ARKANSAS IOLTA PROGRAM GUIDEBOOK FOR ATTORNEYS AND FINANCIAL INSTITUTIONS

December 2015

Arkansas Access to Justice Foundation, Inc.
IOLTA Program
1300 West 6th Street, Room 113
Little Rock, AR 72201
(501) 682-9421
(501) 682-9415
www.arkansasjustice.org/iolta

TABLE OF CONTENTS

V. Appendix

I. IOLTA Program History

The Arkansas Supreme Court created the Arkansas IOLTA program in 1984 to provide funds for legal aid to the poor, for student loans and scholarships, and for projects that improve the administration of justice. Since its inception, the IOLTA program has made grants totaling more than $8 million in furtherance of these priorities. The majority of IOLTA grants have been made to Arkansas's nonprofit providers of civil legal services. Arkansas currently has two such programs—the Center for Arkansas Legal Services and Legal Aid of Arkansas. Together, these programs serve approximately 14,000 clients each year in matters involving the most basic of human needs: economic security, access to safe and habitable housing, and protection from domestic violence, to name a few.

In 1995, the once voluntary IOLTA program became mandatory for attorneys handling client or third-party funds. In 2014, the Arkansas IOLTA Foundation, Inc.—which had administered the program since its inception—merged with the Arkansas Access to Justice Foundation, Inc., and adopted that name. The Arkansas Access to Justice Foundation now administers the program. Under Rule 1.15 of the Arkansas Rules of Professional Conduct, lawyers who receive, maintain, or disburse client trust funds are required to maintain those funds in interest-bearing accounts at approved financial institutions, either for the benefit of the individual client or the Arkansas Access to Justice Foundation.

Lawyers routinely receive client funds (proceeds from settlements, escrow funds, advances on fees and costs, etc.) that they place in a bank account for future use. Since the funds are being held for the benefit of the client, lawyers must place these funds in accounts that are separate from their general operating accounts.

Lawyers should establish separate, interest-bearing accounts for individual clients where the sum is large enough or when the time of the deposit is of sufficient duration to justify the costs of opening, closing, and administering the account. The individual client receives the interest from the separate account and assumes the tax liability for the interest.

However, if the funds are small or short-term, it is often impractical for the attorney and bank to establish separate interest-bearing accounts that would result in any interest accruing to individual clients. In this circumstance, the lawyer places the client's funds in the lawyer's or law firm's multi-client IOLTA account until distribution. These clients do not receive the interest from this pooled IOLTA account; instead, banks remit the interest directly to the Foundation. Under the Rule, it is up to the lawyer to determine whether a client's trust funds will be placed in a separate account for the benefit of the individual client or in the lawyer's multi-client IOLTA account.

Although financial institutions are not required to participate in the IOLTA program, more than 100 financial institutions in Arkansas offer IOLTA accounts to their attorney customers and are on the approved list maintained by the Office of Professional Conduct and listed on the Foundation's website.

The Internal Revenue Service made a final ruling that the Foundation is a 501(c)(3) nonprofit corporation and a 509(a)(1) publicly supported foundation. The Board of Governors of the Federal Reserve System, the FDIC, and the Federal Home Loan Bank Board approve of the Arkansas IOLTA program. Copies of these documents are available from the IOLTA office.

This Guidebook is designed to provide information about the Arkansas IOLTA program and to assist participating financial institutions and lawyers in establishing and maintaining IOLTA accounts. Participating attorneys and financial institutions are encouraged to become familiar with all provisions of this Guidebook. Please call the IOLTA office if we can be of assistance to you as you administer IOLTA accounts at your institution or in your law firm. We can be reached at (501) 682-9421 or contact@arkansasiolta.org.

II. Definitions

"Allowable reasonable fees" – (1) Per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) federal deposit insurance fees, (5) sweep fees, 12b-1 fees, and subaccounting fees, and (6) reasonable IOLTA account administrative fees.

"Eligible institution" – A depository bank or savings and loan association or credit union authorized by federal or state laws to do business in Arkansas, 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 Arkansas. An eligible institution must either (1) maintain a physical office in the state of Arkansas or (2) be owned by a bank holding company regulated by the Federal Reserve System, of which a subsidiary federally-insured depository bank or savings and loan association or credit union maintains a physical office in the state of Arkansas.

"IOLTA account" – An interest- or dividend-bearing trust account benefiting the Arkansas Access to Justice Foundation, Inc., established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons, which may be withdrawn upon request as soon as permitted by law.

"Interest- or dividend-bearing trust account" – A federally insured checking account or an investment product, including a sweep product and a daily (overnight) financial-institution repurchase agreement or an open-end money market fund. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

"Non-IOLTA account" – A separate interest-bearing account where funds of a particular client for a specific and individual matter are deposited and where the interest earned on such account is held in trust as the property of that client as provided in Rule 1.15.

