direct IOLTA Overhead Analysis

- / - / - /

	2006	2007	2008	2009
% of Approved 47019% Grants to Income		87,33%	72.37%	70,50%
% of Paid Grants 47.01% to Income	47.01%	87.33%	**69.43%	70.50%
% of Direct IOLTA Expenses to Income	*26.67%	14.28%	11.64%	9,119%
% of Reserve to Income	26.28%	<11.09%>	10.09%	15.18%

*Direct and indirect IOLTA expenses were not separated for 2006. Thus, this percentage is Total IOLTA expenses to income.

 ** Two grantees did not receive second half grants because of noncompliance with reporting.

IOLTA Income, Grants and Total Overhead Analysis

	2006	2007	2008	2009
*!OILTA Income	: <i>7</i> /64,7/4/6	1,031,116	1,326,498	1,536,890
Grants Approved	359,500	900,525	000'096	1,083,500
Grants Paid	359,500	900,525	921,300	14,088,500
Total IOLTA Overhead	204,000	244,966	271,304	200,000***
Reseive	201,000	<1114,375>	133,894	258,390

*IOLTA Income is income from the previous year, i.e., 2006 column is 2005 IOLTA income, 2007 is 2006 IOLTA income, etc.

**Reserve in 2008 was completely depleted in December 2008 because \$405,198 of first Half of 2009 grants paid in December 2008 instead of January 2009.

***These are budget projections.

IOLTA Income, Grants and Total Overhead Analysis

	2006	2007	2008	2009
% of Approved 4,7,10% (Sremis to		<u>87,33%</u>	72.37%	70.50%
% of Paid Grants 47.10% to Income	47.10%	87.33%	69,45%	70.50%
% of Toizel IOLTA 26.67% Overhead to Income	<u> 26.67%</u>	24,24%	<u>20,45%</u>	13,01%
% of Reserve to Income	26.63%	<11.09%>	10.09%	16.49%

The goal of the NLF is to reduce its overhead without sacrificing its goals of:

- 1. Ensuring that all Nevada attorneys have their IOLTA's with preferred partner banks.
- 1. Ensuring that as many Nevada banks as possible are participating as NLF preferred bank partners.
- 1. Raising significant funds outside of IOLTA in order to benefit Nevada's legal service providers and the Access to Justice Commission (ATJC).

As a result the NLF is implementing the following overhead policies immediately:

- 1. The NLF will decrease its direct and indirect IOLTA expenses by 25% in 2009.
- expenses in 2009. (This is personally guaranteed by Robert income, sufficient to pay for 100% of the NLF direct IOLTA 2. The NLF guarantees it will raise funds, outside of IOLTA Eglet and the Mainor Eglet Cottle law firm.)
- The NLF will raise funds, outside of IOLTA income, sufficient to pay for 75% of both direct and indirect IOLTA expenses for
- 4. The NLF will raise funds, outside of IOLTA income sufficient to pay for 80% of both direct and indirect IOLTA expenses for
- The NLF will raise funds, outside of IOLTA income, sufficient to pay for 85% of both direct and indirect IOLTA expenses for

As a result the NLF is implementing the following overhead policies immediately:

- 6. The NLF will raise funds, outside of IOLTA income, sufficient to pay for 90% of both direct and indirect IOLTA expenses for
- The NLF will raise funds, outside of IOLTA income, sufficient to pay for 95% of both direct and indirect IOLTA expenses for
- The NLF will raise funds, outside of IOLTA income, sufficient to pay for 100% of both direct and indirect IOLTA expenses for 8
- pay for 100% of both direct and indirect IOLTA expenses for all The NLF will raise funds, outside of IOLTA income, sufficient to future years, 9.
- endowment. However, the NLF Board of Trustees may use the resources or the NLF endowment if it becomes necessary 10. Colleague funds will continue to go toward the NLF to meet the above stated overhead goals.

As a result the NLF is implementing the following overhead policies immediately:

- 11. The NLF is developing a comprehensive fundraising plan in significant additionally funding for the Nevada legal service providers, Access to Justice Commission and law related order to meet these overhead goals as well as provide education.
- 12. Mortgage and interest payments will continue to be paid out of building funds raised outside of IOLTA income. The NLF will have the building paid off by the end of 2009.
- 13. Silver Ball and colleague expenses will continue to be paid from Silver Ball and colleague revenue.
- income and fundraising from sources outside of IOLTA income. 14. Fundraising expenses outside of IOLTA will be financed with

As a result the NLF is implementing the following overhead policies immediately: 15. An annual budget will be prepared which will specifically allocate NLF expenses to each of the NLF purposes:

A. Direct IOLTA expenses

B. Indirect IOLTA expenses - IOLTA Campaign

C. Silver Ball D. Colleagues

E. Fundraising outside of IOLTA

F. Building

Nevada Law Foundation Recommended Changes to Nevada Supreme Court Rule 216

216.1(a) Change "a major portion" to "a significant majority of all violence and to children protected by or in need of protection IOLTA funds shall be disbursed for the purposes of providing legally-related services to the poor, to victims of domestic of the juvenile court."

216.2. Change "nine to twenty-one", change "six to sixteen", and violence and children protected by or in need of protection of composed of twenty-one members. Sixteen of the members shall be members in good standing of the state bar and five acquainted with the needs of the poor, victims of domestic governing body of the designated bar foundation shall be change "three to five", so that it reads as follows: "the shall be lay persons who have knowledge of and are the juvenile court."

216.3 Change terms from two years to four years and remove term limits.

Nevada Law Foundation Recommended Changes to Nevada Supreme Court Rule 216

216.4 and 5 Change to Supreme Court appointing eight attorneys governors appointing eight attorneys and two laypersons every four years starting in the second year between the Supreme and three laypersons every four years and the board of Court four year appointments.

Add that "the chairman and/or vice-chairman and/or designated Add that "the chairman and/or vice-chairman and/or designated foundation shall serve as a non-voting member of the service foundation shall serve on the Access to Justice Committee, member of the governing body of the designated bar member of the governing body of the designated bar providers directors board.

35

IOLTA Distribution Formula/Reserve Policy

GOALS:

- 1. Review reserve policy and provide recommendations,
- Develop recommendations for distribution formula of IOLTA funds.
- Provide recommendations.

Nevada Law Foundation IOLTA Reserve Policy Adopted December 1992

Plithoge of an Molfa Reserve:

has fallen below projections, and to provide grants as needed at a time tirtumstance. To provide grantees with a reasonable period of financial The IOLIA reserve has been established to provide a source for grants and to meet grant commitments during a fiscal year when IOLTA income of low performance or the loss of the JOLTA program and to assist grantees who experience fiscal crisis due to an unforeseen

Adding to the Tolly Reserve:

designated for reserve, 10 percent in 1994, and a minimum of 10 percent for each year there after. The WLF Board in its discretion may place IOLTA funds in excess of the amount committed to grants for IOLTA In each year beginning in 1993 with 5 percent of 10073 income expenses and for costs of running the JOLTA program.

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A maximum cap was not to be established. The goal amount is to be able to fund existing grantees at current level for one full year.

Distribution of the Reserve:

Except in extreme circumstances, no more than 25 percent of the IOLTA reserve may be distributed to assist grantees who are experiencing fiscal crists during a fiscal year.

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investment window should be one year or less and funds should be The NLF risk tolerance for the IOLTA Reserve is very low; the exposed to minimal ups and downs.

Nevada Law Foundation IOLTA Reserve Policy Amended January 2009

Purpose of an IOLTA Reserve:

source for grants and to meet grant commitments during a projections, and to provide grants as needed at a time of low performance or the loss of the IOLTA program and to assist grantees who experience fiscal crisis due to an unforeseen circumstance. To provide grantees with a The IOLTA reserve has been established to provide a fiscal year when IOLTA income has fallen below reasonable period of financial stability.

Adding to the IOLTA Reserve:

In each year a maximum of 10 percent of IOLTA income will be designated for reserve.

Nevada Law Foundation IOLTA Reserve Policy Amended January 2009

Maximum Reserve:

children protected by or in need of protection of the Juvenile Court, The goal amount is to have enough in the reserve account to equal balance equals 75 percent of the amount of the previous years 75 percent of the amount granted in the previous year to legal and any other grantees. In an year where the reserve account service providers. For the poor, victims of domestic violence, grants no contribution to the reserve account will be made.

Distribution of the Reserve:

Except in extreme circumstances, no more than 50 percent of the IOLTA reserve may be distributed to assist grantees who are experiencing fiscal crisis during a fiscal year.

IOLTA Reserve Investment Plan:

investment window should be one year or less and funds should be The NLF risk tolerance for the IOLTA Reserve is very low; the exposed to minimal ups and downs.

NLF Reserve Policy

PREVIOUS	NEW
Goal of 10% of IOLTA gramus each year	Goal of 10% of 101.77A grants each year
No ambual cap	Cap of 10% of 10LTA grants in that year,
Goal of 100% of 101.TA graints in subsequent year	Goal of 75% of IOLTA graints in previous year
No total cap	Totall cap of 75% of IOLTA grants in previous year

NLF Recommended IOLTA Distribution Plan

After overhead and the reserve amount is set aside the balance of IOLTA income will be divided as follows:

90% will be granted to the legal aid providers of Nevada which consists of: 1. LACSN - Legal Aid Center of Southern Nevada

WLS - Washoe Legal Services
 NLS - Nevada Legal Services
 VARN - Volunteer Attorneys of Rural Nevada
 LVSLP - Las Vegas Senior Law Project

6. WSLP - Washoe Senior Law Project

agree each year, they may divide these funds between If the Executive Directors of the six legal aid providers their six programs as they desire.

NLF Recommended IOLTA Distribution Plan

of IOLTA funds between them in any given year, then the NLF cannot agree on how to divide the legal aid providers portion Board of Trustees will make the decision on how this portion of IOLTA funds will be divided between the six legal aid If the Executive Directors of the six legal aid providers <u>providers.</u>

Among the factors the NLF Board of Trustees will consider, if they make the decision on how the legal aid providers portion of the IOLTA funds will be divided are:

- 1. The geographic origin of the funds; and
 - 2. The needs of each provider

The remaining 10% of IOLTA income shall be granted as the NLF Board of Trustees deems appropriate keeping in mind the purposes of the IOLTA funds as set forth in NSCR 216.

The Three Levels – Strategic Goals, Objectives and Actions

LEVEL	FOCUS	EXAMPLE
High Altitude	Strategic Direction	Ensure Financial Sustainability
		of the organization
Low Altitude	Objective	Build the Annual Giving
		fundraising program by 30%
		through 100 new donors by
		December 2008 –
		Development director and
		annual giving team
On the Ground	Action Steps	Train board and staff on
		annual giving techniques
		Write letters and mail in
		October and March 2008

Building Strategic Goals:

Strategic goals describe far reaching goals that can be realized over a 3-5 year period. Usually 4 or more strategic goals are identified in a strategic planning process Below are samples of strategic directions. They usually result in internal and external strengthening and growth of the organization.

Sample Strategic Directions:

- Ensure Fundraising Sustainability
- Achieve Academic Excellence
- Ensure Expertise, Leadership and Advocacy
- Ensure Financial Sustainability
- Develop a High Functioning Board
- Build Organizational Capacity

Carole A. Fish, M.Ed., CFRE Consultant FISH+LEWIS Consulting

NEVADA LAW FOUNDATION STRATEGIC PLANNING RETREAT II January 30, 2009

VISION

A Vision is made up of:

- Specific accomplishments
- Stronger relationships
- Expanded infrastructure
- Success and results
- If you are a visual person imagine the committees, staffing, events, donor relationships that are possible and how they would play out in the organization
- Higher purpose not self-serving
- Far reaching your best guess at what is possible
- Linked to a community solutions, not just community benefit

High Performance Organizations are:

- Highly intentional
- Keenly strategic
- Well timed
- Distinctive
- Donor <u>and</u> program centered
- Volunteer driven
- Understand that they exist for community solutions, not just benefit
- Donor lifetime patterns
- Embrace their size and ability
- Do more with less

Mapping It Out

Below are the strategic and fundraising steps we will be following to develop plans for the next 3-5 years. The green steps require new definitions needed before a vision can be constructed. The blue steps require team participation to create the strategic and fundraising plans.

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DEFINITION ARTHUR		CREATING (TEAM)
DEFINING (CAROLE)	 	CREATING (TEAM)

Strategic Planning

Step 1 What is your role?

Step 2 What is your level of maturity (high performance organization)?

Step 3 Who are your constituents and what are their mandates?

Step 4 What is your vision?

Step 5 What are your objectives?

Step 6 What are Your Values?

NEVADA LAW FOUNDATION

STRATEGIC PLANNING RETREAT 2008

January 30, 2009 10:00 a.m. to 5:00 p.m.

AGENDA

Morning

10:00 a.m. Welcome and Opening Remarks

David McElhinney, Esq., Chair

Nevada Law Foundation

Suzan Baucom, Executive

Director

10:10 a.m. IOLTA Update

Robert Eglet, Esq.

Vice Chairman

11:00 a.m. Strategic Planning

Carole Fish, M.Ed., CFRE

and Group

Expectations and Roundtable Issues Review

Mapping

11:30 a.m.

Working Lunch

Afternoon

12:00 p.m. Strategic Planning

Carole Fish and Group

Defining Roles

Defining Constituents and their Mandates

Creating the Vision

Developing Strategic Goals and Objectives

2:45 p.m.

Final Remarks and Adjournment

David McElhinney

December 4th and 5th, 2008

EXPECTATIONS Everything will be reviewed We need a fundraising strategy that makes sense What is the mission of the Nevada Law Foundation – it needs to be clear IOLTA – we need to consider a formula that takes in account geographic distribution so there is no dispute We need an end to the fighting and rumbling Alps report needs to be addressed and put to bed High volume of services, everything in our organization is in a state of urgency Mevada Law Foundation shares our sense of urgency We need to be working with the banks We need to help the legal needs of the poor The Nevada Law Foundation needs a strategic vision We have a sense of urgency to raise more money 💉 What is going on in the other parts of the world in terms of IOLTA We need to create an opportunity Regain confidence from the legal community Be held accountable Be a working partner of access to Justice We need to be clear about our direction Are we going forward with Nevada Law Foundation We need to work together with legal provides and define ways to do that We need to be more involved in IOLTA Are we competing for the same dollars We need more financial resources We need to maximize IOLTA revenue to the poor IOLTA needs to be operated in a business fashion We need to achieve a fair and just society = to do this, we need more resources We need to raise more money We need a greater consensus We need to improve access to justice – it is the mission of the Nevada Law Foundation This is exciting We did a Civic Assessment - we need to use this We need to maximize our income from IOLTA by getting the best rates and involving all of the banks We need a financial plan, business plan and marketing plan . We need to enhance fundraising – setting targets Access to Justice needs to be supported We need to make presentations to the community on the Legal needs assessment

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NEVADA LAW FOUNDATION

STRATEGIC PLANNING RETREAT I

December 4th and 5th, 2008

Roundtable Issues and Opportunities

Communications and Fundraising

- Pro bono luncheon is a great example of engagement by all
- This isn't an amateur sport!
- We need a mid-year meeting and better communications
- Communication is everything a breakdown in communications means we don't accomplish what we need to accomplish
- We need to communicate what the money is doing what it is accomplishing
- We need stories and the end result
- We should consider a statewide focus for fundraising -- a coordinated effort
- This has been a good dialogue we have been operating in the dark

IOLTA

- What is the right structure for Nevada Law Foundation? For IOLTA?
- Either there is action or other actions will happen
- We have a window of opportunity with the banks and we don't want to lose it
- We have resources to help with our relationships with the banks
- We should not use IOLTA to pay for operations

Nevada Law Foundation Infrastructure

- Staffing structure needs to be looked at for the Nevada Law Foundation
- We have a sense of urgency we are fighting for our survival
- A lot of misconceptions need to be corrected
- There needs to be a strong action plan
- We "crossed" the street
- I am inspired by what is possible
- We need a larger board and more input
- More meetings with the board if we are really going to get any work accomplished

Community Solutions

- What is the structure in relationship to Access to Justice? This needs to be created. It is an
 opportunity
- The next 10-15 years will be totally different
- We need serious support from the top down
- Take drug problems addictions are increasing we need to look ahead and plan for this
- We need to plan for a level of increased services
- We need new perspectives our product needs to be better with higher yields and lower administrative costs

POTENTIAL ROLES FOR THE FUTURE

 Strengthen Resource Infrastr 	ructure
Fundraiser	✓ Shows accountability and expertise. You are a model for all law foundations in the country and for non profits in the state as to how to raise financial resources
Endowment Builder	✓ Shows commitment to the stability of the community
Resources to Strengthen Capacity of Nonprofits	✓ Shows commitment to excellence in the delivery of services. Special resources to strengthen non profits, their leadership and their ability to work strategically

 Strengthen Program in the C 	ommunity
Grant maker	 ✓ Shows expertise as to what programs are really working in the community ✓ Good Housekeeping Seal of Approval ✓ (Community Foundations and United Way
	are often in this role)
Expertise/Professional Leadership	 ✓ Shows commitment to sharing expertise and being involved. ✓ Providing leadership on boards, collaborations, commissions
Convener of Ideas/ New Solutions	✓ Show commitment to innovations and engagement.
	 ✓ Provides resources and places for dialogue, produces articles, workshops on relevant topics





MEMORANDUM

From: Kristina Marzec, Director

To: Access to Justice Commission

Date: February 3, 2009

Re: IOLTA COMPARABILITY RESEARCH

This memorandum was prepared with assistance from Suzan Baucum of the Nevada Law Foundation.

Brief Issue:

Chief Justice Hardesty requested that the Commission and the Board of Governors consider effecting IOLTA comparability through amendment to one or more Nevada Supreme Court Rules.

Research Background:

In preparing this response, I spoke with a representative from half of the 18 states which have adopted substantive comparability^a and the ABA, and also reviewed each comparability rule text (attached hereto). Suzan Baucum provided substantial input from the national IOLTA community, and the local banking community.

The critical common elements in the process in each state involved:

- 1. Negotiations and backing by the state banking association(s):
- 2. Backing by the relevant State Bar Committee if applicable, and governing board;
- 3. A mechanism by which banks were given significant time to achieve the targeted comparability prior to effective date of the rule or legislation;
- 4. A benchmark with **carefully crafted language** and **review of current banking rates** to insure that banks were being asked to provide an identifiable rate closely tied to similarly situated non-IOLTA accounts (this was key in avoiding threatened litigation); and
- 5. A built-in review system to allow fluidity of the market, either through the rate itself or regulatory oversight (usually the local IOLTA Foundation).

Relevant Potential Rules discussion:

There are two rules in Nevada that apply to trust accounts we have been discussing for potential amendment: SCR 78.5 (establishing approved financial institutions, a State Bar function, which is typical of national standards) and SCR 217 (creation and maintenance of trust accounts).

^a AL*, AR, CA, CT*, FL*, IL, LA, MD, MA, ME, MI*, MN, MS, MO, NJ*, NY, OH*, TX. (*rule more than one year old)

In reviewing and discussing what others states have done, we see RPC 1.15 is the highly favored rule of choice for comparability because it reinforces the message that this rule regulates lawyers, not banks.

- 1. One (1), Massachusetts, governs IOLTA through IOLTA Committee Guidelines;
- 2. One (1), Texas, has rules of court specific to its **Access to Justice Foundation**, which govern IOLTA;
- 3. Two (2), California and Florida, have legislation that interlocks with the court rules;
- 4. One (1), Maryland, governs IOLTA through its **version of Nevada Rule 78.5** (Maryland Bar Rule 16-610); and
- 5. The remaining large majority of thirteen (13) have amended Rule of Professional Conduct 1.15 (Safekeeping Property) with fairly elaborate rules;

All states have had an older, generic comparability rule similar to that currently in NSCR 217(2) which states, in relevant part,

"The rate of interest payable upon any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular nonattorney depositors."

