

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 0537

FILED

SEP 05 2019

ORDER AMENDING SUPREME COURT RULE 217

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *E. BROWN*
CHIEF DEPUTY CLERK

WHEREAS, on July 23, 2019, the Nevada Supreme Court Access to Justice Commission filed a petition in this court seeking to amend SCR 217(2) regarding creation and maintenance of interest-bearing trust accounts interest minimum standards; and

WHEREAS, this court solicited public comment on the petition and a public hearing was held in this matter on September 5, 2019; and

WHEREAS, it appears that amendments to Supreme Court Rule 217 are warranted; accordingly,

IT IS HEREBY ORDERED that Supreme Court Rule 217 shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the amendments to the Supreme Court Rules shall be effective 30 days from the date of this order. 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

dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 5th day of September, 2019.

Gibbons, C.J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Paul Matteoni, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT TO SUPREME COURT RULE 217

Rule 217. Creation and maintenance of interest-bearing trust accounts. A member of the state bar or the member's law firm shall create or maintain an interest-bearing trust account for clients' funds [~~which~~] that are nominal in amount or to be held for a short period of time in any banking, credit union, or savings and loan association [~~which~~] that is in compliance with the following provisions:

1. An interest-bearing trust account established pursuant to this rule may be established with any state bar-approved bank, credit union, or savings and loan association authorized by federal or state law to do business in Nevada, located in Nevada and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or other financial institution approved by the state bar pursuant to Rule 78.5 of these rules. Funds in each interest-bearing account shall be subject to withdrawal upon request and without delay.

2. Interest minimum standards. [~~The rate of interest payable upon any interest-bearing trust account shall meet any one of the following minimum standards:~~

~~(a) The 30-day LIBOR minus .50 percent, or, the Federal Discount Rate plus .50 percent, whichever is greater; or~~

~~(b) Equal to the Federal Fund Target Rate, or, the Federal Discount Rate plus .50 percent, whichever is greater; or~~

~~(c) Equal to or greater than a flat interest rate, which rate shall be reviewed and approved by the Access to Justice Commission twice annually and made public at least 30 days prior to the effective date.~~

~~(d) Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, are permissible so long as there is no impairment of the right to withdraw or transfer principal immediately without penalty.]~~ The Nevada Supreme Court Access to Justice Commission shall review and set twice annually the rate(s) of interest payable upon any interest-bearing trust account and make the rate(s) public at least 30 days prior to the effective date.

(a) The minimum rate shall be 0.70 percent.

(b) Higher rates offered by the institution are permissible so long as there is no impairment of the right to withdraw or transfer principal immediately without penalty.

3. Fees prohibited. Accounts under this rule shall be exempt from service charges and fees.

4. Reporting. A member of the state bar or the member's law firm establishing such account shall:

(a) Direct the depository institution to:

~~[(i)]~~ (1) remit interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with an institution's standard accounting practice at least monthly, to the designated tax-exempt foundation pursuant to Rule 216;

~~[(ii)]~~ (2) transmit with each remittance in an electronic format to be specified by the designated tax-exempt foundation a statement ~~[which]~~ that shall include:

~~[(1)]~~ (i) the name of the member of the state bar or the member's law firm for whom the remittance is sent;

- ~~[(2)]~~ (ii) the rate of interest applied;
- ~~[(3)]~~ (iii) the account number for each account;
- ~~[(4)]~~ (iv) the average amount on deposit for each account;
- ~~[(5)]~~ (v) the rate and type of interest or dividends remitted;
- ~~[(6) the amount and type of charges or fee deducted,~~

if any;

~~[(7)]~~ (vi) the average account balance for the monthly period for which the report is made; and

~~[(iii)]~~ (3) transmit to the depositing member of the state bar or the member's law firm at the same time a report showing the amount paid to the designated tax-exempt foundation; and

(b) Establish and follow reasonably prudent procedures to verify, at least annually, that each account maintained under this rule is on deposit with an institution currently listed by the designated tax-exempt foundation as operating in compliance with the Interest Minimum Standards set forth in subsection 2 above. Member verification shall be reported to the ~~[State Bar,~~ state bar, by completing and submitting a form provided with the annual membership fee statements.

5. Exceptions. If the member or the member's law firm does not maintain an office within 20 miles of a complying financial institution pursuant to subsection 6:

(a) The minimum interest standards set forth in subsection 2 (a)-(c) are waived; and

(b) The reporting requirements of subsection 4(a)(ii) are partially waived such that the member must direct the depositing institution to report at least quarterly, electronically if possible, to include at a minimum the name of the

member of the state bar or the member's law firm for whom the remittance is sent and the rate of interest applied.

Notice of waiver shall be reported by the member or member's law firm annually on a form to be provided by the state bar with annual membership fee statements.

6. List of complying financial institutions. The designated tax-exempt foundation shall maintain an accurate and up-to-date list of all financial institutions as defined in subsection 1 above, which are in compliance with the Interest Minimum Standards set forth in subsection 2 above. This list shall be provided to the ~~[State Bar]~~ state bar by the designated tax-exempt foundation, posted on the ~~[State Bar's]~~ state bar's website and published in other media from time to time to facilitate members' compliance with this rule.

~~7. [Effective dates; compliance monitoring. The amendments to this rule mandated by order dated December 16, 2009, shall be effective 30 days from entry of order. The designated tax-exempt foundation pursuant to Rule 216 shall begin monitoring banking compliance within 30 days of the effective date and provide reports at least quarterly to the Access to Justice Commission and the State Bar of Nevada. The first member reporting required pursuant to subsection 5(b) shall begin in 2010, and reported in the 2011 annual membership fee statements.~~

8.] Non-compliance; assessment/suspension. Active members who fail to meet the requirements of this rule shall be notified of their non-compliance, in writing, by the ~~[State Bar.]~~ state bar. Upon the expiration of 30 days from the date the ~~[State Bar]~~ state bar sends the member notice of non-compliance, said non-compliant member shall be:

(a) Assessed \$200, payable within 30 days to the designated tax-exempt foundation pursuant to Rule 216; and

(b) Suspended from membership in the ~~[State Bar,]~~ state bar, but may be reinstated upon filing verification of compliance on a form to be provided by the ~~[State Bar.]~~ state bar.

Supplying false information in response to the requirements of this rule shall subject the member to appropriate disciplinary action.