"Repurchase agreements" – Transactions in which a fund buys a security from a dealer or bank and agrees to sell the security back at a mutually agreed upon time and price. The repurchase price exceeds the sale price, reflecting the fund's return on the transaction. This return is unrelated to the interest rate on the underlying security. Repurchase agreements are subject to credit risks.

"U.S. Treasury Securities" – Direct obligations of the federal government of the United States.

III. Information for Attorneys

3.1 Participation and Compliance

On October 17, 1994, the Supreme Court of Arkansas changed the nature of the IOLTA program from voluntary to mandatory effective April 17, 1995. All Arkansas lawyers and law firms receiving short-term or nominal client funds must place those funds in interest-bearing trust accounts at approved eligible institutions.

The Rule requires all licensed Arkansas lawyers to certify their compliance annually to the Arkansas Supreme Court at the time of annual renewal of the lawyer's license. If a lawyer or law firm has not complied with Rule 1.15, the lawyer will be referred to the Arkansas Supreme Court Committee on Professional Conduct for investigation. If a lawyer's IOLTA status changes during the year (e.g., the lawyer moves to a new law firm, closes an IOLTA account, leaves private practice, or retires), the lawyer should complete an Attorney Change of Status Form and provide an updated Annual IOLTA Compliance Statement.

A lawyer or law firm should periodically review the lawyer's or firm's IOLTA account to determine whether client funds should be moved due to changed circumstances.

3.2 When an IOLTA Account is Needed

Only those attorneys who handle client or third-party funds are required to establish an IOLTA account, and only funds that constitute advances of fees and costs should be deposited in an IOLTA account. Fees that are already earned must always be deposited in the attorney's operating account. Examples include advance payments of court costs and fees, settlement funds, and escrow funds. Whether or not client retainers should be deposited in the IOLTA account or operating account depends on how the retainer is intended to operate. If it is a true retainer paid to secure the availability of the lawyer for a given period of time, such fee is considered to be earned upon receipt and should be deposited in the firm's operating account. If the retainer is intended to be an advance payment for fees and costs, it is generally considered earned as the costs are paid and services rendered.[1] In this instance, an attorney should transfer the advanced funds to the operating account once the costs are incurred or fees earned.

[1] John M.A. DiPippa, *Lawyers, Clients, and Money*, 18 U. Ark. Little Rock L.J. 95, 106 (1995).

Attorneys may establish separate interest-bearing accounts, known as "non-IOLTA accounts," for individual client funds where the amount is large enough or the time that the attorney will hold the funds is of sufficient duration to justify the costs associated with opening and administering the account. In such cases, those accounts should be opened using the client's tax ID number, and any interest that accrues will belong to the client. In deciding whether to open a trust account for an individual client, the attorney should consider the amount of interest that the funds would earn during the time they are expected to be held and the estimated cost of establishing and administering the separate account, including the cost of the law firm's services. A decision about whether to deposit client funds in a regular IOLTA account or an individual trust account is left to the discretion of the attorney.

3.3 Exemption from Participation

Under Rule 1.15, a lawyer may be exempt from participating in the IOLTA program. These exemptions are found in the IOLTA Compliance Statement issued by the Clerk of the Arkansas Supreme Court or available online at https://attorneyinfo.aoc.arkansas.gov. Exemptions include (1) attorneys who do not handle client or third-party funds that are subject to Rule 1.15 (e.g., military and government attorneys, judges, in-house counsel, and attorneys who maintain licensure but do not practice); (2) attorneys who are licensed in Arkansas but who primarily practice in another state; and (3) attorneys who are retired or whose licenses are on inactive status.

3.4 Setting Up an IOLTA Account

An attorney who needs to establish an IOLTA account must do so at an approved financial institution utilizing a product listed in Administrative Order No. 22, and in accordance with the procedures for establishing an account set out below.

3.4.1 *Approved Financial Institutions*

All IOLTA accounts must be held at financial institutions that have been approved by the Office of the Committee on Professional Conduct in accordance with Section 28 of the Procedures Regulating Professional Conduct of Attorneys at Law. A current list of approved financial institutions is available on the Foundation's website at www.arkansasjustice.org/ioltabanks. Attorneys are encouraged to consider financial institutions that pay competitive interest rates and waive service charges and handling fees. Banks that pay more competitive rates and waive charges and fees are listed on the "Preferred Banks" section of the Foundation's website.