As we have seen here and around the country, this general language is ineffective and unenforceable language.

Many comparability states establish the benchmark, and then add an honor roll program to encourage and promote those banks that go above and beyond. Maryland's "Banking on Justice" IOLTA honor roll program serves as an excellent model for a similar program, whose preferred banks receive benefits to include:

Highlighted on MSBA & MLSC websites; Active link from MLSC website to Honor Roll member website; Prominently featured in Maryland's premier legal newspaper, The Daily Record; Promoted at all MLSC events; Promoted and prominently featured at MSBA events, including MSBA Annual Meeting; Featured at various local & specialty bar meetings; Broad publication of Honor Roll members in local & statewide bar publications & newsletters; Promoted at semi-annual MSBA Professionalism Course, a mandatory program attended by every newly-admitted Maryland attorney.

Options in Summary:

- 1) Amend RPC 1.15 to establish a definition of comparability, which would also allow for additional language on such issues as spot auditing for compliance with SCR 217;
- 2) Amend SCR 217 to simply replace the current language with "The rate of interest payable ... shall be equivalent to one of the following..." and insert the benchmarks, also incorporating a yearly review by either the Nevada Law Foundation, the Access to Justice Commission, the State Bar Board of Governors, or some combination thereof:
- 3) Amend SCR 78.5 to marry comparability with approved financial institutions, which is highly disfavored across the board from my discussions; or
- 4) Create an entirely new rule.

Comparability Generally:

In the event other options to regulating comparability directly are desired, the ABA identifies four (4) generally accepted options to achieving comparability by rule:

- 1. Create an investment product, such as repurchase agreements (REPOS) or a Government Money Market Fund, where the banks can make a profit on IOLTA funds through those vehicles...
- 2. Give financial institutions the option to pay the higher interest rate that would be available under a REPO or Government Money Market Fund on an existing account ("emulate" the comparable rate).
- 3. Benchmarking. Approximate what the rate (net of reasonable services charges and fees) would be on average in this market, represented as a percentage of the federal funds target rate). The average benchmark rate found in comparability rules nationally is about 60% of the federal funds target rate.
- 4. Negotiated rate. Not rule based. Focus on equitable treatment approach through negotiations (treat like other similarly-situated non-IOLTA accounts). Pair with a recognition program for banks which voluntarily exceed the compliance level.

Compliance monitoring:

However comparability is established, but in particular with regulated benchmarks, it is critical that one entity or person (almost universally the IOLTA foundation) monitor the market and compliance of both banks and lawyers.

Benchmarks:

The three benchmarks previously approved by the Commission are a minimum of:

- 1. .50 basis points of the 30-Day LIBOR;
- 2. Equal to the Fed Fund Rate (which was 2% at the time but is now at or near zero);
- 3. A flat 2% for one year.

Each of these requires a written agreement with no negative netting or other fees.

The Commission has temporarily halted the Fed Fund Rate for its Preferred List because it is now so low; this is the rate that the rest of the country is tied to, and it is causing a major crisis for legal services nationally.

- Floor and ceiling: A unique solution that we have been discussing for Nevada would be to keep the above three benchmark options, but for the two tied to an index, add language that established the higher of the index or "no lower than 1%" or "no lower than .50 basis points above the Fed Discount Rate." This will keep true comparability from the banking perspective and allow for fluctuations in the market during the year.
- Verifying what banks are really paying nonattorney depositors.

There is a research company called "Informa Research Services" which the national community uses to monitor banking rates for any number of reasons. The IOLTA community

uses them almost exclusively as they are experienced and very knowledgeable of the needs and concerns of the IOLTA community and the banks which fund them. I contacted Inform and got a rate quote from the Nevada representative for deposit reports in Nevada: \$100 per institution for a one time report and \$235 per institution for a monthly report. Given that 70% of our deposits are in three banks, it seems reasonable that such a report be considered for those three banks if we expect to be in negotiations over the issue of what rates are reasonable and comparable, and when adjusting rates.

Legislation

The ABA reports that there is currently no pending IOLTA litigation since *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S.Ct. 1406 (2003).

On March 26, 2003, the U.S. Supreme Court issued its decision in *Brown v. Legal Foundation of Washington* 538 U.S. ____ (2003), upholding the constitutionality of IOLTA under the Just Compensation Clause of the Fifth Amendment. Justice Stevens authored the 5-4 majority decision, which Justices O'Connor, Souter, Ginsburg and Breyer joined. In its ruling, the Court held that even assuming that a law requiring that the interest generated on IOLTA accounts be transferred to a different owner amounted to a per se taking, such a taking was for a valid public use and the amount of just compensation due was zero. As a result, the Court found that the operation of the IOLTA program in Washington does not violate the Fifth Amendment.

Analysis of Brown Decision (presented by the ABA IOLTA Committee)

The Court's analysis began by establishing that the text of the Fifth Amendment "confirms the state's authority to confiscate private property", so long as two conditions are met: "the taking must be for a 'public use' and 'just compensation' must be paid to the owner." The Court disposed of the "public use" question by stating that ".. the overall, dramatic success of these programs in serving the compelling interest in providing legal services to literally millions of needy Americans certainly qualifies the Foundation's distribution of these funds as a 'public use' within the meaning of the Fifth Amendment."

The Court then discussed the type of taking, if any, involved in the case. The petitioners alleged two takings claims based on (1) the requirement that certain types of client funds be placed in an IOLTA account and (2) the transfer of interest from an IOLTA account to the Washington IOLTA program. Applying a regulatory taking analysis, the Court concluded that the placement of funds in an IOLTA account was not a taking "because the transaction had no adverse economic impact on petitioners and did not interfere with any investment-backed expectations." As to the alleged taking of interest, the Court indicated that the per se analysis was appropriate to the facts of this case and consistent with its previous holding in *Phillips v. Washington Legal Foundation* that the interest is the property of the clients. The majority assumed that the petitioners' "interest was taken for a public use when it was ultimately turned over to the Foundation." This assumption, however, did not end the Court's inquiry.

The Court held that, in any event, there was no constitutional violation because no just compensation was due. In essence, the Court found that the plaintiffs in the case lost nothing of value given the fact that transaction costs would have outweighed the small amount of gross interest their individual accounts would have earned. In reaching its conclusion, the Court applied a long line of Fifth Amendment cases on just compensation, stating: "[J]ust compensation required by the Fifth Amendment is measured by the property owner's loss rather than the government's gain."

Finally, the Court addressed the plaintiffs' argument that funds could have mistakenly been deposited in an IOLTA account when the interest generated would actually have exceeded the transaction costs involved, contrary to the law establishing the IOLTA program in Washington State. While recognizing that mistakes might occur, the Court pointed out that the responsibility of ensuring that only qualifying funds are deposited in IOLTA accounts rests with the entity making the deposits (in this case the Limited Practice Officers handling real estate escrows). While the property owner might have a claim against the entity making a faulty deposit, that faulty deposit would not involve any state action subject to Fifth Amendment protection.

The Dissents

Justice Scalia authored a spirited dissent, which was joined by Chief Justice Rehnquist and Justices Kennedy and Thomas. In it, IOLTA was likened to a "Robin Hood Taking, in which the government's extraction of wealth from those who own it is so cleverly achieved, and the object of the government's larcenous beneficence is so highly favored by the courts (taking from the rich to give to indigent defendants) that the normal rules of the Constitution protecting private property are suspended." Justice Scalia argued that the fair market value of the interest earned by the clients' principal should be the test of just compensation, rather than the net interest approach used by the majority.

Justice Kennedy also issued a brief additional dissent in which he raised First Amendment concerns regarding IOLTA. Kennedy wrote: "The First Amendment consequences of the State's action have not been addressed in this case, but the potential for a serious violation is there. . . One constitutional violation (the taking of property) likely will lead to another (compelled speech)."

Conclusion

The cleanest method to establish comparability by rule appears to be amending RPC 1.15, ensuring the benchmarks are worded with viable alternatives for banks which reasonably reflect the market, and establishing an annual review process to ensure that the benchmarks remain viable. For rates tied to an index, a floor should be established to avoid a future crisis such as the one affecting the rest of the country tied to the Fed Target Rate.

Understanding the urgency Nevada faces, it nonetheless appears advisable to work with the Nevada Bankers Association at the front end for support of what by all accounts appears to be a very reasonably crafted proposal, avoiding misconceptions about the actual proposal and push back later when the proposal is opened for public comment.



APPENDIX A

Rule 1.15 SAFEKEEPING PROPERTY

Definitions. As used in this rule, the terms below shall have the following meaning:

"IOLTA account" means a pooled interest— or dividend-bearing trust account benefiting the Alabama Law Foundation or the Alabama Civil Justice Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in section (q).

"Interest- or dividend-bearing trust account"
means a federally insured checking account or a
business checking account with an automated
investment feature, such as an overnight sweep and
investment in a government money market fund or
daily (overnight) financial-institution repurchase
agreement invested solely in or fully
collateralized by U.S. Government Securities. A
daily financial-institution repurchase agreement
may be established only with an eligible
institution that is "well capitalized" or
"adequately capitalized" as those terms are
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, at the time of the investment, have total assets of at least \$250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay except as permitted by law.

"Allowable, Reasonable Fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) a reasonable IOLTA account administrative fee.

- "U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.
- a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) un-earned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver Interest or dividends, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after

termination of the representation.

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

- (b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding that property.
- (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
 - (d) A lawyer shall not make disbursements of a

client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of noncollection, replace the funds in the separate account.

(e) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution, and overdraft created thereby is not paid within 3 business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this Rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of

General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this Rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this Rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule and shall hold harmless the financial institution for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this Rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(f) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§ 34-3-17 and -18, shall maintain a separate account to hold funds of a client or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold

funds for clients or third persons, is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(g) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.

In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited, as well as the estimated cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person, the ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affects the ability of the client or third person funds to earn income in excess of the costs incurred to secure such income. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination of whether the funds of a client

or third person can earn income in excess of costs as provided in (g) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment.

Offering IOLTA accounts is voluntary for financial institutions. Lawyers may only place trust accounts in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.

A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its non-IOLTA customers) by either using the identified product type as an IOLTA account or paying the equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

- 1. An interest bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.
- 2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money market funds as described in the definitions.
- 3. A government (such as for municipal deposits)

interest-bearing checking account.

- 4. A checking account paying preferred interest rates, such as money market or indexed rates.
- 5. Any other suitable interest or dividend bearing account offered by the institution to its non-IOLTA customers.

As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, which would otherwise qualify for investment options described in (1) through (4) above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

- 1. Accounts that have limited check-writing capability required by law or government regulation may not be considered as comparable to IOLTA in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.
- 2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation and Alabama Civil Justice Foundation the highest interest or

dividend rate for each of the accounts they offer within the above listed account types. The foundations will certify participating financial institutions' compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted at least quarterly to the Alabama Law Foundation or the Alabama Civil Justice Foundation, as the lawyer shall designate.

Interest or dividends shall be calculated in accordance with the institution's standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.

Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer

maintaining the IOLTA account.

Fees or charges in excess of the interest or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or waive any or all fees on IOLTA accounts.

A statement should be transmitted to the Alabama Law Foundation or the Alabama Civil Justice Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, if any, the average account balance for the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

- (h) All interest or dividends transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:
 - (1) to provide legal aid to the poor;
 - (2) to provide law student loans;
 - (3) to provide for the administration of justice;
- (4) to provide law-related educational programs to the public;

- (5) to help maintain public law libraries; and
- (6) for such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.
- (i) All interest or dividends transmitted to and received by the Alabama Civil Justice Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:
- (1) to provide financial assistance to organizations or groups providing aid or assistance to:
 - (A) underprivileged children;
 - (B) traumatically injured children or adults;
 - (C) the needy;
 - (D) handicapped children or adults; or
 - (E) drug and alcohol rehabilitation programs.
- (2) to be used in such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.
- (j) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

RULE 1.15. SAFEKEEPING PROPERTY AND TRUST ACCOUNTS

- (a) Safekeeping property.
 - (1) A lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
 - (2) Property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.
 - (3) Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client.
 - (4) A lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order.
 - (5) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons.
 - (6) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (b) Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.
 - (1) Funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.
 - (2) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
 - (3) A lawyer may deposit funds belonging to the lawyer or the law firm in a client trust account for the sole purposes of paying bank services charges on that account, or to comply with the minimum balance required for the waiver of bank charges, but only in the amount necessary for those purposes, but not to exceed \$500.00 in any case. Such funds belonging to the lawyer or law firm shall be clearly identified as such in the account records.

- (4) Each trust account referred to in section (b) (1) shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government.
- (5) Each such trust account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:
- (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
- (ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.
- (6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account ("IOLTA" account) for such funds. The account shall be maintained in compliance with the following requirements:
 - (i) The trust account shall be maintained in compliance with sections (b)(1) -(b) (5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;
 - (ii) No earnings from the account shall be made available to the lawyer or law firm; and,
 - (iii) The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include any items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.
- (7) All client funds shall be deposited in the account specified in section (b)(6), unless they are deposited in a separate interest-bearing account ("non-IOLTA" account) for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in this Rule.
- (8) The interest paid on the account shall not be less than, nor the fees and charges assessed greater than, the rate paid or fees and charges assessed, to any non-lawyer customers on accounts of the same class within the same institution.
- (9) The decision whether to use an "IOLTA" account specified in section (b)(6) or a "non-IOLTA"

account specified in section (b)(7) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

- (i) The amount of interest which the funds would earn during the period they are expected to be deposited; and,
- (ii) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.
- (10) All lawyers who maintain accounts provided for in this Rule, must convert their client trust account(s) to interest-bearing account(s) with the interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six months from the date of the order adopting this Rule, unless the account falls within subsection (b)(7). Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.
- (11) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on a form provided by and in a manner designated by the Clerk of the Supreme Court.
- (12) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas IOLTA Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.

COMMENT:

- [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.
- [2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b)(3) provides it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the trust account funds are the lawyer's.
- [3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fee owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed of the funds shall be promptly distributed.
- [4] Paragraph (a)(6) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender property to the client until the claims are

resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

- [5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.
- [6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.



STATE BAR OF CALIFORNIA LEGAL SERVICES TRUST FUND PROGRAM Interest on Lawyers' Trust Accounts (IOLTA)

Guide for Financial Institutions

These guidelines are designed to answer questions regarding your administration of Interest on Lawyers' Trust Accounts (IOLTA). The interest generated by these accounts fund the Legal Services Trust Fund Program (LSTFP) of the State Bar of California.

Background: The IOLTA Program

The IOLTA program, authorized by the legislature at Business & Professions Code §§6211 et seq. ("Statute") requires lawyers to place short-term or nominal client funds into interest- or dividend-bearing accounts. Accounts that pool nominal and short-term deposits and pay the interest or dividends to the Legal Services Trust Fund Program are called "IOLTA accounts." Interest and dividends generated from IOLTA accounts are used to fund legal services to indigent people, seniors and people with disabilities. These funds are an integral part of a comprehensive system to ensure that low-income Californians have access to justice in the State of California. Since 1981, California bankers and lawyers have partnered to achieve access to justice for all Californians.

All funds that a lawyer or law firm receives or holds for the benefit of a client or other person in connection with the performance of a legal service or representation by a lawyer must be deposited in one or more trust accounts, but not every trust account established by a lawyer or law firm will be an IOLTA account. It is the attorney or law firm's obligation to determine which funds should be held in an IOLTA account – only those funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income should be held in an IOLTA account. If a lawyer or law firm determines that funds should be held for the benefit of individual clients or third persons, then the lawyer or firm will place the funds in a non-IOLTA account that will usually bear the social security number or tax identification number of the individual client, third person, or law firm.

Eligible Financial Institutions

Participation in the IOLTA program is voluntary for financial institutions, but a lawyer cannot keep an IOLTA account at a financial institution that does not meet the requirements set forth in the Statute.

Duties of IOLTA Eligible Institutions

An IOLTA eligible institution must pay comparable interest rates or dividends as required by Statute (the "comparability requirements") and may choose to do so in one of three ways:

Establish IOLTA accounts as comparable rate products: Comparable rate products are eligible accounts that earn no less than the highest interest rate or dividend generally available from the institution to non-IOLTA account

customers when the IOLTA account meets the same minimum balance or other eligibility qualifications;

- **Emulate the comparable product rate**: Instead of converting IOLTA accounts to higher paying products such as money market or other business sweep accounts, an institution can simply choose to pay the equivalent rates, less chargeable fees, if any, of those products in the IOLTA deposit accounts meeting the same minimum balance and other requirements. Financial institutions that select this option benefit from ease of administration and the option to keep IOLTA funds on the financial institution's operations balance sheet.
- Pay the Established Compliance Rate: In lieu of paying the comparable rate, financial institutions may opt to pay the "Established Compliance Rate." The initial Established Compliance Rate will be an amount on funds that is equal to 68% of the Federal Funds target rate as of the first business day of the quarter or other IOLTA remitting period, which amount is deemed to be already net of allowable reasonable fees. This Established Compliance Rate may be adjusted once a year by the LSTFP, upon 90 days written notice to financial institutions participating in the IOLTA program.

At a minimum, interest or dividends must be calculated in accordance with the institution's standard practice for non-IOLTA customers with comparable accounts, but institutions may elect to pay a higher rate on IOLTA accounts.

Eligible Accounts

An "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

- 1. An interest-bearing checking account.
- 2. An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund.
- 3. Any other investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et

seq.), and, at that time of the investment, shall have total assets of at least \$250,000,000.

Although the rate comparability requirement applies to all IOLTA accounts, the amended IOLTA statute affects most significantly those IOLTA accounts whose high balances and other characteristics qualify them for investment sweep accounts, premium checking accounts, or other high-rate accounts offered to non-IOLTA customers holding comparable balances. Typically, those "high balance" accounts hold average balances of \$100,000 or more. Financial institutions do not have to create new products if these are not already offered to other customers.

The LSTFP will work with both financial institutions and lawyers whose accounts are affected to facilitate implementation of the rate comparability provision. Financial institutions should let lawyers who call know that they are working with the LSTFP as to affected accounts, and can feel free to direct any lawyer inquiries to the LSTFP.

Benefits to Financial Institutions

Participation in IOLTA is a great way for banks to show they care about the communities they serve. IOLTA grants provide needed legal service to people who otherwise would have nowhere to turn for access to justice. Because IOLTA is a charitable program serving public purposes, many financial institutions choose to waive all service charges on IOLTA accounts, choose to pay a higher than comparable rate of interest or dividends, or otherwise increase the IOLTA yield.

- The Legal Services Trust Fund Program will regularly publicize to its 157,700 active member lawyers and others, the names of those institutions that choose to contribute by voluntarily increasing the yield on IOLTA accounts to a level significantly higher than strictly required under the comparability requirement.
- A financial institution may report on its CRA Statement (for use under the Community Reinvestment Act of 1977, as amended (12 U.S.C. §2901) that it is eliminating or reducing fees on IOLTA accounts or paying higher interest rates on IOLTA accounts than on comparable business accounts to reflect its contributions to the communities in which it is located.
- A financial institution may also reflect IOLTA contributions in banking information brochures, newsletters, and annual reports to shareholders. By doing this, you let investors and customers know that the financial institution is playing an active role to support the justice system and worthwhile law-related programs in your community.

Administrative Costs to Adapt Systems

If a financial institution expects to experience administrative costs to adapt its system to comply with the provisions of the Statute or in making investment products available to IOLTA members, the financial institution should notify the LSTFP, advising of the amounts and nature

of the anticipated costs. The LSTFP will consider whether there are options to help financial institutions defray such reasonable up-front costs. Itemized costs should be submitted at least 60 days in advance for approval by the LSTFP.

Procedures to Establish an IOLTA Account

To set up the IOLTA account, lawyers will deliver to their financial institution a completed form, which can be obtained from the Legal Services Trust Fund Program, or downloaded from www.calbar.ca.gov. Most lawyers or law firms will not have more than one IOLTA account because eligible deposits can all be pooled in one IOLTA account.