3.4.2 *Permissible Products*

Under Administrative Order No. 22, the funds in the account must be subject to withdrawal "upon request and without delay." The following products are those permitted under the current order:

- An FDIC-insured interest-bearing checking account
- A federally-insured interest-bearing credit union checking account
- A money market account with check-writing capability[2]
- A sweep product
- A daily (overnight) financial-institution repurchase agreement[3]

3.4.3 *Geographic Location of IOLTA Account*

According to Rule 1.15, client or third-party funds must be maintained in a trust account "in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person." A lawyer whose office is situated in another state but who represents Arkansas clients may establish a trust account for his or her Arkansas clients in the lawyer's state if the financial institution meets the definition of an "eligible institution" under Administrative Order No. 22, the institution is approved by the Office of the Committee on Professional Conduct, and the institution remits the interest earned on the account to the Arkansas Access to Justice Foundation. If there is any question regarding whether the account should be opened in Arkansas or another state, the lawyer should obtain the consent of his or her clients. One option for meeting this requirement would be to include language to that effect in the lawyer's client engagement agreement.

3.4.4 *Basic Procedures*

The account is issued in the name of the attorney or law firm, is owned by the attorney or law firm, and is referred to as the Arkansas IOLTA Account of that attorney or firm. All interest earned on the IOLTA account (less allowable reasonable fees) is remitted on a monthly basis to the Arkansas Access to Justice Foundation, Inc.

A completed New IOLTA Account Agreement is required in order to set up an IOLTA account. This form will be in addition to any paperwork that the financial institution requires the attorney to complete, such as a signature card. In setting up the account, it is important to use the Foundation's tax ID number as it appears on the form. Either the attorney or the financial institution should mail, email, or fax both the completed, signed form to the Foundation. **It is the attorney's responsibility to ensure that the form is completed and submitted to the Foundation**. The financial institution usually keeps the originals, but there is no requirement that they do so. Forms may be obtained from the IOLTA office or downloaded from the Foundation's website at www.arkansasjustice.org/ioltaforms. Many financial institutions have copies of these forms on hand.

[2] An open-end money market fund must invest primarily in U.S. Treasury Securities or repurchase agreements 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 investment, have total managed assets of at least $250,000,000.

[3] A daily financial-institution repurchase agreement must be fully collateralized by U.S. Treasury Securities.

The account must be identified on the signature card as “Arkansas IOLTA Account of [name of lawyer or law firm]” and must use the Foundation’s Tax Identification Number (TIN): 71-0611874. All IOLTA accounts in Arkansas use this TIN. The Foundation is the beneficiary of the interest for reporting purposes.

Rule 1.15 provides that an attorney may deposit his or her own funds into the account to the extent required for banking purposes, but not to exceed $500. These funds must be clearly identified in the lawyer’s or law firm’s records of the IOLTA account.

Lawyers are required to notify their clients of their IOLTA account by posting a notice in a conspicuous place in their law offices. *In re Interest on Lawyers’ Trust Accounts*, 289 Ark. 595, 709 S.W.2d 400 (1986). Contact the Foundation’s staff or visit our website at www.arkansasjustice.org/ioltaforms if you need a copy for your law office.

3.5 FDIC Insurance

Effective January 1, 2013, IOLTA accounts are subject to a $250,000 limit per client, per financial institution, provided that the attorney or firm that holds the funds has designated the account as a trust account and has properly accounted for each individual client’s funds. Non-interest bearing accounts have the same level of coverage.

FDIC regulations provide that deposit accounts owned by one party but held in a fiduciary capacity by another party are eligible for pass-through deposit insurance coverage if (1) the deposit account records generally indicate the account's custodial or fiduciary nature and (2) the details of the relationship and the interests of other parties in the account are ascertainable from the deposit account records or from records maintained in good faith and in the regular course of business by the depositor or by some person or entity that maintains such records for the depositor. See 12 C.F.R. § 330.5(b).

If an IOLTA account does qualify for pass-through coverage as a fiduciary account, then each separate client for whom a law firm holds funds in an IOLTA account may be insured up to $250,000 for his or her funds.

For example, if a law firm maintains an IOLTA account with $250,000 attributable to Client A, $150,000 to Client B, and $75,000 to Client C, the account would be fully insured if the IOLTA account meets the requirements for pass-through coverage. If the clients have other funds at the same financial institution, those funds would be added to their respective shares of the funds in the IOLTA for insurance coverage purposes. For example, if Client B also had a non-interest bearing account with a $50,000 balance and $100,000 in certificates of deposit, $50,000 of the client’s holdings at that financial institution would not be insured.

3.6 IRS Reporting Not Required

IOLTA accounts are exempt from any backup withholding tax. Financial institutions DO NOT need to send out a request for taxpayer identification number, IRS Form W-9. If the

bank's procedures require the receipt of a W-9 form, it should list the Foundation's TIN and we will sign it.

Neither the financial institution nor the law firm is required to report interest earned on the IOLTA account. Financial institutions should dispense with the issuance of IRS Form 1099. If the financial institution's data processing system automatically issues a Form 1099, the form should indicate the name of the attorney or law firm and the tax ID of the Foundation and should be sent to the Foundation.

Interest on IOLTA accounts is not includible in the gross income of either the clients or the lawyers. IRS Rev. Rul. 81-209.

3.7 Debit Cards and Credit Cards

3.7.1 *Debit Cards*

Attorneys are strongly cautioned against having a debit or ATM card linked to their IOLTA accounts because of the potential for client funds to be diverted if the debit card is lost, stolen, or misused. In addition, disbursements made by cash withdrawals can create difficulties from the standpoint of maintaining complete and accurate trust account records. If an attorney or firm needs to make an electronic payment on the client's behalf out of client funds that have already been advanced (for example, to pay an e-filing fee), the payment should be made from the attorney's operating account and then reimbursed from IOLTA account.

3.7.2 *Receipt of Client Payments via Credit Card*

Credit card payments do not pose special issues when used for services already rendered, as those may be deposited directly into a firm's operating account. When an attorney accepts payments that are required to be deposited into a trust account, however, there are potential pitfalls posed by Rule 1.15: (1) the prohibition against commingling client funds with the attorney's own funds, and (2) the requirement that a client's funds be available to the client "upon request and without delay."

While an attorney is permitted to deposit up to $500 of the lawyer's own money in an IOLTA account for the purpose of covering bank service fees or meeting minimum balance requirements, the attorney may not deposit client funds in the firm's operating account, even if the attorney intends to immediately transfer those funds to an IOLTA account. If the firm's operating account is subject to a lien or bank set-off, the client's funds are at risk for being diverted to satisfy those obligations. Linking credit card payments of client funds to a firm's operating account is therefore not an acceptable solution.

Other issues arise if the credit card payments are linked to the IOLTA account, as these transactions are subject to merchant fees and "chargebacks." Credit card companies charge a variety of merchant fees that are often deducted directly from the bank account

set up to receive credit card payments. While an attorney is permitted to deposit up to $500 of the attorney's own money to cover certain costs, Rule 1.15 limits those to charges levied by the *bank*. Third party fees are not contemplated. Additionally, credit card customers often have a period of days after receiving a statement to dispute a charge. When a charge is disputed, the credit card company institutes a "chargeback" and reverses the charge pending resolution of the dispute. This places the attorney in the untenable position of having to either hold onto client funds paid by credit card until the time period for disputing a charge elapses or run the risk that the credit card company will institute a chargeback after the attorney has already spent the funds.

Some credit card processers—including LawPay, the Arkansas Bar Association's recommended merchant service provider—offer programs that address these issues by crediting funds that belong in an IOLTA account to that account and debiting any fees or chargebacks to the firm's operating account. This option also allows the attorney to direct whether a payment should go to the operating account or to the IOLTA account.

There is one final issue of concern for attorneys who accept credit card payments: Effective January 2013, Section 6050 of the Tax Code requires credit card processors to report gross credit card transactions to the IRS on a 1099-K. The regulation does not distinguish between credits made to an operating account versus credits to an IOLTA account, meaning that advances are reported together with payments for services rendered. Accordingly, amounts reported on the 1099-K will not necessarily reflect gross income actually received.

Section 6050W will also impose a 28% withholding penalty on all of a firm's credit card transactions if the name of the attorney or firm on the credit card merchant services account does not exactly match name associated with the tax ID number on file with the IRS. Major credit card processors have character limitations for the account name field, meaning many firms with longer names may have opened the account using an abbreviated name or acronym. If this is the case, the firm should contact its processor to make sure that the name on the merchant account is identical to the firm's legal name, at least up to the number of available characters. The firm should also ensure that its own tax ID number (instead of the Arkansas Access to Justice Foundation's tax ID number, which must be on the firm's IOLTA bank account) is on its credit card merchant service account.

3.8 Refunds of Interest on Erroneous Deposits

A return of interest paid to the Arkansas Access to Justice Foundation may be made under certain circumstances. The most common situation is one in which a lawyer mistakenly places a client's money in an IOLTA account when it should have been placed in a separate account for the benefit of the client. An attorney or firm that makes such a request should do so in writing on firm letterhead, should clearly state the reason for the request, and must make the request within 180 days of the first interest payment to the Foundation. The return of interest will generally be made to the attorney's IOLTA account and directed to the bank maintaining the account. Only the interest actually paid to the

Foundation will be returned to the attorney's account, meaning that the refund will usually be based a calculation of simple interest, rather than compounded interest.

3.9 Unclaimed and Unidentifiable Funds and Property

3.9.1 *Unclaimed or Unidentifiable Funds*

From time to time, an attorney, law firm, or estate of a deceased attorney will wind up in possession of client or third party funds but is unable to locate the client or third party, despite diligent efforts to do so. These are considered "unclaimed" trust account funds. In other instances, an attorney, law firm, or estate of a deceased attorney will be in possession of funds in a client trust account that cannot be traced back to a particular client. Such funds are considered "unidentifiable" trust account funds. Some examples of situations that might result in unidentifiable funds in a trust account include:

- When a lawyer tries to reconcile an account after a number of years;
- When a lawyer who has died kept no or inadequate records and the representative of the estate is unable to determine what clients may be entitled to the remaining funds;
- When law firms merge and combine records, there may be balances that have no client identifier surviving in the records.