Information for attorneys about opening and maintaining attorney-client trust accounts can be found on the State Bar's website at www.calbar.ca.gov.

<u>Signature Cards and Corporate Resolutions</u>: One way for financial institutions to streamline their IOLTA account procedures is to accept the attorney form and not require new signature cards or corporate resolutions when an account is enrolled in IOLTA. This form is signed by the same authorized persons who sign customary signature cards or corporate resolutions for the account.

Remittance to the State Bar

Financial Institutions may remit interest or dividend payments monthly (LSTFP's preference) or quarterly for all the accounts they hold. Interest or dividends earned on the accounts should be calculated based on the aggregate average balance of each individual IOLTA account.

Remittances are due the 10th of the month following the end of the reporting period, and will be considered delinquent on the last day of the month following the end of the reporting period. One way to facilitate the remittance process is to flag and coordinate all IOLTA accounts to the same closing date or statement cycle.

Financial institutions may:

- Hold the interest or dividends in the depositing attorney's account until remitted.
- Debit the depositing attorney's account for the interest or dividends when paid and hold it in a separate account until remitting it to the State Bar.
- Pay interest or dividends directly into a separate account until remitting the interest or dividends to the State Bar or pay interest or dividends directly to the State Bar.

Reasonable Service Charges: Financial institutions may only deduct the following service charges from the interest or dividends earned on each IOLTA account: per-check charges, per-deposit charges, monthly fees such as fees in lieu of minimum balance, federal deposit insurance fees, or sweep fees. Fees and charges must be calculated in accordance with the institution's standard practice and may be deducted only from the interest or dividends earned on the IOLTA account. These charges may not be deducted from the principal balance, and they may not be deducted from the interest or dividends earned on other IOLTA accounts. All other charges are

the responsibility of and may be charged to the lawyer or law firm account holder. Financial institutions may choose to waive any and all fees on IOLTA accounts.

Reasonable service charges include only those charges listed in the above paragraph; therefore, they do not include other costs such as the cost of check printing, deposit stamps, NSF charges, collection charges, and fees for cash management services. These other charges are deemed to be ordinary business expenses that must be paid for by an attorney or law firm that receives or disburses trust funds.

<u>Send remittance to:</u> Financial institutions may remit interest to the State Bar by check mailed directly to: The State Bar of California, Legal Services Trust Fund Program, Department 05-590, San Francisco, California, 94139; or by wire transfer to Wells Fargo Bank Routing Number: 121000248 Account Number: 4159-394709.

Reporting to the State Bar

The "IOLTA Remittance Report" allows the LSTFP to record IOLTA interest or dividends by individual lawyer/law firm IOLTA accounts, using the account number assigned by the financial institution. Submit remittance advice for each IOLTA account even if no interest or dividend is being paid for the remitting period. Information reported on the remittance advice must show the IOLTA account number, the name of the lawyer or law firm, the amount of the remittance attributable to each account maintained by each lawyer or law firm, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance on which the interest or dividends were paid (for example, average daily collected balance) for the period for which the report is made.

Electronic remittance: To improve accuracy and speed data entry, the LSTFP has instituted electronic forms for use in remittal of IOLTA statements. Templates in Microsoft Excel and a plain text format (comma delimited values) can be downloaded from the State Bar website at www.calbar.ca.gov. Electronic remittance reports should be sent to iolta@calbar.ca.gov.

Reporting to Law Firm

The financial institution must also send the lawyer/law firm holding the account a report in accordance with normal procedures for reporting to depositors. The lawyer/law firm address should be used for this statement. This statement should **not** be sent to the LSTFP.

Unproductive Accounts

If service charges exceed interest and dividends for any account during a remitting period, the financial institution has several options: 1) maintain the account and write off or absorb any uncollected charges; 2) maintain the account and accrue charges, offsetting them against future interest earnings on that account; 3) pass these service charges and costs to the lawyer or law firm customer's operating account; 4) require the lawyer or law firm to maintain a reasonable

balance in the IOLTA account to cover the excess charges/fees; or, 5) if the account is deemed "unproductive" by the LSTFP under the criteria below, close the account.

An account is "unproductive" if:

- 1. On an annual basis, the account has been negative for at least two years; and,
- 2. Where service charges would still exceed interest even if the interest rate were increased by 100 basis points

Upon notice from the financial institution that an account is unproductive, the LSTFP will send written notice to the account holder that the account holder has 60 days to make arrangements to maintain a reasonable balance in the IOLTA account to cover the charges and fees, or notify the financial institution that it will cover those charges out of a general account. If the attorney or attorney firm does not respond within 60 days, the State Bar will send 30-day notice to the account holder that it will direct the bank to convert the IOLTA account to a non-interest bearing trust checking account and that the State Bar will no longer pay for services charges/fees. The State Bar at that time will notify the bank that it should remove the State Bar's Federal Taxpayer Identification number from the account.

Tax Identification and No Withholding

In order to report to the appropriate taxing authorities, financial institutions should use the State Bar of California's Taxpayer Identification number 94-6001385 on all Interest on Lawyers' Trust Accounts. This number is to be set up as a Taxpayer Identification number and not as a Social Security number.

The State Bar is not subject to any interest withholding requirements and pursuant to regulations promulgated by the Internal Revenue Service need not file an exempt certificate unless required by the financial institution.

Adjustments and Errors

Remittance errors: The State Bar will make refunds when interest or dividends have been remitted in error, whether the error is that of the financial institution or the attorney. Attorneys requesting payment of interest or dividends on funds placed in an account in error should submit a timely request to the financial institution for a refund of interest or dividends on the identified funds. The financial institution should make a timely request in writing, accompanied by documentation of the error. As needed for auditing purposes, the State Bar may request additional documentation. In no event will the refund exceed the interest or dividends actually received by the State Bar.

<u>Reconciliation of account information</u>: Semi-annually the State Bar reconciles the information in financial institution remittance reports with the compliance reports that California attorneys

provide to us. The cooperation of financial institutions in finding and correcting errors is appreciated.

<u>Erroneous deductions</u>: If the LSTFP becomes aware that a member business expense is erroneously deducted from IOLTA funds, the LSTFP will inform the financial institution and request the error be corrected.

Miscellaneous

<u>Contact person</u>: Financial institutions are encouraged to designate an "IOLTA Contact Person" for their institution to serve as a liaison with the LSTFP. Financial institutions should advise of any new "IOLTA Contact Person" by e-mailing the contact's name, title, address, phone, fax, and email address to <u>iolta@calbar.ca.gov</u>. Also, please provide immediate notice if the financial institution acquires, merges with or is acquired by another financial institution.

<u>Distributing IOLTA procedures to branch personnel</u>: It is requested that financial institutions distribute their IOLTA procedures, and any updates, to branch personnel who most often deal directly with customers. Branch personnel may be encouraged to call the LSTFP with any questions.

Assistance is Available

The LSTFP will work with lawyers and financial institutions to make California's IOLTA program a success. Staff is available to answer questions and to help financial institutions with their IOLTA accounts. Additional copies of the Statute, relevant State Bar Rules, and IOLTA forms are available upon request, or may be downloaded from www.calbar.ca.gov.

Additionally, the LSTFP is available to assist institutions to comply with the Statute and implementing rules in the following ways:

- Discuss defraying reasonable up-front costs to adapt IOLTA compliance systems;
- Provide detailed reporting and remittance specifications, including technical support;
- Assist in identifying IOLTA accounts to be placed in higher-paying products; and,
- Coordinate communications and assistance to affected lawyers and law firms to move IOLTA accounts to higher-paying products.

For assistance or additional information, please contact our compliance auditor, Legal Services Trust Fund Program, the State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, or email iolta@calbar.ca.gov. You also can call one of the compliance auditors at (415) (415) 538-2046 or (415) 538-2227. The LSTFP welcomes your comments and suggestions.

California Business and Professions Code Section 6212, 6213

- 6212. An attorney who, or a law firm which, establishes an interest bearing demand trust account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:
- (a) The interest bearing trust account shall be established with a bank or such other financial institutions as are authorized by the Supreme Court.
- (b) The rate of interest payable on any interest bearing demand trust account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by an attorney or law firm 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.
- (c) The depository institution shall be directed to do all of the following:
- (1) To remit interest on the average daily balance in the account, less reasonable service charges, to the State Bar, at least quarterly.
- (2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any.
- (3) To transmit to the depositing attorney or law firm at the same time a report showing the amount paid to the State Bar for that period, the rate of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

6213. As used in this article:

- (a) "Qualified legal services project" means either of the following:
- (1) A nonprofit project incorporated and operated exclusively in California which provides as its primary purpose and function legal services without charge to indigent persons and which has quality

control procedures approved by the State Bar of California.

- (2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California which meets the requirements of subparagraphs (A) and (B).
- (A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.
- (B) The program shall have quality control procedures approved by the State Bar of California.
- (b) "Qualified support center" means an incorporated nonprofit legal services center, which has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.
- (c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.
- (d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.
- (e) "Fee generating case" means any case or matter which, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:
- (1) The recipient has determined that free referral is not possible because of any of the following reasons:

- (A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.
- (B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.
- (C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.
- (D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.
- (2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.
- (3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.
- (4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.
- (f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (Public Law 93-355; 42 U.S.C. Sec. 2996 et seq.).
- (g) "Older Americans Act" means the Older Americans Act of 1965, as amended (Public Law 89-73; 42 U.S.C. Sec. 3001 et seq.).
- (h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act of 1975, as amended (Public Law 94-103; 42 U.S.C. Sec. 6001 et seq.).
- (i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

CONNECTICUT

Rule 1.15 Safekeeping Property

- (a) As used in this rule, the terms below shall have the following meanings:
 - (1) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a <u>reasonable</u> IOLTA account administrative or maintenance fee.
 - (2) An "eligible institution" means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the federal government, or (ii) an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in paragraph (e)(4) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (g)(5) below.
 - (3) "Interest- or dividend-bearing account" means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000.
 - (4) "IOLTA account" means an interest- or dividend-bearing account established by a lawyer or <u>law firm</u> for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only <u>client</u> or third person funds, except as permitted by subsection (g)(7) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to paragraph (g)(5) below.
 - (5) "Non-IOLTA account" means an interest- or dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.
- (b) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

- (c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
- (d) Absent a written agreement with the client otherwise, a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the <u>client</u> or third person, shall promptly render a full accounting regarding such property.
- (f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (g) Notwithstanding subsections (b), (c), (d), (e) and (f), a lawyer or <u>law firms</u> shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for (i) the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and (ii) law school scholarships based on financial need. Lawyers and law firms shall only place a client's or third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days in an IOLTA account and shall only establish IOLTA accounts at eligible institutions that meet the following requirements:
 - (1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.
 - (2) The IOLTA account shall include only clients' or a third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days.
 - (3) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:
 - (A) To remit interest or dividends, net of allowable <u>reasonable</u> fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;
 - (B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is <u>reasonably</u> required by such organization; and
 - (C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.

- (4) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:
 - (A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money-market fund. Nothing in this rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.
 - (B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.
 - (C) Allowable <u>reasonable</u> fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.
- (5) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer this program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:
 - (A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;
 - (B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the Superior Court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the

action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

- (C) Allow the judicial branch access to its books and records upon <u>reasonable</u> notice; and
- (D) Submit to audits by the judicial branch.
- (6) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have approved, a resolution of the board of directors of such an organization which includes provisions:
 - (A) Establishing that all funds the organization might receive pursuant to subsection (g) (3) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;
 - (B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;
 - (C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;
 - (D) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;
 - (E) Establishing that the organization shall comply with the requirements of this Rule; and
 - (F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.
- (7) A lawyer's or law firm's own funds may only be deposited in a clients' funds account in an amount that the lawyer or law firm <u>reasonably</u> determines to be necessary to pay financial institution fees or service charges on the account or to obtain a waiver of fees and service charges on the account.

- (8) Nothing in this subsection (g) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:
 - (A) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or
 - (B) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

5 RULES REGULATING TRUST ACCOUNTS 5-1 GENERALLY

This is a companion rule to Florida rule of professional conduct 1.15

RULE 5-1.1 TRUST ACCOUNTS

- (a) Nature of Money or Property Entrusted to Attorney.
 - (1) Trust Account Required; Commingling Prohibited. A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, shall be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account. A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.
 - (2) Compliance With Client Directives. Trust funds may be separately held and maintained other than in a bank or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.
 - (3) Safe Deposit Boxes. If a member of the bar uses a safe deposit box to store trust funds or property, the member shall advise the institution in which the deposit box is located that it may include property of clients or third persons.
- (b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.
- (c) Liens Permitted. This subchapter does not preclude the retention of money or other property upon which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.
- (d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.
- (e) Notice of Receipt of Trust Funds; Delivery; Accounting. Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

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

- (1) Definitions. As used herein, the term:
 - (A) "nominal or short term" describes funds of a client or third person that, pursuant to subdivision (3), below, the lawyer has determined cannot practicably be invested for the benefit of the client or third person;
 - (B) "Foundation" means The Florida Bar Foundation, Inc.;
 - (C) "IOTA account" means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;
 - (D) "Eligible Institution" means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Savings and Loan Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.
 - (E) "Interest or dividend-bearing trust account" means a federally insured checking account 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 openend 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 \$250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay.
- (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 shall be deposited into one or more IOTA accounts, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of this rule.
- (3) Determination of Nominal or Short-Term Funds. The lawyer shall exercise good faith judgment in determining upon 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 shall consider such factors as:
 - (A) the amount of a client's or third person's funds to be held by the lawyer or law firm;
 - (B) the period of time such funds are expected to be held;
 - (C) the likelihood of delay in the relevant transaction(s) or proceeding(s):
 - (D) the cost to the lawyer or law firm of establishing and maintaining an interestbearing account or other appropriate investment for the benefit of the client or third person; and

(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 shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with ethical impropriety or other breach of professional conduct based on the exercise of such good faith judgment.

- (4) Notice to Foundation. Lawyers or law firms shall advise the Foundation, at Post Office Box 1553, Orlando, Florida 32802-1553, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.
- (5) Eligible Institution Participation in IOTA. Participation in the IOTA program is voluntary for banks, 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 shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA 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 such 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.
 - (C) Remittance and Reporting Instructions. Eligible institutions shall:
 - (i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation:
 - (ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and
 - (iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the Foundation, the rate of interest applied, and the period for which the statement is made.
- (6) Small Fund Amounts. The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.
- (7) Confidentiality and Disclosure. The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation shall, upon an official written inquiry of The Florida Bar made in

the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

- (h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter shall not receive benefit from interest on funds held in trust.
- (i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When an attorney's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, such funds or property shall be so designated. Diligent search and inquiry shall then be made by the attorney to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds shall be properly identified as the lawyer's trust property. If a missing beneficial owner is located, the trust funds or property shall be paid over or delivered to the beneficial owner if the owner is then entitled to receive the same. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners after being designated as such shall, after diligent search and inquiry fail to identify the beneficial owner or owner's address, be disposed of as provided in applicable Florida law.
- (j) Disbursement Against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients owning trust account funds subject to possibly being affected. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account. Notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit:
 - (1) when the deposit is made by certified check or cashier's check;
 - (2) when the deposit is made by a check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;
 - (3) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;
 - (4) when the deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;
 - (5) when the deposit is made by a check issued by the United States, the State of Florida, or any agency or political subdivision of the State of Florida;
 - (6) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, such a disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, if the lawyer accepting any such check personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients, the lawyer shall not be considered guilty of professional misconduct.

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other

property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be a conversion. This does not preclude the retention of money or other property upon which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer upon receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

[Revised: 02-29-2008]



LAWYERS TRUST FUND OF ILLINOIS

HOME

IOLTA RESOURCES FOR ATTORNEYS

ELIGIBLE FINANCIAL INSTITUTIONS

IOLTA RESOURCES

GRANT INFORMATION

NEWS & EVENTS

LINKS

IOLTA RESOURCES FOR ATTORNEYS

IOLTA Rule

Amended Rule 1.15. Safekeeping Property

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account or accounts maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.
- (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- (d) All nominal or short-term funds of clients or third persons held by a lawyer or law firm, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more pooled interestor dividend-bearing trust accounts, hereinafter "IOLTA accounts," established with an eligible financial institution selected by a lawyer or law firm in the exercise of ordinary prudence, and with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each IOLTA account shall comply with the following provisions:
 - (1) Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois. An eligible financial institution is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Security and Exchange Commission, which offers IOLTA accounts within the requirements of this rule as administered by the Lawyers Trust Fund of Illinois.
 - (2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.
 - (3) An IOLTA account that meets the highest comparable rate- or dividend-standard set forth in (d)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using

the highest-yield bank product:

- (a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers.
- (b) for accounts with balances of \$100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in (f).
- (c) for accounts with balances of \$100,000 or more, an open-end money market fund with, or tied to, check-writing capacity solely invested in or fully collateralized by U.S. Government securities.
- (4) As an alternative to the account options in (3), the financial institution may pay a "safe harbor" yield equal to 70% of the Federal Funds Target Rate.
- (5) A lawyer or law firm may maintain funds belonging to the lawyer or law firm in the IOLTA account to meet minimum balance requirements and to pay bank charges.
- (6) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated, the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.
- (7) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time.
- (8) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term.
- (e) Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors:
 - (1) the amount of interest which the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding; (2) the cost of establishing and administering the account, including the cost of the lawyer's services; (3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(f) Definitions

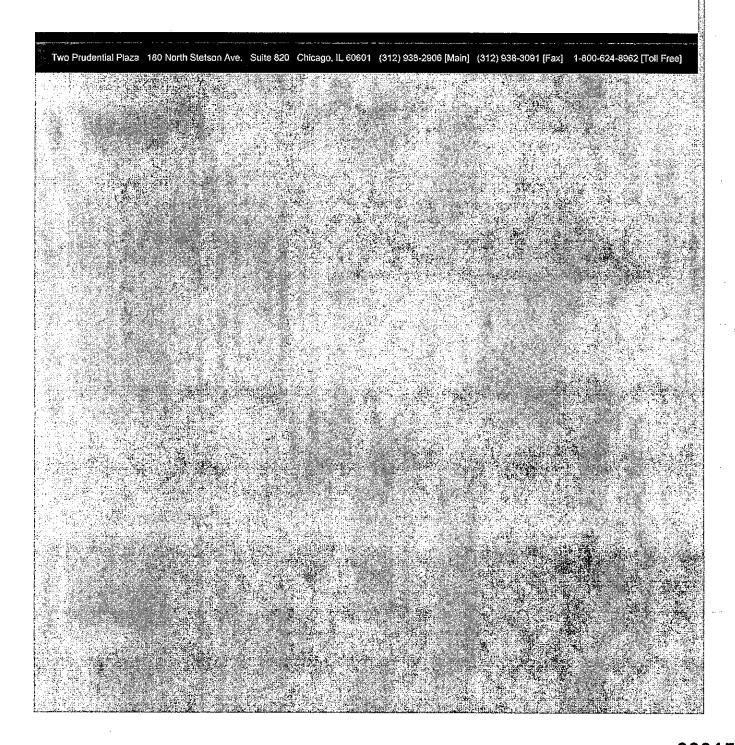
- (1) "IOLTA account" means an interest- or dividend-bearing trust account benefiting the Lawyers Trust Fund of Illinois, established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons as defined in (d) and from which funds may be withdrawn upon request as soon as permitted by law.
- (2) "Open-end money market fund" is a fund of an open-end investment company

that must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940, and, at the time of the investment, have total assets of at least \$250 million.

- (3) "U.S. Government securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest or any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement ("repo") may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.
- (4) "Safe harbor" is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.
- (5) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable bank accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.
- (g) In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:
 - (1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or
 - (2) has met the "good-funds" requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the following forms of deposits:
 - (a) a certified check,
 - (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States,
 - (c) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government,
 - (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state,
 - (e) a personal check or checks in an aggregate amount not exceeding \$5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA,
 - (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. §202.2,
 - (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company,

provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

Adopted February 8, 1990, effective August 1, 1990; amended July 18, 1990, effective August 1, 1990; amended April 1, 1998, effective immediately; amended October 1, 1998, effective immediately; amended December 1, 1998, effective immediately; amended January 25, 2007, effective June 1, 2007.



SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the 1974 Louisiana Constitution, and the inherent power of this Court, and considering the recommendation of the Louisiana Bar Foundation to amend Rule 1.15 of the Rules of Professional Conduct, as well as the IOLTA Rules,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

PART I. Rule 1.15 of the Louisiana Rules of Professional Conduct be and is hereby amended to read in its entirety as follows:

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be

kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
- c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
- d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The

lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

- f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm.
- g) A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest-bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
 - (1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF-approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions.

IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in

Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least \$250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

- (A) No earnings from such an account shall be made available to a lawyer or law firm.
- (B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
- (C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
- (2) To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or

other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.

(3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:

(A) Establishing the IOLTA Account as:

(1) an interest-bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with

an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

- (B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or
- (C) Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."
- (4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

- (A) To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;
- (B) to transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and
- (C) to transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.
- (5) "Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or

charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

PART II. The IOLTA Rules be and are hereby amended to read in their entirety as follows:

IOLTA RULES

- (1) The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.
- (2) The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:
 - (a) No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.
 - (b) Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non-

IOLTA, interest-bearing client trust account and earnings may be made available to the client or third person, respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer-client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

- (c) Funds of clients or third-persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.
- (d) In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:
 - (1) The amount of the funds to be deposited;
 - (2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
 - (3) The rates of interest or yield at financial institutions where the funds are to be deposited;

- (4) The cost of establishing and administering non-IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
- (5) The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
- (6) Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person.

The determination of whether funds to be invested could be utilized to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

(e) Although notification of a lawyer's participation in the IOLTA

Program is not required to be given to clients or third persons whose
funds are held in IOLTA Accounts, many lawyers may want to notify
their clients or third persons of their participation in the program in
some fashion. The Rules do not prohibit a lawyer from advising all
clients or third persons of the lawyer's advancing the administration of
justice in Louisiana beyond the lawyer's individual abilities in

conjunction with other public-spirited members of the profession. The placement of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.

- (3) The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
 - (a) to provide legal services to the indigent and to the mentally disabled;
 - (b) to provide law-related educational programs for the public;
 - (c) to study and support improvements to the administration of justice; and
 - (d) for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.
- (4) The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of

Louisiana shall review, study, and analyze such reports and shall make recommendations to the Foundation with respect thereto.

These rule changes shall become effective on April 1, 2008 and shall remain in full force and effect thereafter until amended or changed through future Order of this Court.

New Orleans, Louisiana, this 3rd day of January
2008.

FOR THE COURT:

Pascal F. Calogero, Jr. Chief Justice

SUPREME COURT OF LOUISIANA A TRUE COPY

> Carmen B. Young Deputy Clerk of Court

12



STATE OF MAINE SUPREME JUDICIAL COURT AMENDMENTS TO THE MAINE BAR RULES

2008 Me. Rules 07

Effective: April 1, 2008

All of the Justices concurring therein, the following amendments to the Maine Bar Rules are hereby adopted, to become effective on April 1, 2008. This order amends the Maine Bar Rules, as those Rules have been amended by 2008 Me. Rules 01, as last amended December 12, 2007, and also effective April 1, 2008.

- 1. Maine Bar Rule 3.6(e)(1) is amended to read as follows:
 - 3.6 Conduct During Representation
 - (e) Preserving Identity of Funds and Property.
- (1) All funds of clients paid to a lawyer or law firm, other than retainers and advances for fees, costs and expenses, shall be deposited in one or more identifiable accounts maintained in the state in which the law office is situated at a financial institution authorized to do business in such state. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (i) Funds reasonably sufficient to pay institutional service charges may be deposited therein; and
 - (ii) Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive the funds is disputed by the client; in that event the disputed portion shall not be withdrawn until the dispute is finally resolved.
 - (iii) For purposes of this rule, "retainer" means a fee paid to an attorney for professional services that is earned upon the attorney's engagement. A retainer payment is the property of the attorney when

received. "Retainer" does not include a payment by a client as an advance payment that will be credited toward fees for professional services as the attorney earns the fees.

2. Maine Bar Rule 6(a)(2) is amended to read as follows:

RULE 6. REGISTRATION; LIST OF TRUST ACCOUNTS

- (2) *IOLTA Accounts*. Every lawyer admitted to practice in this State shall annually certify to the Board of Overseers of the Bar in connection with the annual renewal of the lawyer's registration, that:
 - (A) To the lawyer's knowledge after reasonable investigation
 - (1) the lawyer or the lawyer's law firm maintains at least one IOLTA account, and
 - (2) the lawyer has taken reasonable steps to ensure that all client funds are held in client trust accounts meeting the requirements of these Rules, or
- (B) That the lawyer is exempt from maintaining an IOLTA or other trust account because the lawyer:
 - (1) is not engaged in the private practice of law;
 - (2) does not have an office within the State of Maine;
 - (3) is (i) a judge or other judicial officer employed full time by the United States Government, the State of Maine or another state government, (ii) on active duty with the armed services, or (iii) employed full time as an attorney by a local, state, or federal government, and is not otherwise engaged in the private practice of law;
 - (4) is counsel for a corporation or non-profit organization or a teacher or professor employed by an educational institution, and is not otherwise engaged in the private practice of law;

- (5) has been exempted by an order of the Court which is cited in the certification; or
- (6) holds no client funds other than retainers or advances for fees, costs and expenses.
- 3. These amendments shall take effect April 1, 2008.

Datad: Eak	oruary 29, 2008	
Dated. Fet	Juary 29, 2006	/s/
		Leigh I. Saufley, Chief Justice
		/s/
		Robert W. Clifford, Associate Justice
		/s/
		Donald G. Alexander, Associate Justice
	•	/s/
		Jon D. Levy, Associate Justice
		/s/
		Warren M. Silver, Associate Justice
		/s/
		Andrew M. Mead, Associate Justice
		/s/
		Ellen A. Gorman, Associate Justice

*****END OF DOCUMENT****



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IOLTA

For a PDF of IOLTA Questions & Answers for Attorneys, click here.

Justice Action Group

For a PDF of IOLTA Questions & Answers for Financial Institutions, $\underline{\text{click}}$ here.

Campaign for Justice

Frank M. Coffin Fellowship for Family Law The following financial institutions participate in the Bar Foundation's IOLTA program. If you would like to participate in the IOLTA please print the Notice to Financial Institution and submit this form to your bank/credit union.

Interest rates as of their last remittance are also indicated.

Loan Repayment Assistance Program

MBF Grant Programs

MBF Banking Partners

Legal Service Providers & Support Agencies

Maine Courts & Lawyers

PRIME PARTNERS

The following financial institutions have adopted leading comparable rates for IOLTA Accounts:

Auburn Savings Bank	2.76
Saco & Biddeford Savings Institution	2.76
University Credit Union	2.76
Bar Harbor Banking and Trust Company	2.50
Kennebec Savings Bank	2.10
Bangor Savings Bank	2.00
First Federal Savings & Loan Assoc. of Bath	2.00
Katahdin Trust Company	2.00
Rockland Savings & Loan Association	1.32
Damariscotta Bank & Trust Company	1.30
Gorham Savings Bank	1.30
Machias Savings Bank	1.30
Skowhegan Savings Bank	1.30
The First, N.A.	1.30

Prime Partners - Tiered Rates

Sanford Institution for Savings	0.24 - 2.77
Ocean National Bank	0.30 - 2.03
Merrill Bank	1.00 - 1.59

Mechanics Savings Bank	0.309 - 1.302
Key Bank, N.A.	1.10 - 1.30
Rivergreen Bank	0.50 - 1.25

ELIGIBLE INSTITUTIONS

The following financial institutions have indicated a willingness to adopt comparable rates for IOLTA Accounts:	These are their rates:
Camden National Bank	1.29
Norway Savings Bank	1.25
Bank of America, N.A.	1.20
Franklin Savings Bank	0.85
Kennebunk Savings Bank	0.75
NorState Federal Credit Union	0.75
Northeast Bank	0.75
Lincoln Maine Federal Credit Union	0.50
Maine Bank & Trust	0.50
New Dimensions Federal Credit Union	0.50
Border Trust Company	0.30
Atlantic Regional Federal Credit Union	0.15
Androscoggin Savings Bank	0.10
Biddeford Savings Bank	0.10
Eligible Institutions - Tiered Rates	
Savings Bank of Maine	0.50 - 1.25
Kennebec Federal Savings	0.25 - 0.50
Bath Savings Bank	0.20 - 0.25
Katahdin Federal Credit Union	0.05 - 0.25

PENDING

The following financial institutions currently offer these rates. As the new Court Rule is implemented, they are being given the opportunity to reach compliance:	Current Rate
TD Banknorth, N.A.	1.24

All rates effective as of July 1, 2008.



Maryland Legal Services Corporation

IOLTA - Interest on Lawyer Trust Accounts



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By participating in the IOLTA Honor Roll, financial institutions and attorneys help support the provision of critically needed legal aid to those Marylanders unable to afford such services.



For Financial Institutions

For Lawyers

For Grantees



Maryland IOLTA Honor Roll

Banking on Justice



The Maryland Court of Appeals has amended the Maryland Rules of Procedure 16-610, effective April 1, 2008, to ensure that financial institutions that participate in the IOLTA program pay interest rates on IOLTA deposits comparable to other similarly situated accounts.

The Maryland Legal Services Corporation (MLSC) and Maryland State Bar Association (MSBA) applaud financial institution Honor Roll members for going above and beyond the requirements of the revised Maryland rule to foster the IOLTA program in its mission to ensure that lowincome Marylanders have access to critically needed legal aid.

We welcome the following Honor Roll members that have agreed to pay a net yield of 65 percent or more of the federal funds target rate on IOLTA deposits. For all IOLTA-approved institutions, see the link below the Honor Roll list.

You may also download a printable list of Honor Roll Members.

HONOR ROLL MEMBERS

FINANCIAL INSTITUTION	LOCATION
Adams National Bank - web link	Montgomery County & Washington, DC
American Bank - web link	Montgomery County & Washington, DC
Baltimore County Savings Bank - web link	Baltimore City; Baltimore, Harford & Howard Counties
Bay National Bank - web link	Baltimore & Wicomico Counties
Bradford Bank - web link	Baltimore City, Baltimore & Howard Counties
Business Bank - <u>web link</u>	Northern Virginia
Capital Bank	Washington, DC & Montgomery County
Carrollton Bank	Baltimore City, Anne Arundel, Baltimore & Harford Counties
Chevy Chase Bank - web link	Statewide, Washington, DC & Virginia
Citibank, N.A.	Baltimore City, Anne Arundel, Baltimore, Montgomery, & Prince George's Counties, & Washington, DC & Virginia
ColomboBank - web link	Baltimore City, Montgomery County & Washington, DC
First Shore Federal - web link	Wicomico & Worcester Counties

MARYLAND RULES OF PROCEDURE TITLE 16—COURTS, JUDGES, AND ATTORNEYS CHAPTER 600—ATTORNEY TRUST ACCOUNTS

Rule 16-610. APPROVAL OF FINANCIAL INSTITUTIONS

a. Written Agreement to be Filed with Commission.

The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution that are subject to this Rule. The Commission may extend its approval of a previously approved financial institution for a reasonable period to allow the financial institution and the MLSC the opportunity to enter into a revised agreement that complies with this Rule.

- b. Contents of Agreement.
- 1. Duties to be Performed.

The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

- (A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds of any instrument drawn on the account.
- (B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection b 1 (C) of this Rule.
- (C) Use the following procedure for reports to Bar Counsel required under subsection b 1 (B) of this Rule:
- (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.
- (ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the name and address of the attorney or law firm maintaining the

account, the account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

- (D) Pay interest on its IOLTA accounts at a rate no less than the highest non-promotional interest rate generally available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.
- (i) An approved institution may satisfy the requirement described in subsection b 1 (D) of this Rule by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account Allowable Reasonable Fees as defined in subsection b 1 (d)(iii). This account may be any one of the following product option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the particular IOLTA account qualifies to be established as this type of account at the particular branch:
- (a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including securities of government-sponsored entities;
- (b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;
- (c) any other suitable interest-bearing checking account offered by the approved institution to its non-IOLTA customers.
- (ii) In lieu of the options provided in subsection b 1 (D)(i), an approved financial institution may: (a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a "safe harbor" rate that is equal to 55% of the Federal Funds Target Rate as reported in the Wall Street Journal on

the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection b 1 (D), but no fees may be deducted from the interest on a "safe harbor" rate account; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this "specified rate" account as agreed between MLSC and the financial institution.

- (iii) "Allowable Reasonable Fees" means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep fees, plus a reasonable IOLTA account administrative fee. Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney's or law firm's clients, including fees for wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.
- (iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described herein or electing to waive any fees and service charges on an IOLTA account.
- (v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

Cross reference: Rule 16-607 b 1.

- (E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule 16-722 (Audit of Attorney Accounts and Records).
- 2. Service Charges for Performing Duties Under Agreement.

Nothing in the agreement shall preclude an approved financial institution from charging the attorney or law firm maintaining an attorney trust account (1) a reasonable fee for providing any notice or record pursuant to the agreement or (2) fees and service charges other than the "Allowable Reasonable Fees" listed in subsection b 1 (D)(iii) of this Rule.

c. Termination of Agreement.

The agreement shall terminate only if:

- 1. the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or
- 2. the financial institution gives thirty days' notice in writing to the MLSC and to Bar Counsel that the institution intends to terminate the agreement and its status as an approved financial institution on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or
- 3. after a complaint is filed by the MLSC or on its own initiative, the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement and the Commission's approval of the institution are terminated.

d. Exceptions

Within 15 days after service of the notice of termination pursuant to subsection c 3 of this Rule, the institution may file with the Court of Appeals exceptions to the decision of the Commission. The institution shall file eight copies of the exceptions which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by an order of the Court.

Source: This Rule is derived from former Rule BU10.

REPORTER'S NOTE

The Maryland Legal Services Corporation ("MLSC") has been concerned that some financial institutions in Maryland have not been offering on IOLTA accounts a rate of interest that is comparable to the rate offered on similar non-IOLTA accounts.

The Rules Committee heard from representatives of the Maryland Bankers' Association and the MLSC, and reviewed IOLTA interest "comparability" provisions in effect in other States. The Committee recommends amendments to Rule 16-610 a and b 1 (D) to require a financial institution that wishes to be an "approved financial institution," as defined in Rule 16-602 a, to

enter into an agreement to pay interest on IOLTA accounts computed in accordance with the provisions of this Rule.

The Committee also recommends the addition of a sentence to subsection c 3, providing for notification to a financial institution of termination of approval if the Attorney Grievance Commission finds that the institution has failed or refused to perform a duty required by the agreement.

Additionally, the Committee recommends a new section d, providing a mechanism for the financial institution to file exceptions to a decision by the Attorney Grievance Commission to terminate its approval of a financial institution.



MASSACHUSETTS IOLTA COMMITTEE

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June 30, 2006

Honorable John M. Greaney Chair SJC Rules Committee John Adams Courthouse One Pemberton Square Boston, MA 02108

RE: Proposed IOLTA Guideline Changes

Dear Justice Greaney:

I write on behalf of the Massachusetts IOLTA Committee to request two revisions to the Interest on Lawyers Trust Accounts Committee Guidelines (Guidelines), which were last revised by the Court in November 1993. The IOLTA Committee collects interest on lawyers trust accounts that would not otherwise generate interest for clients. It passes these revenues along to three charitable entities that make grants to assist the administration of justice and support legal aid to the poor.

The first proposed revision concerns the interest rates paid by financial institutions on IOLTA accounts. The second is intended to conform the Guidelines to the 2004 amendments to Mass. R. Prof. C. 1.15 Record Keeping Rules. The text of the proposed revisions begins on page 8 of this letter, as Attachment 1.

These revisions were initially proposed to the Rules Committee by the IOLTA Committee on March 9, 2006. At that time it was suggested by the SJC that the proposed revisions be published for public comment. The IOLTA Committee had the proposed revisions published for comment in Massachusetts Lawyers Weekly on March 13, 2006. In addition, letters requesting comments were sent to each of the 200 financial institutions that offer IOLTA accounts. Enclosed as Attachment 2 is a copy of the letter and enclosure. Comments were due no later than April 28, 2006. Nine comments were received, all relating to the interest rates revision. The Massachusetts Bankers Association also requested a meeting to discuss the proposed revisions; that meeting was held on May 24, 2006.

The Committee carefully reviewed these comments and considered changes in the proposed revisions. The comments are discussed in Part III of this letter. The Committee, in response to the comments, has amended its proposed revision to the interest rate guideline. The Committee now proposes that the Court approve the Guideline revisions, as amended, set forth beginning on page 8.

I. Fair and Reasonable Interest Rates

Fair and reasonable interest rates on IOLTA accounts generate appropriate levels of revenue to provide legal services to low income citizens in Massachusetts while not placing financial institutions at an economic disadvantage. In recognition of the crucial role played by interest rates in the generation of IOLTA revenue, the Supreme Judicial Court (SJC) in 1993 approved an amendment to the Guidelines that called for financial institutions to pay interest "at a rate equal to or greater than the financial institution pays on NOW or comparable interest bearing accounts."

When this wording was adopted, NOW account rates were between 4 and 5%. In 2004, IOLTA account rates throughout the country ranged from 0.35% to 1.2%, with a weighted national average for all accounts of approximately 0.51%. This slippage was caused by the competitive evolution in bank deposit products since the early 1980s. Interest-bearing checking accounts were a new bank deposit product when IOLTA came into being, but they are now a commodity commanding an interest rate near the bottom for any types of accounts offered by banks. By pinning IOLTA interest rates to NOW accounts, the current Guidelines cause IOLTA revenue to fluctuate based on this product rather than on the complete competitive market for earnings on deposits.

Competition for deposits has encouraged banks to develop new products, such as business sweep accounts, that can bring in and retain customers whose business requires them to keep large average balances on deposit. Interest rates for those accounts move up and down in tandem with various indices such as the Federal Funds Rate. Rates for interest-bearing checking accounts, on the other hand, are relatively insensitive to increases in these indices. IOLTA accounts - even large ones - remain in this relatively low-priced NOW configuration because neither banks nor law firms have had incentives to change the status quo.

We are requesting that the Guidelines be updated so that IOLTA accounts earn the same interest generally available to similarly situated non-IOLTA customers at the same financial institution. This would continue the intention of the 1993 Guidelines, and reflect the current market for financial products. The new language is also more flexible than that of the current Guidelines, and will permit natural adjustments as financial products evolve in the future, assuring that financial institutions treat IOLTA accounts fairly.

The Federal Reserve Bank has increased the Federal Funds Rate 17 times during the past twenty-four months; the rate is now at 5.25%. Despite these increases, most smaller banks in Massachusetts are still offering interest rates on IOLTA accounts that are less than one-half of one percent (.005). The rates paid by the larger banks are generally better, but are still a third or less of the Federal Funds rate, generally about 1.50%. This is not a new pattern. Enclosed as Attachment 3 is a chart showing how bank IOLTA rates fall when the Federal Reserve lowers interest rates and fail to increase when the

Federal Reserve rates increase. IOLTA rates have stayed well below the Federal Reserve rates, and well below the lowest deposit account rates.

Several states have amended their IOLTA rules to ensure uniform and fair treatment of IOLTA rates by their banks. States which have implemented language similar to that proposed here for our Guidelines are Alabama, Connecticut, Florida, Indiana, Michigan, New Jersey, Ohio, Pennsylvania, and Utah. Their new provisions require that financial institutions pay rates on IOLTA accounts which are comparable to the rates paid on other products with balances similar to IOLTA accounts. Enclosed as Attachment 4 is a chart with the language of several states' comparable rate guidelines.