Both unclaimed and unidentifiable trust account funds[4] are subject to the provisions of Ark. R. Prof'l Conduct 1.15(c), which requires that a lawyer, law firm, or estate of a deceased lawyer pay the funds to the Arkansas Access to Justice Foundation if, for a period of at least two years, that lawyer, firm, or estate has been unable, using reasonable efforts, to locate or identify the rightful owner. The lawyer should also submit to the Foundation and to the Office of the Committee on Professional Conduct the name and last known address of each person appearing from the lawyer or law firm's records to be entitled to the funds, if known; a description of the efforts undertaken to identify or locate the owner; and the amount of any unclaimed or unidentifiable funds. A Report of Unclaimed or Unidentifiable Trust Account Funds is included in the Appendix to this Guidebook and is available at www.arkansasjustice.org/ioltaforms.

Efforts to identify or locate the rightful owner of funds should be reasonable under the circumstances. Whether such efforts can be considered "reasonable" may depend on a number of factors, including the amount of money involved, whether contact information for the rightful owner is publicly available, the amount of time that has passed, the number of times that contact with the rightful owner has been attempted, and the expense associated with efforts to identify or locate the rightful owner. If the amount at issue is $500, the attorney would not be expected to hire a private investigator, whereas such an effort may be warranted if the amount at issue is $50,000.

[4] It should be noted that this rule applies both to IOLTA and non-IOLTA client trust accounts.

If lawyer, law firm, or estate of a deceased lawyer who has remitted funds under this rule identifies or locates the rightful owner within two years of the date the funds were remitted, that party should request a refund from the Foundation and repay those funds to the rightful owner. The lawyer, law firm, or deceased lawyer's estate must then submit a verification to the Foundation attesting that the funds have been returned. A sample affidavit is include in the Appendix to this Guidebook and is available at www.arkansasjustice.org/ioltaforms. The Foundation will, at all times, maintain sufficient reserves to pay any such claim.

3.9.2 *Unclaimed Property*

In the case of abandoned property, the Uniform Disposition of Unclaimed Property Act, sets out a process that an attorney should follow in the event that he or she is unable to locate a client whose property the attorney possesses. Under that act, client property is presumed to be abandoned after seven years have passed without any contact or instructions from the property's owner.[5]

Before the presumption of abandonment applies, the attorney must exercise due diligence to locate the owner. What actions on the attorney's part constitute "due diligence" will depend on the circumstances, including the value of the property involved.

If the attorney's efforts to locate the owner are fruitless after seven years, the attorney must file a verified report with the Auditor of the State and pay or deliver the unclaimed property to the Auditor of the State.

For complete information about the procedures for handling unclaimed property under the Act, see Ark. Code Ann. §§ 18-28-201 to -224.

3.10 Recordkeeping Requirements

Under Section 28 of the Procedures of the Supreme Court Regulating the Professional Conduct of Attorneys at Law, every lawyer engaged in the practice of law in Arkansas shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings, or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

To ensure that client and third party funds are properly accounted for, attorneys should maintain an individual ledger for each client and should reconcile all client ledgers with the IOLTA account balance each month.

[5] Note that the seven-year period is longer than the five-year period that attorneys are normally required to retain client records. *See* Judith Kilpatrick, *Leftover Trust Funds: What Do You Do?*, 1998 Ark. L. Notes 49.

3.11 Closing an IOLTA Account

If a lawyer or law firm closes an IOLTA account, the lawyer or law firm should complete and submit to the Foundation an Attorney Change of Status form. **It is the lawyer's responsibility to ensure that any interest accrued during the month that the account is closed is paid to the Foundation**. Failure to timely notify the Foundation and/or remit any outstanding interest may result in an ACH return charge to the Foundation, for which the lawyer must reimburse the Foundation.

IV. Information for Banks

4.1 Participation and Compliance

Bank participation in IOLTA is voluntary. Banks that participate in the IOLTA Program must have on file with the Office of Professional Conduct an Attorney Trust Account Overdraft Reporting Agreement. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' written notice to the Office of Professional Conduct. A copy of the agreement may be found at www.arkansasjustice.org/ioltaforms.

If a participating financial institution is found by the Executive Director of the Office of Professional Conduct to have engaged in a pattern of neglect or to have acted in bad faith in not complying with its obligations under the Attorney Trust Account Overdraft Reporting Agreement, the financial institution's approval shall be revoked and the financial institution removed from the list of approved financial institutions.