The Massachusetts IOLTA Committee has studied the materials from these states and noted that in November of 2005 the New Jersey Supreme Court adopted a "Best Customer Standard" (described within Attachment 4). The Court stated, "(t)his standard describes the actions necessary to demonstrate that a financial institution is offering a comparable and reasonable return on IOLTA accounts, as required by the IOLTA Guidelines."

In order to maximize the return on IOLTA investments, for the benefit of the charities, the Massachusetts IOLTA Committee believes banks should be fair and provide parity between the interest rates they pay on IOLTA accounts and the interest rates they pay on otherwise comparable non-IOLTA accounts. On January 12, 2006, the IOLTA Committee voted to request that the Supreme Judicial Court approve the proposed Guideline. The proposed Guideline updates rate parity requirements to provide that IOLTA accounts receive the highest interest generally available to an institution's own non-IOLTA customers as long as the IOLTA accounts meet the same minimum balance and other account eligibility requirements as the non-IOLTA customers.

The changes in the proposed Guideline bring the IOLTA framework into alignment with 21st century banking practices and investment options which are now available. The rate parity provisions only affect banks which already offer higher rate products to non-IOLTA customers for similar balances. These provisions are inherently fair to banks because they rely on a bank's own existing products, which are already structured to be profitable to the bank.

IOLTA always has been and remains voluntary for banks. Banks do not have to offer IOLTA accounts. Lawyers, however, are bound by the IOLTA Rules and may only place their trust funds at institutions that meet the Rules' requirements. To assist with implementation, the Committee will work with each affected bank and with affected lawyers as needed.

II. Change in the Record Keeping Rules

To conform to the revised ethical rules, we are requesting minor changes in the Guidelines which recognize that all references to Mass. R. Prof. C., 1.15 (e) need to be changed to Mass. R. Prof. C., 1.15 (g).

III. Comments to the Proposed Revisions

The proposed revisions were published for public comment in Massachusetts Lawyers Weekly on March 13, 2006. Comments were due no later than April 28, 2006. The first proposed revision of the Guidelines was to modify the description of interest rate options available to financial institutions that offer IOLTA accounts to attorneys. The Committee received nine comments to this proposal: six from banks, one from a banking trade association and two from charitable entities that receive IOLTA funds and make grants to providers of free legal services to the poor and for improvements in the administration of justice. The second proposed revision of the Guidelines was for the purpose of conforming the Guidelines to the 2004 Record Keeping amendments in Mass. R. Prof. C., Rule 1:15. No comments were received regarding this revision.

With regard to the description of interest rate options available to financial institutions that offer IOLTA accounts to attorneys, the IOLTA Committee reviewed these comments carefully as detailed in the following section by section analysis:

Section by Section Analysis of Comments:

The proposed revision substitutes a requirement that a financial institution pay interest at a rate "comparable to the highest rate of return the financial institution offers according to" a new "Best Customer Standard" for the current rule's requirement that the interest rate be "equal to or greater than the financial institution pays on NOW accounts or comparable interest bearing accounts."

The two charitable entities that commented, the Massachusetts Bar Foundation and the Massachusetts Legal Assistance Corporation, gave full support to the proposed revision because it would appropriately increase the financial support available to critical legal assistance programs that serve some of the Commonwealth's most vulnerable residents. They noted that the "Best Customer Standard" would remedy inequities in the rates banks pay across the state.

The "Best Customer Standard" is defined in two alternative subsections. Under Section B.1.A., a financial institution can meet the "Best Customer Standard" by providing to IOLTA "the highest yield available among" four types of accounts, "as provided to the best customers of the institution with similarly-sized deposits in such accounts in Massachusetts." The four types of accounts are:

- 1. a money market with or tied to check writing capability;
- 2. a business checking account with an automated investment feature, such as an overnight sweep or other automated transfer, and investment in insured bank accounts, or repurchase agreements fully collateralized by U.S. government securities;
- 3. a government (such as municipal deposits) checking account; [or]
- 4. any other interest-paying business checking account product.

Many of the bank comments, and the comment of the trade association, misunderstood this subsection. These comments pointed out that the four types of accounts often are offered subject to terms and conditions such as maximum activity levels, minimum balance requirements, monthly fees and other limitations. The Massachusetts Bankers Association comment misstated the standard as requiring a rate "at least equal to the rate paid to the best customers of that specific institution with similarly sized balances, regardless of transaction activity, loan balances or other accounts."

In fact, the "Best Customer Standard" only called for rates paid under the same terms and conditions "as provided to the best customers." Unless a bank chooses to avail itself of the option offered in Section B.1.A.5., it would apply all the same terms and conditions on IOLTA accounts as on the comparable accounts. IOLTA deposits, in order to earn a higher rate of interest, would be subject to the same activity levels, balance requirements and monthly fees. It is true that IOLTA accounts cannot be "linked" to other accounts for minimum balance purposes. This means that an IOLTA account would have to meet all account requirements without benefit of linkage; if it doesn't, then the IOLTA account would not qualify for the rate of interest paid by that type of account.

A similar misunderstanding appeared in one comment noting that sweep accounts are not insured by FDIC. Although the current rules require FDIC coverage, there is an exception for IOLTA accounts in excess of \$100,000 reinvested in repurchase agreements fully collateralized by U.S. Government obligations. See Mass.R.Prof.C. 1.15 (g).

One comment correctly noted that many banks currently absorb normal expenses by waiving normal service charges and administrative costs on IOLTA accounts. Such charitable support for IOLTA accounts is not required by the IOLTA Guidelines, although it is certainly encouraged by the IOLTA Committee. As banks do for check printing, they can bill the attorney for the expenses related to the account. A bank meeting the "Best Customer Standard" would not be required to absorb such expenses unless it also absorbed them for its best customers.

Despite the fact that none of the comments identified an actual problem with the proposed definition of "Best Customer Standard" under subsection B.1.A., the Committee realized that the proposed language on the "Best Customer Standard" was not

sufficiently clear. At the meeting with the Massachusetts Bankers Association, the Committee invited the Massachusetts Bankers to suggest language that would remove the confusion. The Massachusetts Bankers Association proposed the so-called Connecticut Rule, from the IOLTA Rule recently adopted by Connecticut.

The Connecticut standard (as well as the Michigan, Pennsylvania, Florida and Alabama Rule) is a comparability rule which calls for the financial institution to pay interest comparable to the highest rate of return the financial institution offers to its non-IOLTA account customers when the IOLTA account meets or exceeds the same minimum balance and other account eligibility qualifications applicable to those other accounts.

The Committee agrees with this suggestion and has substituted Connecticut's "comparability" interest standard for the "Best Customer Standard" in the proposed revision. Descriptions of comparable rates and comparability options have been added which make it clear that the IOLTA rate takes into account the eligibility qualifications.

The Committee's proposed revision continues to offer financial institutions a "safe harbor" as an alternative to certifying the highest yield available among comparable accounts. A definition has been added for clarity. The Committee's original proposal placed the safe harbor at 60% net yield of the Fed Funds Target Rate, which followed most states examples. The Massachusetts Bankers Association proposed 50% net yield of the Fed Funds Target Rate following its meeting with the Committee. The proposal was based on banks practice of waiving normal service fees on IOLTA accounts. The Committee considered the proposal but decided that 55% net yield was a fair and reasonable given what banks earn on comparable commercial accounts. The Committee noted that the 60% net yield rate in New Jersey was recently accepted by Bank of America and Sovereign Bank, which were two of the banks that submitted written comments and are two of the largest depositories of IOLTA accounts in Massachusetts.

Conclusion

The IOLTA Committee, having reviewed all the comments received and having adopted changes in the proposed revisions that respond to the comments of the Massachusetts Bankers Association, hereby submits the attached proposals for revision of the IOLTA Guidelines to the Supreme Judicial Court for approval. If approved by the Court, the Committee requests a September 1, 2006 effective date in order to start the lengthy implementation process.

Thank you for the opportunity to submit this request. Please do not hesitate to call if you need further information. We look forward to the Court's response.

Very truly yours,

Anthony M. Doniger, Chair

CC:

Honorable Judith A. Cowin
Honorable Roderick L. Ireland
Christine Burak
Francis Ford
Richard Soden
Janet Kenton-Walker
Georgia Katsoulomitis
Beth Lynch
Lonnie Powers
IOLTA Committee
Stephen Casey
Jayne Tyrrell

Revisions to the Interest on Lawyers Trust Account Committee Guidelines:

I. To Assure Fair and Reasonable Interest Rates:

Replace:

B. Characteristics of Accounts

Lawyers shall establish and maintain IOLTA accounts which have the following characteristics:

1. Interest Rates: The financial institution pays interest at a rate equal to or greater than the financial institution pays on NOW accounts or comparable interest bearing accounts.

With:

B. Characteristics of Accounts

Lawyers shall establish and maintain IOLTA accounts in eligible financial institutions which have the following characteristics:

1. Interest Rates: The financial institution pays interest comparable to the highest yield the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements.

(a) Comparability Options.

A financial institution shall pay on IOLTA accounts the highest yield available among the following product option types (if the product option is available from the financial institution to other non-IOLTA customers) by either using the identified account option as an IOLTA account or paying the equivalent yield on the existing IOLTA account in lieu of actually using the highest yield bank product:

- 1. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. government securities as described in Mass.R.Prof.C. 1.15 (g) (1).
- 2. A government (such as for municipal deposits) interest bearing checking account.
- 3. A checking account paying preferred interest rates, such as money market or indexed rates.
- 4. An interest bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.
- 5. Any other suitable interest bearing deposit account offered by the institution to its non-

IOLTA customers.

As an alternative, the financial institution may pay:

- 6. A "safe harbor" equal to 55% net yield of the Federal Funds Target Rate. *
- 7. A yield specified by the IOLTA Committee, if the Committee so chooses, which is agreed to by the financial institution. Such yield would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between the financial institution and IOLTA.
- (b) Implementation of Comparability.

The following considerations will apply to determinations of comparability:

Accounts which have limited check writing capability required by law or government regulation may not be considered as comparable to IOLTA in Massachusetts. This, however, is distinguished from checking accounts which pay money market interest rates on account balances without the check writing limitations. Such accounts are included in the Option 3 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Massachusetts.

For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the IOLTA Committee the highest yield for each of the accounts they offer within the above listed account types. The IOLTA Committee will certify participating financial institutions compliance with these Guidelines on an annual basis.

*The IOLTA Committee will review and may revise the safe harbor rate from time to time based on changing market conditions.

(c) Definitions.

An "eligible financial institution" for IOLTA accounts is a financial institution that meets the requirements of Mass. R. Prof. C. 1.15 (g) (1), and has been certified by the Committee to be in compliance with these guidelines.

A "safe harbor" rate, as identified by the IOLTA Committee, is a rate which if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return, regardless of the highest yield available at the financial institution. Such yield shall be calculated based on 55% net yield of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.

"Net yield" is defined as the effective interest rate earned on the IOLTA account after considering any fees assessed by the financial institution against the interest earned. Allowable fees are defined at IOLTA Guidelines, B (3) (a) and (b).

II. To Conform to the Revised Record Keeping Rules:

In the Preamble:

1. Replace: The IOLTA Committee ("Committee") provided for by Mass.R.Prof.C. 1.15 (e)(4)(v)(Rule 3:07), adopts the following Guidelines, subject to the approval of the Court, to provide the operation of the comprehensive IOLTA program set forth in amendments to SJC Rule 3:07 adopted by Orders of the Court dated September 26, 1989, October 1, 1992, and April 6, 1993.

With:

The IOLTA Committee ("Committee") provided for by Mass.R.Prof.C. 1.15 (g)(4)(v)(Rule 3:07), adopts the following Guidelines, subject to the approval of the Court, to provide the operation of the comprehensive IOLTA program set forth in amendments to SJC Rule 3:07 adopted by Orders of the Court dated September 26, 1989, October 1, 1992, and April 6, 1993.

2. Replace:

3.(b) Expenses of Charities: ... (b) Compliance...preparing the reports required by Mass.R.Prof.C. 1.15 (e)(6)(Rule 3:07), or...

With:

3.(b) Expenses of Charities: ... (b) Compliance...preparing the reports required by Mass.R.Prof.C. 1.15 (g)(6)(Rule 3:07), or....

3. Replace:

4. Record Keeping:.... (a) have ...annual report required by Mass.R.Prof.C. 1.15 (e)(6)(Rule 3:07); and,....

With:

- 4. Record Keeping:.... (a) have ...annual report required by Mass.R.Prof.C. 1.15 (g)(6)(Rule 3:07); and,....
- 4. Replace:
- F. Annual Reports

The Committee... required of the charities by Mass.R.Prof.C.1.15 (e)(6)(Rule 3:07)....

With:

F. Annual Reports

The Committee... required of the charities by Mass.R.Prof.C.1.15 (g)(6)(Rule 3:07)....

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Rule 1.15 Safekeeping Property

(a) Definitions.

- (1) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the account.
- An "eligible institution" for IOLTA accounts is a bank or savings and loan association authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Michigan. The eligible institution must pay no less on an IOLTA account than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution's standard practice, but institutions may elect to pay a higher interest or dividend rate and may elect to waive any fees on IOLTA accounts.
- (3) "IOLTA account" refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, at an eligible institution from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held.
- (4) "Non-IOLTA account" refers to an interest- or dividend-bearing account from which funds may be withdrawn upon request as soon as permitted by law in banks, savings and loan associations, and credit unions authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government. Such an account shall be established as:
 - (A) a separate client trust account for the particular client or matter on which the net interest or dividend will be paid to the client or third person, or

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- (B) a pooled client trust account with subaccounting by the bank or savings and loan association or by the lawyer, which will provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.
- (5) "Lawyer" includes a law firm or other organization with which a lawyer is professionally associated.

(b) A lawyer shall:

- (1) promptly notify the client or third person when funds or property in which a client or third person has an interest is received;
- (2) preserve complete records of such account funds and other property for a period of five years after termination of the representation; and
- (3) promptly pay or deliver any funds or other property that the client or third person is entitled to receive, except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, and, upon request by the client or third person, promptly render a full accounting regarding such property.
- (c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (d) A lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded.
- (e) In determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, a lawyer shall consider the following factors:
 - (1) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of (a) the amount of the funds to be deposited; (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and (c) the rates of interest or yield at financial institutions where the funds are to be deposited;

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- (2) the cost of establishing and administering non-IOLTA accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;
- (3) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and
- (4) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.
- (f) A lawyer may deposit the lawyer's own funds in a client trust account only in an amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of service charges or fees.
- (g) Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred.
- (h) No interest or dividends from the client trust account shall be available to the lawyer.
 - (i) The lawyer shall direct the eligible institution to:
 - (1) remit the interest and dividends from an IOLTA account, less allowable reasonable fees, if any, to the Michigan State Bar Foundation at least quarterly;
 - (2) transmit with each remittance a report that shall identify each lawyer for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance for the period in which the report is made; and
 - (3) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.
- (j) A lawyer's good-faith decision regarding the deposit or holding of such funds in an IOLTA account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a non-IOLTA account.

Adopted October 18, 2005



MINNESOTA RULE 1.15: SAFEKEEPING PROPERTY

- (a) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts as set forth in paragraphs (d) through (g) and as defined in paragraph (o). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein;
 - (2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.
- (b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established and the lawyer must provide the client or third person with: (i) written notice of the time, amount, and the purpose of the withdrawal; and (ii) an accounting of the client's or third person's funds in the trust account. If the right of the lawyer or law firm to receive funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm to receive funds from the account is disputed within a reasonable time after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.

(c) A lawyer shall:

- (1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties;
- (2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them;
- (4) promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive; and
- (5) deposit all fees in advance of the legal services being performed into a trust account and withdraw the fees as earned, unless the lawyer and the client have entered into a written agreement pursuant to Rule 1.5(b).

- (d) Each trust account referred to in paragraph (a) shall be an account in an eligible financial institution selected by a lawyer in the exercise of ordinary prudence.
- (e) A lawyer who receives client or third person funds shall maintain a pooled trust account ("IOLTA account") for deposit of funds that are nominal in amount or expected to be held for a short period of time.
- (f) All client or third person funds shall be deposited in the account specified in paragraph (e) unless they are deposited in a:
 - (1) separate trust account for the particular third person, client, or client's matter on which the earnings, net of any transaction costs, will be paid to the client or third person; or
 - (2) pooled trust account with subaccounting which will provide for computation of earnings accrued on each client's or third person's funds and the payment thereof, net of any transaction costs, to the client.
- (g) In determining whether to use the account specified in paragraph (e) or an account specified in paragraph (f), a lawyer shall take into consideration the following factors:
 - (1) the amount of earnings which the funds would accrue during the period they are expected to be deposited;
 - (2) the cost of establishing and administering the account, including the cost of the lawyer's services;
 - (3) the capability of financial institutions described in paragraph (d) to calculate and pay earnings to individual clients.

Only funds that could not accrue earnings for the client, net of the costs described in subparagraph (2) above, may be placed or retained in the account specified in paragraph (e).

(h) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis, books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). Equivalent books and records demonstrating same information in an easily accessible manner and in substantially the same detail are acceptable. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.

- (i) Every lawyer subject to paragraph (h) shall certify, in connection with the annual renewal of the lawyer's registration and in such form as the Clerk of the Appellate Court may prescribe, that the lawyer or the lawyer's law firm maintains books and records as required by paragraph (h). The Lawyers Professional Responsibility Board shall publish annually the books and records required by paragraph (h).
- (j) Lawyer trust accounts, including IOLTA accounts, shall be maintained only in eligible financial institutions approved by the Office of Lawyers Professional Responsibility. Every check, draft, electronic transfer, or other withdrawal instrument or authorization shall be personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or more lawyers authorized by the law firm.
- (k) A financial institution, to be approved as a depository for lawyer trust accounts, must file with the Office of Lawyers Professional Responsibility an agreement, in a form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether the instrument is honored. The Lawyers Professional Responsibility Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon three days notice in writing to the Office.
- (l) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:
 - (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
 - (2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within (5) banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(o) Definitions.

"Trust account" is an account denominated as such in which a lawyer or law firm holds funds on behalf of a client or third person(s) and is: 1) an interest-bearing checking account; 2) a money market account with or tied to check-writing; 3) a sweep account which is a money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or 4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. 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 Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. A daily overnight financial institution repurchase agreement may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

"IOLTA account" is a pooled trust account in an eligible financial institution that has agreed to:

- (1) remit the earnings accruing on this account, net of any allowable reasonable fees, monthly to the Lawyer Trust Account Board (LTAB) established by the Minnesota Supreme Court;
- (2) transmit with each remittance a report on a form approved by the LTAB that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of earnings applied, the amount of earnings accrued, the amount and type of fees deducted, if any, and the average account balance for the period in which the report is made; and
- (3) transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

An approved eligible financial institution must pay no less on IOLTA accounts than (i) the highest earnings rate generally available from the institution to its non-IOLTA customers on each IOLTA account that meets the same minimum balance or other eligibility qualifications, or, (ii) 80% of the Federal Funds Target Rate on all its IOLTA accounts. The rate to be paid shall be fixed on the first day of each month, subject to rate changes during the month reflected in normal month-end calculations. Accrued earnings and fees shall be calculated in accordance with the eligible financial institution's standard

practice, but institutions may elect to pay a higher earnings rate and may elect to waive any fees on IOLTA accounts. A financial institution may choose to pay the higher sweep or money market account rates on a qualifying IOLTA checking account.

"Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, sweep fees and similar charges assessed against comparable accounts by the eligible financial institution. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA accounts.

"Eligible financial institution" for trust accounts is a bank or savings and loan association authorized by federal or state law to do business in Minnesota, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Minnesota.

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

"Notice of dishonor" refers to the notice which an eligible financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

Comment

- [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.
- [2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (a) (1) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds is the lawyer's.
- [3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.
- [4] Paragraph (b) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under

applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.





- (a) A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such trust account funds and other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.
- (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (c) When a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests. If a dispute arises concerning their respective interests, the lawyer shall disburse the portion not in dispute, and keep separate the portion in dispute until the dispute is resolved.
- (d) Except as provided in paragraph (f) of this rule, a lawyer or law firm shall create and maintain an interest- or dividend-bearing trust account (IOLTA Account) for all funds which are nominal or short term funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income (IOLTA eligible Funds), pursuant to the following:
- (1) All trust Funds shall be deposited in a lawyer's or law firm's IOLTA Account unless in the lawyer's judgment the funds can earn income for the client or third party in excess of the costs incurred to secure such income.
- (2) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.
- (3) IOLTA Accounts shall be established only with financial institutions:
 - i. authorized by federal or state law to do business in Mississippi;
 - ii. the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any successors thereof;
 - iii. which pay a rate of interest or dividend on IOLTA Accounts that is no less than the highest rate generally available to its own non-IOLTA Account depositors when the IOLTA Account meets the same minimum balance or other eligibility requirements, provided however that: (a) IOLTA Accounts may be maintained in an interest-bearing checking account or an interest or dividend-bearing account with check-writing and with a sweep feature which is tied to either a money market account insured by an agency of the federal government or a money market fund or daily overnight repurchase agreement invested solely in or fully collateralized by U.S. Government securities (defined as U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof) so long as there is no impairment of the right to immediately withdraw and transfer principal as soon as permitted by law; (b) institutions may choose to pay these rates on a qualifying IOLTA checking account instead of establishing the higher rate product; and (c) institutions may also elect to pay a higher interest or dividend rate and may waive any fees on IOLTA Accounts.
- (4) Financial institutions are prohibited from using interest from one IOLTA Account to pay fees or charges in excess of the interest earned on another IOLTA Account. If not waived by the financial institution, such fees, if any, are the responsibility of the lawyer or the law firm.
- (5) Lawyers or law firms depositing funds in an IOLTA Account established pursuant to this rule shall direct the depository institution:
 - i. to remit all interest, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the Mississippi Bar Foundation, Inc. For the purposes of this paragraph, reasonable services charges or fees shall not include fees for wire transfers,

insufficient funds, bad checks, stop payments, account reconciliation, negative collected balances and check printing;

ii. to transmit with each remittance to the Foundation a report showing the following information for each IOLTA Account: the name of the lawyer or law firm, the amount of interest or dividends earned, the rate and type of interest or dividend applied, the amount of any services charges or fees assessed during the remittance period, the net amount of interest or dividends remitted for the period, the average account balance for the period for which the interest was earned and such other information as is reasonably required by the Foundation;

iii. to transmit to the depositing lawyer or law firm a periodic account statement in accordance with normal procedures for reporting to depositors.

- (e) Any IOLTA Account which has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of time may, at the discretion of the Foundation, be exempted from and removed from the IOLTA program. Exemption of an IOLTA Account from the IOLTA program revokes the permission to use the Foundation's tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the nominal or short term funds of clients and third persons separately, as required above, in a non-interest bearing account.
- (f) Every lawyer admitted to practice in this State shall annually certify to this Court that all IOLTA eligible Funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer:

(1) is not engaged in the private practice of law;

(2) does not have an office within the State of Mississippi;

- (3) is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;
- (4) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(5) has been exempted pursuant to Section (e) above; or

- (6) has been exempted by an order of general or special application of this Court which is cited in the certification.
- (g) In the exercise of a lawyer's good faith judgment in determining whether funds can earn income in excess of costs, a lawyer may take into consideration all reasonable factors including, without limitation:

(1) the amount of the funds to be deposited;

- (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (3) the rates of interest or yield at the financial institutions where the funds are to be deposited;
- (4) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;
- (5) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients; and
- (6) any other circumstances that affect the ability of the funds to earn a net return for the client.
- (h) A lawyer shall review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client.
- (i) The determination of whether funds are nominal or short-term so that they can not earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.
- (j) A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph (1) below, a lawyer may not disburse funds held in trust unless the funds are collected funds.

For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account.

- (1) Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Provided the lawyer has other sources of funds available at the time of disbursement (other than client or third party funds) sufficient to replace any uncollected funds, not withstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances:
- (i) when the deposit is made by certified check or cashier's check;
- (ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;
- (iii) when the deposit is made by a check issued by the United States, the State of Mississippi, or any agency or political subdivision of the State of Mississippi; or
- (iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the State of Mississippi. In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered guilty of professional misconduct based upon the disbursement of uncollected funds.
- (2) A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

[Amended effective January 1, 2007, to provide for mandatory IOLTA participation.]

Order dated January 6, 2009, re: Rule 4-1.15 Safekeeping Property



SUPREME COURT OF MISSOURI en banc

January 6, 2009

In re:

Repeal of subdivision (a)(3)(A)(ii) and subdivision (i)(5) of Rule 4-1.15, entitled "Safekeeping Property," of Rule 4, entitled "Rules of Professional Conduct," and in lieu thereof adoption of a new subdivision (a)(3)(A) (ii) and a new subdivision (i)(5) of Rule 4-1.15, entitled "Safekeeping Property."

ORDER

1. It is ordered that subdivision (a)(3)(A)(ii) and subdivision (i)(5) of subdivision 4-1.15 of Rule 4 be and the same are hereby repealed and a new subdivision (a)(3)(A)(ii) and a new subdivision (i)(5) adopted in lieu thereof to read as follows:

4-1.15 SAFEKEEPING PROPERTY

- (a) As used in this Rule 4-1.15(a) to (i), the following terms mean:
- (3) "Eligible institution," a bank or savings and loan association authorized by federal or state law to do business in Missouri, the deposits of which are insured by an agency of the federal government, or an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Missouri that has voluntarily chosen to offer and maintain IOLTA accounts to its lawyer and law firm customers. To be an "eligible institution," the foundation also must determine that the institution:
 - (A) pays no less on IOLTA accounts than the lesser of:
 - (ii) an amount on funds that would otherwise qualify for the investment options noted at Rule 4.1.15(a)(6)(B) to (D) equal to the greater of 60% of the federal funds target rate as of the first business day of the IOLTA remitting period or 0.60%, which amount is deemed to be already net of allowable reasonable fees;
 - (i) Every lawyer shall certify in connection with this Court's annual enrollment statement that the lawyer or the law firm with which the lawyer

is associated either maintains an IOLTA account with an eligible institution as provided in Rule 4-1.15(h) or is exempt because the:

* *

- (5) Foundation, for the current reporting period, has exempted the lawyer or law firm from the requirement of maintaining an IOLTA account and depositing client and third person funds therein because a lawyer or law firm:
 - (A) maintains an IOLTA account that has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or
 - (B) establishes that no eligible institution within reasonable proximity to his, her or its office offers IOLTA accounts.

The foundation may establish criteria and procedures by which an exemption under this Rule 4-1.15(i)(5) may be obtained.

The trust accounts of lawyers or law firms exempt under this Rule 4-1.15(i)(5) shall be non-interest-bearing, except that such accounts shall be interest-bearing if funds held for particular clients or matters warrant one or more non-IOLTA accounts under Rule 4-1.15(h)(3).

2. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

3. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

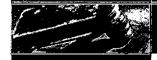
LAURA DENVIR STITH Chief Justice

<u>Judiciary</u> | <u>Supreme Court</u> | <u>Court of Appeals</u> | <u>Circuit Courts</u>

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The IOLTA Fund of the Bar of New Jersey

Court Rules

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- Notice to the Bar, February 6, 2003 (click here)
- Rule: 1:21-6 the NJ Recordkeeping rule (click here)
- Rule: 1:28A. the IOLTA Rule (see below)
- Notice to the Bar, Best Customer Standard, November 15, 2005 (click here)

RULE 1:28A. INCOME ON NON-INTEREST BEARING

LAWYERS TRUST ACCOUNTS (IOLTA) FUND

1:28A-1. Purpose; Administration; Appointments

(a) Administration. The Supreme Court shall appoint six Trustees to administer and operate, in accordance with these Rules, the IOLTA Fund of the Bar of New Jersey, whose purpose is to provide a means of using the return to IOLTA on income earned by depository instittions from funds held in IOLTA accounts to fund law-related, public-interest programs. In addition to the Trustees appointed by the Supreme Court, the following shall be ex officio members and will have the right to vote on all matters except grant applications made to the Board of Trustees, but they may participate in Board discussions of the grant applications: the President of the New Jersey State Bar Association; the First Vice President of the New Jersey State Bar Foundation; and the President of Legal Services of New Jersey, Inc.

(b) Qualification, Terms of Trustees. The original appointment shall be of two Trustees for a one-year term, one for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms all subsequent appointments shall be for a term of five years, and no Trustee who has served a full five-year term shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof. At least four of the Trustees appointed by the Supreme Court shall be members of the bar of this State.

(c) Organization; Meetings. The Trustees shall organize annually and shall then elect from among their number a chairperson and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chairperson. Except as may be otherwise provided by this rule or by regulations promulgated by the Trustees, five of the nine trustees, including the ex officio members, shall constitute a quorum and may transact all business not involving grants. Four of the six Trustees appointed by the Supreme Court shall constitute a quorum for all decisions concerning grants.

(d) <u>Regulations</u>. The Trustees shall adopt regulations, consistent with these rules and subject to the approval of the Supreme Court, governing the administration of the Fund, the procedures for the presentation, consideration, and payment of grants, and the exercise of their investment powers.

(e) Reimbursement. The Trustees shall serve without compensation.

Note: Adopted February 23, 1988, to be effective March 1, 1988; paragraphs (a), (b), (c) and (d) amended September 15, 1992, to be effective January 1, 1993; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; caption of Rule 1:28A and paragraphs (a) and (b) of Rule 1:28A-1 amended February 6, 2003 to be effective March 1, 2003.

1:28A-2. Attorney IOLTA Trust Accounts

(a) Attorney Participation. Commencing on the date established by regulations to be adopted by the Board of Trustees pursuant to Rule 1:28A-1(d), every attorney who practices in this State shall maintain in a financial institution in New Jersey, in the attorney's own name or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability entity of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed, an IOLTA non-interest-bearing trust account or accounts for all clients' funds that are not placed at interest for the benefit of the client.

- (1) The IOLTA non-interest-bearing trust account may be established with any financial institution approved by the Supreme Court to hold attorney trust funds under R. 1:21–6 (a) and insured by the Federal Deposit Insurance Corporation or an analogous federal government agency. Funds in each IOLTA non-interest-bearing trust account will be subject to withdrawal on request and without delay.
- (2) Funds shall be deposited in an IOLTA non-interest-bearing trust account authorized by this Rule when an attorney determines that a trust account deposit will not be placed at Interest for a client. Such a determination shall be made whenever an attorney determines that either (A) the amount of the funds or the period of time that the funds are held, if deposited in an interest-bearing account, would not earn interest in excess of the cost incurred to secure such Interest, or (B) because of particular costs in accounting, administration, or attribution of income, as may occur when multiple parties or clients pool advance payments against the costs of litigation in a single fund, a client's funds should not be deposited in an interest-bearing account because they will not realize income. No ethical impropriety will attend an attorney's depositing such funds in an IOLTA non-interest-bearing trust account in accordance with this Rule.
- (3) An attorney or law firm shall maintain one or more IOLTA non-interest-bearing trust accounts and shall submit to the approved financial institutions in which such accounts are maintained such forms as may be necessary to establish and maintain such accounts, on forms prescribed by the Trustees, and provide a copy of such form to the IOLTA Fund Trustees. If such a form is not filed, the signed registration statement required by Rule 1:20–1 and Rule 1:21–6 shall constitute such authorization.
- (b) <u>Deposit of Funds in IQLTA Account.</u> An attorney will exercise good-faith judgment in determining initially whether the funds of a client are of a nominal amount, are expected to be held by the attorney for a short period of time, or otherwise fall within the circumstances described in (a) above.

In exercising that judgment, the attorney will also consider such other factors as:

- the cost of establishing and maintaining a separate non-IOLTA, interest-bearing trust account, including service charges, bookkeeping and accounting and tax-reporting procedures;
- (2) the nature of the transaction(s) involved;
- (3) the likelihood of delay in the matter for which the funds are held;
- (4) whether the funds received by an attorney in a fiduciary capacity from a client or beneficial owner will generate less than \$150 of interest, provided that that \$150 figure may be used by an attorney as a minimum threshold indicating whether monies received in a fiduciary capacity should be placed in an IOLTA trust account, but shall not preclude the use of a higher figure if the costs or circumstances warrant; and
- (5) the other circumstances described in (a) above.
- (c) <u>Periodic Review of Deposits</u>. At reasonable intervals, an attorney should consider whether changed circumstances require different action respecting the deposit of client funds.
- (d) Registration; Enforcement. The accounts required by this Rule shall be registered annually with the IOLTA Fund in the manner prescribed by the IOLTA Fund Trustees. The Trustees shall annually report the names of all attorneys falling to comply with the provisions of this Rule to the Supreme Court for inclusion on a list of those attorneys deemed ineligible to practice law in New Jersey by Order of the Court. An attorney shall be removed from the Ineligible List without further Order of the Court on submission to the Trustees of the prescribed forms.
- (e) Duties of Financial Institution. The financial institution must:
 - (1) from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institutions a just and reasonable return equivalent to their return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund. And
 - (2) report in the form provided by the Fund.

Note: Adopted February 23, 1988, to be effective March 1, 1988; former rule deleted and R. 1:28A-3 renumbered as 1:28A-2 September 15, 1992, to be effective January 1, 1993; paragraph (a)(1) of former R. 1:28A-3 amended November 7, 1988, to be effective January 2, 1989; rule amended September 15,

1992, to be effective January 1, 1993; new paragraph (d) adopted and former paragraph (d) redesignated as paragraph (e) December 13, 1993, to be effective January 3, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (e) amended February 6, 2003 to be effective March 1, 2003.

1:28A-3. Duties of Trustees and Officers

- (a) Audit and Report. The Trustees shall arrange for an Independent audit annually and at such other times as the Supreme Court shall direct, such audits to be at the expense of the Fund. The annual audit shall be included in a report to be submitted annually by the Trustees to the Supreme Court, reviewing in detail the administration of the Fund during the preceding year.
- (b) <u>Applications to the Supreme Court.</u> The Trustees may apply to the Supreme Court for interpretations of these Rules and of the extent of their powers thereunder and for advice regarding the proper administration of the Fund.
- (c) <u>Treasurer's Duties</u>. The treasurer shall maintain the assets of the Fund in separate accounts and shall disburse monles therefrom only on the action of the Trustees pursuant to these Rules. He or she shall file a bond annually with the Trustees with such surety as may be approved by them and in such amount as they may fix.

Note: Adopted as R. 1:28A-4 February 23, 1988, to be effective March 1, 1988; renumbered as R. 1:28A-3 and paragraphs (b) and (c) amended September 15, 1992, to be effective January 1, 1993.

1:28A-4. General Powers of Trustees

- (a) Reserve Fund. The Trustees of the Fund are authorized to maintain a reasonable reserve fund. At least annually, after a reasonable reserve fund has been created, the Trustees will solicit applications for grants and award grants to those entities deemed to be meritorious under the regulations of the Fund. Grantmaking decisions of the Board are final and are not subject to appeal or judicial review.
- (b) Grants. Grants will be made only for the following purposes:
 - (1) legal aid to the poor;
 - (2) improvement of the administration of justice;
 - (3) education of lay persons in legal and justice-related areas; or
 - (4) such other programs for the benefit of the public as are specifically approved by the New Jersey Supreme Court from time to time.
- (c) Awards. The Board of Trustees shall award:
 - (1) to Legal Services of New Jersey, Inc., not less than 75% of the funds available annually for grants, to be used directly by itself and, through subgrants, by its local member Legal Services programs, in conducting legal assistance activities on behalf of the poor throughout New Jersey;
 - (2) to the New Jersey State Bar Foundation, not less than 12.5% of the funds available annually for grants to be used for the purposes enumerated in R. 1:28A-4(b)(1)-(4) above; and
 - (3) to other entities deemed to be meritorious under the regulations of the Fund, the balance of the funds available annually for grants to be used for the purposes enumerated in R. 1:28A-4(b)(1)-(4) above.

The foregoing may be amended by the Supreme Court from time to time in the public interest.

- (d) General Powers. In addition to the powers conferred by these Rules on the Trustees, they shall have the following general powers:
 - to receive, hold, manage, distribute, and invest the funds received by the Fund and such other funds as it may receive by voluntary contribution or otherwise;
 - (2) to employ and compensate consultants, agents, legal counsel, and such other

employees as they deem necessary and appropriate consistent with personnel policies of the Judiciary; and

(3) to monitor and insure compliance with the provisions of this Rule.

Note: Adopted as R. 1:28A-5 February 23, 1988, to be effective March 1, 1988; renumbered as R. 1:28A-4 and amended September 15, 1992, to be effective January 1, 1993.

1:28A-5. Confidentiality

All activities conducted and records made or maintained by the IOLTA Fund in connection with its operations under this rule shall not be disclosed, except that the IOLTA Board is authorized to:

- (a) Release such information as it may deem necessary to carry out its responsibilities as prescribed by this rule, including the identity of recipients and amounts and purposes of grant awards, and data concerning participating financial institutions; and
- (b) Release statistical and other information in its annual report to the Supreme Court or as requested by the Supreme Court.

Note: Former Rule 1:28A-5 redesignated as Rule 1:28A-4 September 15, 1992 to be effective January 1, 1993. New Rule 1:28A-5 adopted July 12, 2002 to be effective September 3, 2002.

Notice to the Bar and Supreme Court Administrative Determination (see below)

Re: Amendments to Rules Governing the IOLTA Program (R. 1:28A)

Last September, the Supreme Court published for comment Rule amendment proposals that had been presented by the Trustees of the IOLTA Program. Comments on the amendments were received and reviewed by the Court. At the direction of the Court, IOLTA Trustees met in January with representatives of the banking industry to discuss the proposed changes.

After consideration of the proposals and the comments they generated, the Supreme Court has adopted modified amendments to Rules 1:21-6(a) and 1:28A. The amendments take effect March 1, 2003.

In addition to adopting the <u>Rule amendments</u>, the Court has prepared an <u>Administrative Determination</u> that addresses the changes to the IOLTA Rules and Guidelines. The <u>Administrative Determination</u> is being published simultaneously with this Notice and the <u>Rule amendments</u>.

Stephen W. Townsend, Esquire Clerk of the Supreme Court Dated: February 6, 2003

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RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:
- (1) maintain a copy of any fee agreement with each client;
- (2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:
- (i) the name of the client;
- (ii) the date, amount, and source of all funds received on behalf of such client;
- (iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;
- (iv) the current balance for such client.
- (3) maintain a record for each bank account that sets forth all of the following:
- (i) the name of such account;
- (ii) the date, amount, and client affected by each credit and debit;
- (iii) the balance in the account.
- (4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;
- (5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (4) of this rule.

- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, confirmed in writing, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.
- (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.
- (f) Upon dissolution of any <u>law firm</u>, the former <u>partners</u>, managing <u>partners</u>, or supervisory lawyers shall promptly account for all client funds and shall make appropriate arrangements for one of them to maintain all records generated under division (a) of this rule.
- (g) A lawyer, <u>law firm</u>, or estate of a deceased lawyer who sells a law practice shall account for and transfer all funds held pursuant to this rule to the lawyer or <u>law firm</u> purchasing the law practice at the time client files are transferred.
- (h) A lawyer, a lawyer in the lawyer's <u>firm</u>, or a <u>firm</u> that owns an interest in a business that provides a law-related service shall:
- (1) maintain funds of clients or third persons that cannot earn any net income for the clients or third persons in an interest-bearing trust account that is established in an eligible depository institution as required by sections 3953.231, 4705.09, and 4705.10 of the Revised Code or any rules adopted by the Ohio Legal Assistance Foundation pursuant to section 120.52 of the Revised Code.
- (2) notify the Ohio Legal Assistance Foundation, in a manner required by rules adopted by the Ohio Legal Assistance Foundation pursuant to section 120.52 of the Revised Code, of the existence of an interest-bearing trust account;
- (3) comply with the reporting requirement contained in Gov. Bar R. VI, Section 1(F).