In addition to complying with the terms of its Attorney Trust Account Overdraft Reporting Agreement, participating financial institutions must comply with the provisions of Administrative Order No. 22 governing reporting, remitting, interest rates, etc., in order for their attorney customers who have IOLTA accounts to be in compliance with their obligations under Rule 1.15. If a financial institution fails to comply with such requirements, the Office of Professional Conduct may notify the bank's customers of their noncompliance with Rule 1.15 by virtue of the bank's failure to satisfy the requirements of the Rule applicable to financial institutions.

4.2 Overdraft Notices

Participating financial institutions must report overdrafts on IOLTA trust accounts to the Office of Professional Conduct, even if the insufficient instrument is honored. This should be done simultaneously with the notice of overdraft to the lawyer or law firm.

Rule 1.15 stipulates that notice of a dishonored instrument should be identical to that normally sent to a depositor and should include a copy of the check if that is the financial institution's customary practice. The Rule also stipulates that insufficient instruments that are honored by the financial institution should contain the following information:

- identity of the financial institution;

- identity of the the lawyer or law firm;
- the account number;
- the date of presentation for payment;
- the date paid; and
- the amount of the overdraft.

Overdraft notices should be mailed to the Office of Professional Conduct, 2100 Riverdale Road, Suite 110, Little Rock, AR 72202, telephone (800) 506-6631 or (501) 376-0313 and fax (501) 376-3438.

4.3 Interest Rates

Eligible financial institutions that maintain IOLTA accounts must pay the highest rate or dividend generally available to their non-IOLTA customers when the IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications. In determining the highest rate or dividend that the financial institution makes available to its non-IOLTA customers, the financial institution may consider factors, in addition to the balance in the IOLTA account, 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 the fact that the account is an IOLTA account.

4.4 Service Charges and Handling Fees

The majority of participating financial institutions in Arkansas waive fees on IOLTA accounts, which in turn, makes more funds available to support the Foundation's charitable purposes. However, the Arkansas Access to Justice Foundation, Inc. will cover customary, routine account maintenance charges assessed against IOLTA accounts. According to the Rule, these fees may not exceed those charged to non-attorney customers "on accounts of the same class within the same institution." Such routine fees include a monthly maintenance fee, per check/per deposit charge, and a "reasonable" IOLTA remittance fee to defray the depository institution's costs attributable to calculating and remitting the interest on the account to the Foundation. We encourage financial institutions to discuss IOLTA remittance fees with the Foundation.

Fees for wire transfer, insufficient funds, bad checks, stop payment, account reconciliation, negative collected balances, and check printing are not considered customary account maintenance charges and are not covered by the Arkansas Access to Justice Foundation, Inc. Such non-routine fees must be brought to the attention of the lawyer or law firm and arrangements made for the attorney to either deposit sufficient funds of her own to cover the fees or for the fees to be deducted from the attorney's operating account.

The Foundation may define reasonable service charges and handling fees in light of the prevailing financial environment and may remove a bank from the approved list of financial institutions authorized to offer attorney IOLTA accounts.

The financial institution should deduct applicable service charges and handling fees for IOLTA accounts solely from the interest earned. The principal of the account should never be used to offset the service charges or handling fees imposed on an IOLTA account. Since these accounts contain client funds held in trust by attorneys, any invasion of the principal would be improper.

“Negative” interest earnings are strictly prohibited on IOLTA accounts. This would result from service charges that exceed interest earned and would constitute an invasion of principal. “Negative netting”—collecting these negative charges from the interest earned by other IOLTA accounts—is also prohibited. This practice would constitute payment of fees of one account with earnings from another account without the account holder’s consent. Service charges may only be imposed to the extent of interest earned on an individual account. For example, if an IOLTA account earns 50 cents in interest for a given month but the financial institution’s normal monthly maintenance fee is $1, only 50 cents may be charged. The excess service charge amount is waived by the financial institution and net interest paid is reported as “zero” on the IOLTA interest remittance report form.

4.5 Written Agreements

Eligible institutions must have a written agreement between the attorney and the eligible institution that designates the interest on the IOLTA account to be remitted to the Arkansas Access to Justice Foundation, Inc., on a monthly basis. The New IOLTA Account Agreement shall satisfy this requirement for purposes of Administrative Order No. 22.

4.6 Reporting on IOLTA Accounts and Remitting Interest

On the last working day of each month, the Foundation initiates a request, either via fax or email, to each participating eligible institution for that institution to generate a Remittance Report on each IOLTA account at that institution for that month. The Remittance Report should be made available to the Foundation electronically via email, secure mailbox, secure website, or file transfer protocol (FTP) site, and should follow file-type and record-layout requirements prescribed by the Foundation. Generally speaking, acceptable file types include comma-separated value (.csv), tab-delimited (.tsv), and text (.txt) files. Unless the Foundation has approved an exemption to these requirements as described below, Excel (.xls) files and pdfs are not permitted. Files should include the following fields in the indicated order:

- Arkansas Access to Justice Foundation Tax ID Number;
- Routing transit number;
- Branch ID;
- Trust account number;
- Account status (A = active, N = new, C = closed);
- Earnings period start (MM/DD/YYYY);
- Earnings period end (MM/DD/YYYY);

- Interest rate;
- Gross remittance;
- Handling charges;
- Maintenance charges;
- Activity charges;
- Net remittance;
- Principal balance used;
- Rate type (ICR = interest checking; TICR = tiered interest checking; RIR = repo interest)
- Other charges;
- Waived charges;
- Target balance;
- Sweep fee;
- Firm name;
- Firm phone.