Comment

- [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. A lawyer should maintain separate trust accounts when administering estate moneys. A lawyer must maintain the records listed in division (a)(1) to (5) of this rule to effectively safeguard client funds and fulfill the role of professional fiduciary. The records required by this rule may be maintained electronically.
- [2] While normally it is impermissible to commingle the lawyer's own funds with client funds, division (b) provides that it is permissible when necessary to pay or obtain a waiver of bank service charges on that account. The following charges or fees assessed by an IOLTA depository may be deducted from account proceeds: (1) bank transaction charges (*i.e.*, per check, per deposit charge); and (2) standard monthly maintenance charges. The following charges or fees assessed by a client trust account depository may not be deducted from account proceeds: (1) check printing charges; (2) not-sufficient-funds charges; (3) stop payment fees; (4) teller and ATM fees; (5) electronic fund transfer fees (*i.e.*, wire transfer fees); (6) brokerage and credit card charges; and (7) other business-related expenses, which are not part of the two permissible types of fees. Accurate records must be kept regarding which part of the funds are the lawyer's.
- [3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.
- [3A] Client funds shall be deposited in a lawyer's or law firm's IOLTA account unless the lawyer determines the funds can otherwise earn income for the client in excess of the costs incurred to secure such income (*i.e.*, net income). In determining whether a client's funds can earn income in excess of costs, the lawyer or law firm should consider the following factors: (1) the amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; (3) the rates of interest or yield at the financial institutions where the funds are to be deposited; (4) the cost of establishing and administering non-IOLTA accounts for the client's benefit, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit; (5) the capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients; (6) any other circumstances that affect the ability of the client's funds to earn a net return for the client. The lawyer or law firm should review its IOLTA account at reasonable intervals to determine whether changed circumstances require action with respect to the funds of any client.

[4] Division (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] [RESERVED]

[6] [RESERVED]

- [7] A lawyer's fiduciary duties are independent of the lawyer's employment at a particular firm or the rendering of legal services. Law firms frequently merge or dissolve. Division (f) provides that whenever a law firm dissolves, the former partners, managing partners, or supervisory lawyers must appropriately account for all client funds. This responsibility may be satisfied by an appropriate designee.
- [8] All lawyers involved in the sale or purchase of a law practice as provided by Rule 1.17 should make reasonable efforts to safeguard and account for client property. Division (g) requires the lawyer, law firm or estate of a deceased lawyer who sells a practice to account for and transfer all client property at the time the client files are transferred.

Texas IOLTA Prime Partners

The Texas Access to Justice Foundation works closely with Texas banks to ensure their participation in the Interest on Lawyers' Trust Accounts (IOLTA) Program. Per Supreme Court of Texas rules, IOLTA accounts must be held at banks that pay interest rates comparable to similarly situated accounts. Prime Partner banks go above and beyond eligibility requirements by paying at least 70 percent of the Federal Funds Target Rate. The additional interest ensures more funding for legal aid.

Since September, the Federal Reserve has lowered the Target Rate from 5.25 to 2.25, which means IOLTA projections have dropped from \$28 million to \$12.5 million.

You can help by doing one the following:

- 1. Bank at a Prime Partner bank.
- 2. If you do business with a non-Prime Partner bank, persuade the bank to become a Prime Partner.
- 3. If you are employed by a non-Prime Partner bank, persuade the bank to become a Prime Partner.

IOLTA Prime Partners... Banking on Justice.

The Texas Access to Justice Foundation, administrator of the IOLTA Program, was created in 1984 by the Supreme Court of Texas. The Foundation grants millions of dollars each year to legal aid organizations for the provision of free legal assistance to poor Texans. These organizations help about 100,000 people each year with their civil legal needs.

To learn more about IOLTA and the Prime Partner program, visit <u>www.teajf.org</u> or call 512.320.0099.

TEXAS ACCESS to JUSTICE FOUNDATION

Who are the Prime Partners in the Metroplex area?

The IOLTA Program Prime Partner list continues to grow. Is your bank a Prime Partner?

Access 1st Capital Bank (Denton)

Amegy Bank of Texas

(Statewide)

Citibank Texas (Statewide)

Comerica Bank (Statewide)

Compass Bank (Statewide)

Coppermark Bank (Plano)

Dallas City Bank (Dallas)

First International Bank (Plano)

First National Bank Southwest (Plano)

LegacyTexas Bank (Plano)

Nexbank (Dallas)

North Dallas Bank & Trust

(Dallas)

Northstar Bank of Texas

(Denton)

Omni American Bank (Ft. Worth)

PlainsCapital Bank (Statewide)

Sterling Bank (Statewide)

Texas Brand Bank (Garland)

Town North Bank (Dallas)

VisionBank Texas (Richardson)

Washington Mutual (Statewide)



State Bar of Texas

TexasBarCLE L

Texas Bar Journal

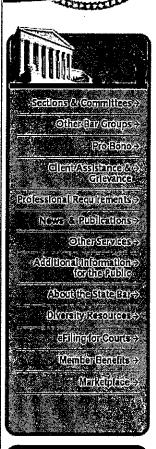
Texas Young Lawyers

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Texas Supreme Court Advisory

Contact: Osler McCarthy, staff attorney for public information 512.463.1441

January 13, 2009

COURT ORDERS NEW CALCULATION FOR INTEREST ON 'IOLTA' ACCOUNTS Amends Rule 7 for Access to Justice Foundation

The Texas Supreme Court amended rules Tuesday that govern interest on lawyer-trust accounts to battle dramatically declining interest income that helps finance state legal-assistance programs.

In 2006 the Court required banks holding Interest on Lawyer Trust Accounts (IOLTA) to pay comparable rates to those accounts as they do for similar interest-bearing accounts. Among the alternatives to achieve that, banks could utilize a "safe harbor" that pegged interest to the Federal Reserve Bank's rate for overnight loans among banks.

But the Federal Reserve Bank's Federal Funds Transfer Rate - one benchmark by which banks may pay interest on lawyer-trust accounts - is now set as a range from one-quarter of 1 percent to zero.

"Because the federal overnight bank-loan 'rate' is no longer a rate but a range, it no longer provides a reasonable benchmark for comparability," said Justice Harriet O'Neill, the Court's liaison to the Texas Access to Justice Foundation. The Court created the foundation to raise money for legal-assistance programs and to supervise its distribution among legal-aid agencies across Texas.

The amended rule makes the benchmark rate the *higher* of 65 percent of the federal transfer rate, or 65-hundreds of 1 percent (0.65), for banks that choose the safe-harbor option.

"The rule as amended also affords the Foundation flexibility to determine the appropriate index periodically, based on overall comparable rates in Texas," Justice O'Neill said. "This will minimize the need for further rule amendments as market conditions change."

Revenue from the lawyer-trust accounts has fallen from \$20 million in 2007, to slightly more than \$12 million last year, to projected revenue this year of \$1.5 million without the amendment. Justice O'Neill predicted the amended benchmark calculation will raise this year's projected yield to \$3 million, still far below what is necessary to meet the increasing needs.

"Without the change," she said, "the money we distribute to help the poor with their legal problems would cover no more than overhead. And in this economy, when more and more clients face foreclosures, fallout from the hurricanes, and other hardships that may demand legal help, this rule change is a slight but needed boost."

Link to order

TAB 5



MEMORANDUM

From: Kristina Marzec

To: Access to Justice Commission

Date: February 5, 2009

Re: Standing Committee Reports

The Committees will provide verbal reports on ongoing projects assigned as outlined below.

1. <u>Communications</u>

Committee convened on 11/7/08, 12/19/08, 01/07/09, and 01/14/09 **Next Meeting: February 27, 2009 3 pm (conference call)**

Needs Assessment Marketing Public Interest Lecture Series Recruitment and Retention

LRAP- w/Development

Fellowships- w/Legal Services Delivery (LSD)

Benefits and Salaries-LSD

Mandatory Reporting- review forms

Website expansion

2. Legal Services Delivery

Committee convened on 12/08/08, 01/07/09

Next meeting: March 3, 2009 11 am (conference call)

LRAP
Division of Aging Funding concerns
Court Posted Fees

Nye County

Real Estate Escrow Funds

Recruitment/Retention

2009 Fellowship-Thronson

LRAP- work group Lynn, Anna, Val, ask Judge Dahl)

Retirement/benefits/salaries- Paul

Cy Pres-Paul

3. <u>Development Committee Report</u>

Committee convened on 11/19/08, 01/13/09

Next meeting: February 24, 2009 2 pm (conference call)

Pro Bono Recognition

Pro Bono Week- also with Communications

State Wide Award- Renee

Nevada Lawyer

Emeritus- Kimberly

Self Help

Standardized Forms-Justice Douglas, Chair, Supreme Court Library Commission

Hotlines, continuum of care issues, Standardized Reporting (provider statistics), Law Firm initiatives

ABA Hearings on the Delivery of Legal Service through Technology ABA/NLADA Equal Justice Conference, May 9, 2008, Minneapolis, MN Report by Valerie J. Cooney, Esq.

The ABA Standing Committee on the Delivery of Legal Services held hearings on the use of technology to provide personal, civil legal services over the Internet and the policies that govern that use. Specifically, the Committee examined:

- 1. The range of providers who are using technology to provide legal services through the Internet and the scope of those services.
- 2. The benefits and detriments that have resulted from the use of technology to provide legal services over the Internet.
- 3. Emerging trends and possible future directions of technology providing legal services via the Internet; and
- 4. The policies and authorities (rules, statutes, case law, ethics opinions, etc.) that have emerged to govern the use of technology for the delivery of legal services and whether those policies are consistent with the need to balance consumer protection with access to affordable legal services and justice.

The hearing generated a good deal of interest on the part of those presenting and took place from 12:00 p.m. to 4:30 p.m. The recorded testimony can be heard on the ABA's website at: www.abanet.org/legalservices/delivery/techhearings.html along with the testimony from subsequent hearings held on Aug. 8 and September 26, 2008. The speakers at the May 9 hearings included:

Richard Zorza, Self-Represented Litigants Network

Lisa Coploys, Illinois Legal Aid Online

Cynthia Vaughn, Ohio Legal Assistance Foundation

A.J. Tavares and Bill Tanner, Orange County Legal Aid Society

I.V. Ashton, PS Technologies, Inc.

Sarah Galligan, Dakota County Judicial Center and Charlie Dyer, Consultant

Kathleen Brockel, Legal Services National Technology Assistance Project

Mark O'Brien, ProBono.net

Katrina Zabinski, Minnesota Statewide Self-Help Services

Glenn Rawdon, Legal Services Corporation

Ken Penokie, Legal Services of Northern Michigan, and John Freeman, Minnesota Legal

Services Coalition

LaVern Pritchard, LawMoose.com

Of the above speakers, those that were the most interesting and that may warrant further study:

Richard Zorza, Self-Represented Litigants Network

Mr. Zorza is the coordinator of the Self-Represented Litigation Network, was the organizer of the 1998 LSC Technology and Access Summit, consultant to tech access organizations such as Pro Bono Net.

<u>Issue</u>: Mr. Zorza identified the issue as regulation of use of technology in delivery of legal services and warns that a highly regulated environment is a deterrent to innovation, the enemy of access and reflects a failure to see the benefits of technology and will undercut innovation.

Benefits: Technology radically increases the number of people served, with marginal costs of service after initial investment. With Bar Assoc.'s support they will be seen as supporters of access to the legal system rather then deterrents of access.

<u>Principles to Guide Regulation</u>: The regulatory environment should not protect short term goals, but look beyond to protection of competence of service; must take into account the need for access, the impact on access and must balance the risk of harm vs. benefit of access. Regulations must aim to protect zealousness, confidentiality, competency, not intermediate goals and must be a process to increase social justice. Must move away from all or nothing attorney/client relationship to a limited scope representation.

Lisa Coploys, Illinois Legal Aid Online

Illinois Legal Aid Online is an organization formed by the State's legislature upon recommendation of ways to better serve the legal needs of Illinois citizens. The organization is charged with the use of technology to better serve the legal needs identified. The program is funded by IOLTA (½ of funding), the Illinois State Bar Foundation and other funders. The online project gained the state bar's support by meeting with them, educating them on need, involving them in the development of programs and providing assurances against the unfair practice of law.

Three (3) attorneys manage the program, develop content, manage an automated document assembly program, oversee an online self-help center and work with outside partners to develop resources. Their constituents include the legal community, the population living on low and limited incomes, the court systems, clerks and legal advocates. The program offers training and practice support for legal aid advocates and system navigators.

The website is visited over 70,000 times per month at a cost of .60 cents per visit. The program is considering moving on to conduct on-intakes, triage and other services including legal assistance where users can talk to an attorney or navigator when they get stuck.

This speaker did not address the issue of future regulation by the ABA of the use technology in the delivery of legal services.

Cynthia Vaughn, Ohio Legal Assistance Foundation

Ms. Vaughn is the Statewide Technology Manager. OLAF is a non-profit created by the Ohio legislature in 1994, is Ohio's IOLTA funder and accounts for 60% of legal aid providers funding in Ohio. OLAF's mission is to assure that resources, programs and services exist statewide to serve the unmet needs of Ohio's poor. OLAF leads an effort to support and expand emerging uses

of technology to support the work of legal aid advocates, pro bono volunteers and pro se litigants.

OLAF hosts Ohio's legal services website that provides legal education materials and assistance with finding /connecting with local legal aid programs. The website is not an all inclusive self-help website but is intended to improve access to justice, and provide higher quality, more efficient delivery of legal services. The site also offers access to HotDocs Document Assembly and A2J Author (civil protection orders and advance directives).

Benefits of use of technology: 1) Open and easy access to legal education 24/7; and, 2) open and easy access to a variety of services information (including legal services programs, pro bono programs and other agencies).

<u>Detriments of use of technology</u>: 1) Public users "expect" to be able to find a form and submit it [to the court]; they assume that the form is all they need; 2) systems can go down, causing frustration; 3) risk of pro se users misidentifying or misunderstanding their issue(s), thus not able to get to the right resources; 4) risk of "missing" the root cause of the problem versus focus on a symptom (e.g. person being evicted because they were refused SSI).

Emerging trends and directions: Those who go online will continue to push the need for service delivery using technology: 1) Internet penetration has reached 73% of American adults; 2) commercial entities are taking root (e.g. Legal Zoom, Google, MSN, Yahoo, etc.); 3) Cybersquatting continues to threaten provider websites; 4) the public "expects" to have access to legal services regardless of the time of day, so initiative such as online intake have become an essential way to extend access beyond regular business hours.

<u>Policies to govern the use of technology</u>: 1) Provide access to court rules and guidelines; 2) require technology "baselines" as possible funder grant conditions to ensure appropriate, reliable and relevant reporting of program activity; 3) for the public, being clear about what information is available online versus what constitutes legal advice is key in maximizing technology in delivery of services.

I.V. Ashton, PS Technologies, Inc.

PS Technologies, Inc., is a national web-services provider. National trend 1) to use technology for delivery and enhancement of legal services of all types, with many statewide systems being put in place; 2) to use technology for knowledge/information management including content and how it is integrated into the community and distributed. Assists knowledge seekers and givers to connect. New systems will bring knowledge to the user rather than them having to seek and find. This is the Web 2.0 concept.

The opportunity for the legal community is great, easy to do because there haven't been uses of this technology in the past. Content is the goal and distribution of information.

Mark O'Brien, ProBono.net

Also a web-services provider, Mr. O'Brien talked about 2 major initiatives they were

developing: 1) Online document assembly known as NPADO [allows legal aid groups to do simple online intake and assessment templates]; and, 2) "live-help", an online interactive chat program allowing for questions and answers in real time. Upcoming innovations include integration of online services on the desktop of advocates, a bench officer self help module which allows court officers to review documents filed from online forms, cross jurisdiction (multiple states) format with integrated document assembly.

Conclusion

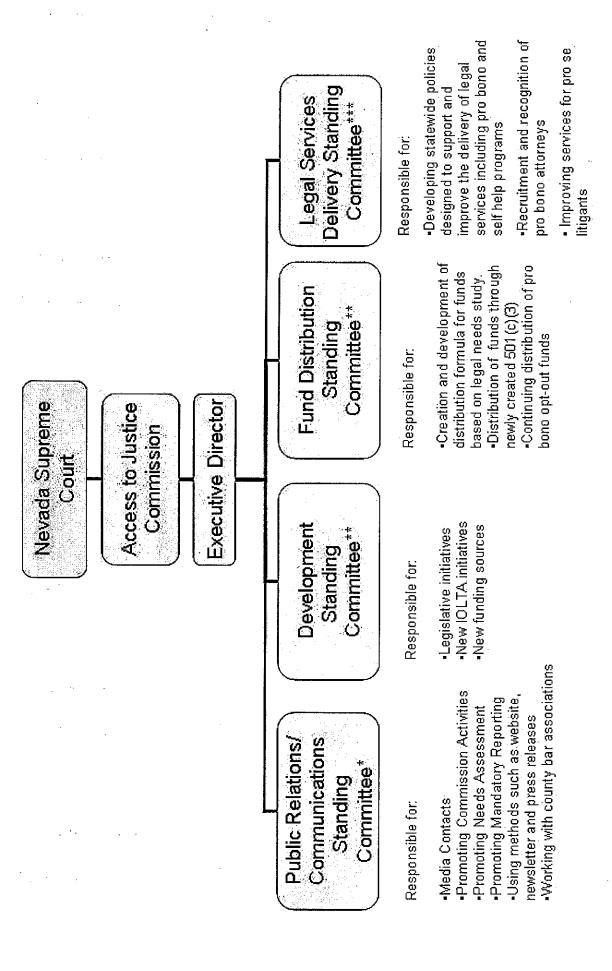
Technology based services discussed included: Hotlines, websites with web based intake procedures, document preparation (with election to have attorney review), virtual self-help centers, legal information and advice, forms, fact sheets, court rules, lawyer referral and pro bono support, advocate training and support, email and blog components for multiple uses, online clinics with video and live presentations, data collection.

Speakers came from very different programs, some with exclusively business interests, while others were differing forms of legal information and service delivery, some operating entirely web-based programs regulated largely by internal procedures, rules and protocols. It is clear that technology currently plays a significant role in the delivery of legal services to the poor in many regions of the country. It is fair to say that this trend is in its infancy and that technology will be the leading means of providing legal information, assistance and support. Private firms appear to be far in front of the curve in use of technology, offering in-house webinars and podcasts for clients only.

The future of legal information/education, communications and legal services may one day include efiling in courts and agencies, electronic appearances, and web hearings via live streaming. Presently the Web offers means for improved case management and client involvement via client email, with embedded documents and case files, internal blogs [interoffice delivery, embedding of documents for review, conflicts check, etc.] and external blogs [to provide clients with information on the law, recent events, case status]. The internet will serve as a key format for the delivery of many types of services, as a referral tool, resource for other attorneys and for the public.

TAB 6

			Acc	Access to Justice Commission	ion	
Last	First	Title	Position	Firm	Phone	Email
Abbott	Kimberly		Pro Bono Project Director	Legal Aid Center of Southern Nevada	702-386-1070	kabbott@lacsn.org
Cooney	Valerie		Executive Director	Volunteer Attorneys for Rural Nevadans	775-883-8278	vcooney@varn.org
Dahl	Stephen	Hon.		Justice Court, North Las Vegas Township	702-455-7804	dahlsi@co.clark.nv.us
Desmond	John			Jones Vargas	775-786-5000	jpd@jonesvargas.com
Doherty	Frances	Hon.		Second Judicial District Court	775-328-3470	frances.doherty@washoecourts.us
Douglas	Michael	Justice	Commission Co-Chair	Supreme Court of Nevada	702-486-3205	mdouglas(@nvcourts.nv.gov
Elcano	Paul		Executive Director	Washoe Legal Services	775-287-0329	pelcano@ashoelegalservices.org
Ferenbach	Cam		State Bar of Nevada, Board of Governors	Lionel, Sawyer & Collins	702-383-8888	cferenbach@lionelsawyer.com
Vacant			Limited Jurisdiction Judge	Liaison to Nevada Judges Association 15(2)(c)	<u> </u>	
Goff Gonzalez	Betsy	Hon.		Eighth Judicial District Court	702-671-4378	GonzalezE@clarkcountycourts.us
Hardesty 🦮	√James N = W	Justice 🥽	*Commission Co-Chair	Supreme Court of Nevada	* ×775-684-1590	Inardesty@nvcourts:nv.gov
Johnson	Anna Marie		Executive Director	Nevada Legal Services	800-323-8666	ajohnson@nlslaw.net
Kandt	W. Brett			Office of the Attorney General	775-688-1966	bkandt@ag.nv.gov
Nielsen	Ernest			Washoe Co. Senior Law Project	775-328-2592	enielsen@washoecounty.us
Puccinelli	Andrew	Hon.	,	Fourth Judicial District Court	775-753-4602	apuccinelli@elkocountynv.net
Steinheimer	Connie	Hon.		Second Judicial District Court	775-328-3183	judge.steinheimer@washoecourt.us
Thronson	David	Professor		UNLV Boyd Law School	702-895-2080	David thronson@unly.edu
Vogel	Sheri Cane		Executive Director	Senior Citizens Law Project	702-29-6644	svogel@lasvegasnevada.gov
Bob Teuton			Eighth Judicial District Court 15(2)(a) Family Court			
Warden	Tom		Vice President, Community & Government Relations	The Howard Hughes Corporation	702-791-4267	twarden@ggp.com
Marzec	Kristina		Commission Director	State Bar of Nevada	702-382-2200 702-317-1404	kristinam@nvbar.org



Standing Committee will be comprised of a representative from the North, South and the Rurals. *Standing Committee will be comprised of at least one representative from the North and South. *Standing Committee will be comprised of 7 members including all 5 Executive Directors

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION OF THE NEVADA SUPREME COURT
ACCESS TO JUSTICE COMMISSION.

ADKT 394

ORDER CREATING THE NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION AND ADOPTING RULE 15 OF THE SUPREME COURT RULES

WHEREAS, the Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court, and the Honorable Nancy A. Becker, Justice of the Nevada Supreme Court, have petitioned this court on its administrative docket to adopt a rule creating the Nevada Supreme Court Commission on Access to Justice; and

Whereas, this court agrees with the petition's allegations regarding the importance of access to justice in a democratic society; the lack of sufficient access to justice for thousands of Nevada citizens of limited means despite the efforts of numerous public and private organizations, attorneys, and other individuals; the critical need for statewide strategic planning and coordination of efforts to expand services and improve access to justice; and the effectiveness of supreme court commissions on access to justice created in other jurisdictions to respond to similar challenges; and

WHEREAS, it therefore appears to this court that amendment of the Supreme Court Rules is warranted to establish a permanent Supreme Court Commission on Access to Justice; accordingly,

IT IS HEREBY ORDERED that new Rule 15 of the Supreme Court Rules shall be adopted and shall read as set forth in Exhibit A.

It is Further Ordered that this new rule shall be effective immediately. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dis-

semination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 15th day of June, 2006.

BY THE COURT

ROBERT E. ROSE, Chief Justice

NANCY A. BECKER
Associate Justice

A. WILLIAM MAUPIN
Associate Justice

Mark Gibbons
Associate Justice

MICHAEL L. DOUGLAS

Associate Justice

JAMES W. HARDESTY
Associate Justice

RON D. PARRAGUIRRE
Associate Justice

EXHIBIT A

NEW RULE 15 OF THE SUPREME COURT RULES

Rule 15. Commission on Access to Justice.

- 1. Creation, purpose. The supreme court shall appoint a commission on access to justice. The commission shall:
- (a) Assess current and future needs for civil legal services for persons of limited means in Nevada.
- (b) Develop statewide policies designed to support and improve the delivery of legal services.
- (c) Improve self-help services and opportunities for proper person litigants and increase pro bono activities.
- (d) Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.
- (e) Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.
- (f) Recommend legislation or rules affecting access to justice to the supreme court.
- 2. Composition. The access to justice commission shall be composed of the chief justice of the supreme court or the chief justice's designate and the following members, to be appointed by the supreme court to four-year terms:
- (a) One district judge each from the Second and the Eighth Judicial District Courts. At least one of those judges must be assigned to the family division of the district court.
- (b) One additional district judge to be selected from the First, Third, Fourth, Fifth, Sixth, Seventh, or Ninth Judicial District Courts.
- (c) One limited jurisdiction judge, who shall serve as liaison to the Nevada Judges Association.
 - (d) One representative designated by the Nevada Attorney General.
- (e) One representative each from the City of Las Vegas Senior Citizens Law Project, Clark County Legal Services/Pro Bono Project, the Eighth Judicial District Pro Bono Foundation, Nevada Legal Services, Volunteer Attorneys for Rural Nevadans/Domestic Violence Project, the Washoe Access to Justice Foundation, the Washoe County Senior Law Project, and Washoe Legal Services/Pro Bono Project.
- (f) One representative each from the Clark County Bar Association, the State Bar of Nevada, and the Washoe County Bar Association.
- (g) One representative from the clinical program at the William S. Boyd School of Law of the University of Nevada, Las Vegas.
- (h) Two persons who are not members of the legal profession. The commission may appoint nonvoting members, including, but not limited to, judges and representatives from other direct service providers, county bar associations, and neighborhood pro bono projects.

3. Meetings. The commission shall meet at least semi-annually and shall have additional meetings, as the commission deems appropriate. The commission may form separate subcommittees to address specific issues.

H

TAB 7



MEMORANDUM

From: Kristina Marzec

To:

Access to Justice Commission

Date:

February 5, 2009

Re:

2009 Calendar to date



Quarterly Commission Meetings:

February 5, 2009 1:30-5 April 28, 2009 1-5 July 10, 2009 1-5 October 9, 2009 1-5

Carson City: AOC Conference Room, 2nd Floor Supreme Court Building

201 S. Carson St. Carson City, NV 89701 Las Vegas:

AOC Conference Room, 17th Floor Regional Justice Center

200 Lewis Ave., 17th Floor Las Vegas, NV 89101

Conference Call info: 1-866-779-0774 *1043736*

AOC Main number: 775-684-1700

Bridge the Gap

INTRODUCTION TO NV PRACTICE AND PROCEDURE

(Bridge the Gap) Reno, NV - Wed., Feb 11 - Atlantis Las Vegas, NV - Feb 13 - Bally's

9:00 a.m. to 4:45 p.m. - 6 hours CLE (incl. 1 hr ethics)

Committee Conference Call Meetings:

February 24, 2 pm- Development February 27, 3 pm- Communications March 3, 11 am- Legal Services Delivery

Professionalism Summitt & Tentative Statewide Pro Bono Awards

April 2009

Equal Justice Conference - Orlando, Florida

May 14-16 (Chairs meetings May 16)

National Pro Bono Week

October 25-31



EQUAL JUSTICE CONFERENCE



EJC Home Page

Agenda at a Glance

Conference Overview

Conference Registration

Conference Registration Discounts

Conference Cancellation Policy

Hotel Registration

Networking

Poster Session

Scholarships

Things To See and Do

Transportation

Join Conference Email List

View Workshop Materials Archive

The 2009 Equal Justice Conference

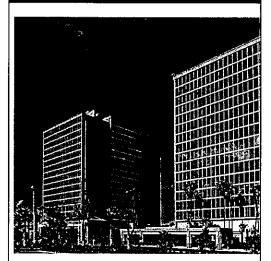
The 2009 Equal Justice Conference will be held

May 14 – 16, 2009

in Orlando, Florida

at the DoubleTree Hotel at the Entrance to Universal Orlando

Conference Hotel



DoubleTree Hotel at the Entrance to Universal Orlando 5780 Major Blvd Orlando, FL 32819 407-351-1000

Room Rate: \$135 single/double per night Reservation Cut-off date: April 14th, 2009

Click here to reserve your room:

http://doubletree.hilton.com/en/dt/groups/per -ABA-20090511/index.jhtml

Orlando Discount Page

Conference Overview



Courtesy of the Orlando/Orange County Convention and Visitors Bureau, Inc.®

The Equal Justice Conference brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to the poor and low-income individuals in need of legal assistance. The emphasis of this Conference is on strengthening partnerships among the key players in the civil justice system. Through plenary sessions, workshops, networking opportunities and special programming, the Conference provides a wide range of learning and sharing experiences for all attendees.

Pro bono and legal services program staff, judges, corporate counsel, court administrators, private lawyers, paralegals, and many others attend this event. The main Conference will celebrate the ongoing collaboration between pro bono and legal services; explore additional partnerships that must be created, the resources that must be tapped, and the new issues facing clients.



Print This Page | Close Window



Division for Legal Services

Celebrate Pro Bono

National Pro Bono Celebration

October 25th - 31st 2009



Countdown to the Celebration 263 Days 09 Hours 08 Minutes 14 Seconds

Resources

The National Pro Bono Celebration Working Group is hard at work on developing a set of resources that will help you plan your celebration events. For now, check out these ideas.

2008 Pro Bono Week: Do Right! (The Chicago Bar Association and the Chicago Bar Foundation)

National Pro Bono Week 2008 (September 15-20, 2008 Locations Throughout Canada)

National Pro Bono Week 2008 (ProBonoUK)

Volunteering

To find the program that is best for you, use the <u>National Pro Bono Volunteer Opportunities Guide</u>, a joint project of the ABA Standing Committee on Pro Bono and Public Service, its project, the ABA Center for Pro Bono, and Pro Bono Net.

Honorary Advisory Committee Members

The <u>Standing Committee on Pro Bono and Public Service</u> has invited leaders of the judicial, legal education and bar communities to show their support for the National Pro Bono Celebration by serving as members of an Honorary Advisory Committee. Click on the links below to see a partial list of those who have agreed to serve.

- ABA Leaders Past and Present
- Bar Presidents
- Law School Deans
- State Supreme Court Chief Justices
- Law Firms
- Standing Committee on Pro Bono and Public Service

We Are Committed To Celebrate!

Review the list of groups that have committed to hold at least one celebration event during October 25-31, 2009.

Review the List of Groups Planning Celebrations

Click HERE to register your group?s participation..

Pro Bono Celebration News

- Victoria M. Almeida, President-Elect of the Rhode Island Bar Association, intends to make the Pro Bono celebration in 2009 a key part of her message and theme when she assumes the Presidency of the Rhode Island Bar on July 1,2009.
- Columbia University Law School Announces Three Programs as Part of Pro Bono Celebration
- Pro Bono Week Goes International, as Canadian Bar Joins the Celebration
- Top National Firms to Take Part in the National Pro Bono Celebration

 Among the firms which have already confirmed their participation in the October 25-31 Pro Bono Celebration are:
 - o Akin Gump Strauss Hauer & Feld
 - o Bingham McCutchen LLP
 - o Brown Rudnick LLP
 - o DLA Piper US LLP
 - o Faegre & Benson LLP
 - o Fenwick & West LLP
 - o Foster Pepper PLLC
 - o Fredrikson & Byron, P.A.
 - o Howrey LLP
 - o Kramer Levin Naftalis & Frankel LLP
 - o Seyfarth Shaw LLP

- o Sheppard Mullin Richter & Hampton LLP
- o Steptoe & Johnson
- o WilmerHale
- Click here to be added to the e-mail list of National Pro Bono Celebration supporters and participants.

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2008/2009 PROGRAMS AND PROJECTS ACCESS TO JUSTICE COMMISSION

Updated 1.12.09

- 501 (C) 3. ON HOLD pending NLF relationship decision
 - o Develop conflict policy and scope of lobbying/legislative activities
- ATJC PR efforts
- Attorney recognition programs
 - o Tentative statewide event, April 2009
 - National Pro Bono Week October 21, 2009. Plan state-wide events.
- Court posted fees
- Cy Pres funding
- Emeritus Attorney Program. Providers to develop working program and work with Director to
 implement operating rules and develop comprehensive plan to solicit participation. Tap eligible out of state
 attorney resources.
- **IOLTA Comparability**. Negotiate with banks to join preferred list. Recommend potential rule changes to enforce comparability through amendment to SCRs (likely 217). Expand marketing plan.
- Law firm initiatives
 - o Follow through with large law firms, responders and non-responders
 - o Identify future plan for medium and small firm meetings
- Lawyer recruitment and Retention
 - Loan repayment assistance program
 - Fellowships- One for 2009
 - Retirement/benefits/salary enhancement
 - o Public Interest Lecture Series. Define goals and objectives of the series
- Legal Needs Assessment
 - Marketing plan development and roll-out
- NLF and the ATJC. Finalize forward relationship between NLF and the ATJC as potential investment and/or fundraising arm
- Rule changes (potential)
 - IOLTA Comparability
 - Donations under 6.1
 - NLF as fundraising and investment arm of the Commission
 - Unbundled legal services (potential state-wide rule)
- Rural legal services delivery
 - o Create subcommittee and follow implementation of ADKT 424
- Self-Help initiatives
 - Participate in RJC Self-help roll-out
 - o Standardized Forms: Coordinate with Supreme Court Library Commission
- Statewide fundraising. (Pending 501(c)(3) decision)
- Uniform Reporting. Develop a standardized reporting system for legal services provider statistics
- **Website**. Director to work with Committees to develop consumer resource section (links to statewide available resources) with potential for separate website in future



Access to Justice Headlines

November 17, 2008

New at www.ATJsupport.org

New Funding for Arizona Legal Aid Programs from Pro Hac Vice Rule. The Arizona Supreme Court has amended its rule allowing out-of-state lawyers to practice on a limited basis, increasing the pro hac vice fee by 15 percent. The additional revenue will be distributed by the Arizona Foundation for Legal Services and Education to fund organizations providing civil legal services.

Minnesota State Bar Association Resolution in Support of Legal Aid. The Minnesota State Bar Association has adopted a resolution affirming its support for pro bono and public interest work. The resolution comes in response to a joint report by the U.S. Department of Justice Office of Inspector General and Office of Professional Responsibility finding that many lawyers were likely rejected for prestigious DOJ appointments due to affiliations with various public interest organizations or activities deemed politically suspect, including Minnesota legal aid and public defender programs. The Bar opposes attempts to define public service as ideological, and states its opposition to employment practices by government agencies that may discourage this work.

Chief Justices and Court Administrators Access to Justice Resolution. At their joint annual meeting, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution supporting court leadership in ensuring access to civil justice.

ABA President's Blog on Access to Justice. ABA President Tommy Wells is maintaining a web log in which he discusses events and activities relating to access to justice, diversity, the rule of law, and the independence of the bar and judiciary, the areas on which he is focusing during his presidency.

Report on Legal Aid Salaries. According the 2008 Public Sector and Public Interest Attorney Salary Report issued by the National Association for Law Placement (NALP), civil legal aid lawyers are still the lowest paid in the profession. The median entry-level salary for a legal services attorney is \$40,000; at 11-15 years of experience, the median is \$60,000. The 2008 Associate Salary Survey, a companion report by NALP, shows that the median salary for a fifth-year associate ranges from \$99,000 to \$183,000 depending on firm size.

West Virginia Incoming Chief Justice Remarks on Access to Justice. State Supreme Court Justice Brent Benjamin spoke at a luncheon sponsored by Legal Aid of West Virginia of his plans to focus on expanding access to civil justice during his upcoming year as Chief Justice.

District of Columbia Legal Needs Report. On October 7, the District of Columbia Access to Justice Commission released *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community*. The report reviews legal needs in nine areas of law (consumer, education, employment, estate planning, family, public benefits, health/disability, housing, and immigration) and the legal services network's capacity to meet those needs. It provides ten recommendations to improve the provision of civil legal services to the District's low-income residents.

New Montana State Bar Equal Justice Award. The Montana State Bar has created a new award to be given annually to a judge for efforts to expand access to justice. The new award is named in honor of retiring Chief Justice Karla Gray, who is its first recipient. This is the Montana State Bar's first award for judicial efforts.

Civil Right to Counsel E-Newsletter. The National Coalition for a Civil Right to Counsel has released its new quarterly e-newsletter, covering advocacy efforts toward a civil right to counsel. The inaugural October 2008 issue and information on free subscription are available at www.civilrighttocounsel.org/news/newsletter (link available from www.ATJsupport.org).

New Maryland Access to Justice Commission. The Maryland Access to Justice Commission, chaired by retired Court of Appeals Judge Irma Raker, held its first meeting on October 20, with New Hampshire Chief Justice John Broderick, Jr., as keynote speaker. Executive Director Pamelo Cardullo Ortiz joins the Commission from her prior position as Executive Director of Family Administration at the Administrative Office of the Courts.

National Pro Bono Celebration. A national week-long celebration of pro bono is scheduled for October 25-31, 2009. Advisory Committee members for the event include state Bar Presidents, state Chief Justices, past and present ABA leaders, law school Deans, law firms, and the ABA Standing Committee on Pro Bono and Public Service. Thirty law firms, bar associations and pro bono programs across the country have signed up to host events thus far.

California Pro Bono Summit. A strategic planning event on pro bono was cosponsored on November 6 by the State Bar's Standing Committee on the Delivery of Legal Services and the Public Interest Clearinghouse. Over sixty law firm pro bono partners and coordinators participated in sessions on family law, rural delivery, coordination and best practices. Working groups were established to implement the ideas generated at the Summit. South Carolina Access to Justice Hearings. The South Carolina Access to Justice Commission has completed a series of statewide hearings on barriers to civil justice, culminating in a final hearing at the state Supreme Court on November 5. South Carolina Public Broadcasting will air a television and a radio show based on the hearings on December 11. Initial findings address access issues and offer recommendations in the following areas: legal services, self-represented litigants, domestic relations, communication, and foreclosures. The state Supreme Court has already approved a divorce packet for self-represented litigants and signage for Clerk of Court's offices setting forth what clerks can and cannot do for self-represented litigants.

ABA Judges Journal Second Special Issue on Access to Justice. The Fall issue of the ABA Judges Journal continues the special focus of the Summer issue on Access to justice issues. It includes an article on creating a culture of support for legal aid by Deborah Hankinson, Chair of the ABA Standing Committee on Legal Aid and Indigent Defendants; a case study of the District of Columbia Access to Justice Commission by Chair Peter Edelman; and a report on efforts to help self-represented litigants in Wisconsin by Chief Justice Shirley Abrahamson. Some articles are available online and the full issue may be downloaded by ABA Judicial Division members.

Petition for Wisconsin Access to Justice Commission. The Wisconsin Supreme Court will consider in mid-December a petition from the Wisconsin State Bar to create an Access to Justice Commission. The petition incorporated the State Bar's Access to Justice Study Committee Report, which found that approximately 80 percent of households with a legal need go without legal assistance. The proposed Commission would be made up of 17 members appointed by the Court.

Minnesota Campaign Supporting Court Funding, Legal Aid, and Public Defenders. The Minnesota State Bar Association, the state courts, legal aid providers and public defenders have joined forces to lobby for funding necessary to keep the state justice system intact in the face of a looming state budget deficit. The Bar Association has created a new networking site for attorneys, "1000supporters.org" to keep them informed of developments on the justice system during the legislative session.

All items are posted at <u>www.ATJsupport.org</u>. For additional information, contact Bob Echols, ABA Center for Access to Justice Initiatives, <u>echols@suscom-maine.net</u>.