The eligible institution should provide the Remittance Report to the Foundation within five (5) business days. Any accounts that were opened during the reporting period (N) or closed (C) during the reporting period should be indicated in the appropriate column. When possible, the branch of the financial institution that opened a new account should submit copies of the completed New IOLTA Account Agreement.

Complete information about file-type and record-layout requirements, as well as sample templates, can be obtained from the Foundation upon request. If your financial institution does not currently report using a Foundation-approved template, we can work with you and our Foundation's software vendor to provide assistance as you develop a template report. Eligible institutions with fewer than thirty (30) IOLTA accounts may request an exemption to the prescribed file-type and record-layout requirements if the development of a report that meets those requirements is overly burdensome. Eligible institutions that receive approved exemptions must still submit monthly reports containing the fields listed above.

In addition to the reporting requirements, each eligible institution is responsible for monthly remittance of IOLTA funds. The interest funds may be remitted via Foundation-generated ACH (Automated Clearinghouse) or by electronic transfer generated by the financial institution. Financial institutions that choose to remit via Foundation-generated ACH are strongly encouraged to establish an internal debit account in which the financial institution deposits all interest earned on each IOLTA account for the month. The Foundation debits the interest via ACH once a month, normally between the 10th and the 15th of the month.

If an eligible institution chooses to initiate an electronic transfer to the Foundation, the Foundation will provide the routing number and account number for the account that receives remittances and complete any required agreement. However, only financial institutions with ACH origination capability may use this method, and only if such transfers

are made via Corporate Credit or Debit (CCD) or similar method. Payments via wire transfer are not permitted.

The Foundation has historically permitted banks to remit interest via check. This method is strongly discouraged, and is not permitted for banks that begin participation in the IOLTA program after June 2013.

A financial institution should transmit to the lawyer or law firm at the same time a report or statement showing the amount of interest paid to the Foundation, the rate of interest applied, the fees assessed, and the average account balance for the period for which the report is made. An entry on the lawyer's or law firm's bank statement meets this requirement. **It is the lawyer or law firm's obligation to reconcile the IOLTA account financial institution statement on a monthly basis to ascertain that the interest is being transferred from the financial institution to the Foundation.** Rule 1.15(a)(4) requires a lawyer to utilize generally accepted accounting practices with regard to trust accounts.

4.6 Remittance Errors

Errors on the part of the Foundation or the eligible institution occasionally lead to an incorrect amount being debited from an IOLTA account or debit account. If such an error occurs, the eligible institution should complete and submit to the Foundation an Error Report Form as soon as the error is discovered. If the error will result in a refund to the attorney or eligible institution and the account is normally debited by the Foundation, the Foundation will institute a credit back to the account within seven (7) business days of receiving the Error Report Form. If the error will result in an underpayment by the bank or attorney, the bank should make arrangements for the difference to be paid to the Foundation by electronic transfer or check within seven (7) business days.

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- or dividend-bearing account held at an eligible institution.

(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 allowable reasonable fees, shall be paid to the IOLTA Program of the Arkansas Access to Justice Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer of 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 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.

(9) 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.

(10) 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.

(11) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas Access to Justice Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the IOLTA 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.

(c) *Unclaimed or Unidentifiable Trust Account Funds.*

(1) When a lawyer, law firm, or estate of a deceased lawyer cannot, using reasonable efforts, identify or locate the owner of funds in its Arkansas IOLTA or non-IOLTA trust account for a period of at least two (2) years, it shall pay the funds to the Arkansas Access to Justice Foundation. At the time such funds are remitted, the lawyer shall submit to the Arkansas Access to Justice Foundation and the Office of the Committee on Professional Conduct the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, if known; a description of the efforts undertaken to identify or locate the owner; and the amount of any unclaimed or unidentified funds.

(2) If, within two (2) years of making a payment of unclaimed or unidentified funds to the Arkansas Access to Justice Foundation, the lawyer, law firm, or deceased lawyer's estate identifies and locates the owner of funds paid, the Arkansas Access to Justice Foundation shall refund the sum to the lawyer, law firm, or deceased lawyer's estate. The lawyer, law firm, or deceased lawyer's estate shall submit to the Foundation a verification attesting that the funds have been returned to the owner. The Arkansas Access to Justice Foundation shall maintain sufficient reserves to pay all claims for such funds.

.

.

.

Comment Text:

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.

History Text:

History: Section (c) was added by per curiam order November 30, 2006, effective February 1, 2007; amended by per curiam order September 26, 2013, effective January 1, 2014; amended and effective by per curiam order November 5, 2015.

Associated Court Rules:

[Current] Arkansas Rules of Professional Conduct

Source URL: https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-115-safekeeping-property-and-trust-accounts

Order 22. IOLTA Program Relationship with Eligible and Member Institutions

Section 1. DEFINITIONS. As used in Rule 1.15 of the Arkansas Rules of Professional Conduct, the terms below shall have the following meaning:
(a) "IOLTA account" means an interest- or dividend-bearing trust account benefiting the Arkansas Access to Justice Foundation, Inc., established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons, which may be withdrawn upon request as soon as permitted by law.
(b) "Eligible institution" for IOLTA accounts means a depository bank or savings and loan association or credit union authorized by federal or state laws to do business in Arkansas, 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 Arkansas. In addition, an eligible institution must either (1) maintain a physical office in the state of Arkansas or (2) be owned by a bank holding company regulated by the Federal Reserve System, of which a subsidiary federally-insured depository bank or savings and loan association or credit union maintains a physical office in the state of Arkansas. Eligible institutions must meet the requirements set out in section (b) above.
(c) "Interest- or dividend-bearing trust account" means a federally insured checking account or an investment product, including a sweep product and 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. Treasury Securities; an open-end money-market fund must invest primarily in U.S. Treasury Securities or repurchase agreements fully collateralized by U.S. Treasury 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 investment, have total managed assets of at least $ 250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay.
(d) "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, 12b-1 fees, and subaccounting fees, and (6) a reasonable IOLTA account administrative fee.
(e) "U.S. Treasury Securities" means direct obligations of the federal government of the United States.
(f) "Repurchase agreements" means transactions in which a fund buys a security from a dealer or bank and agrees to sell the security back at a mutually agreed upon time and price. The repurchase price exceeds the sale price, reflecting the fund's return on the transaction.

This return is unrelated to the interest rate on the underlying security. Repurchase agreements are subject to credit risks.

Section 2. PARTICIPATION. Participation in the IOLTA Program of the Arkansas Access to Justice Foundation is voluntary for banks, savings and loan associations, and investment companies. Any eligible institution that elects to provide and maintain IOLTA accounts shall do so according to the following terms:

(a) Determination of Interest Rates and Dividends. Eligible institutions that maintain IOLTA accounts that are, or are invested in, interest-bearing deposits or daily financial-institution repurchase agreements shall pay no less than the highest rate and dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the balance in the IOLTA account, 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 the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer may accept, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account into a daily financial institution repurchase agreement or a money-market fund. However, this Rule shall not require any eligible institution to offer or otherwise make available sweep accounts for IOLTA accounts.
(b) Written Agreements. There shall be a written agreement between the lawyer and the eligible institution, designating interest on the IOLTA account be remitted to the Arkansas Access to Justice Foundation, Inc. on a monthly basis.
(c) Interest Rates and Dividends. Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.
(d) Fees That May Be Deducted From Interest Earned. Allowable reasonable fees are the only service charges or fees permitted to be deducted from interest earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for all of its customers with interest-bearing accounts. All other fees and charges shall not be assessed against the accrued interest on the IOLTA account but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.
(e) Negative Netting Prohibited. Fees or charges in excess of the interest earned on the account for any month shall not be taken from interest earned on other IOLTA accounts or from the principal of the account.
(f) Reporting Requirements. A statement should be transmitted monthly to the Arkansas Access to Justice Foundation, Inc., in an electronic format to be specified by the Foundation, 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 average account balance, the interest rate 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, and the net amount of interest or dividend remitted for the period.

Section 3. REMOVAL OF FINANCIAL INSTITUTIONS FROM IOLTA PROGRAM. In addition to the attorney trust account "automatic overdraft" notification procedures set out in Section

28 of the Procedures of the Arkansas Supreme Court regulating professional conduct of attorneys at law:

(a) Banks may only be removed from the IOLTA Program after notice from the Foundation to the bank of the action needed to correct or implement any needed changes and a timely response from the bank.

(b) Should a bank be removed from the IOLTA Program, the Foundation will give attorneys sufficient notice and time in order to move their IOLTA accounts to another participating bank.

Associated Court Rules:

Administrative Orders

Source URL: https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/order-22-iolta-program-relationship-eligible-and-member

ARKANSASJUDICIARY
Published on *Arkansas Judiciary* (https://courts.arkansas.gov)

SECTION 28. ATTORNEY TRUST ACCOUNT AND AUTOMATIC "OVERDRAFT"

NOTIFICATION PROCEDURE.

A. Consent By Lawyers. Every lawyer practicing or admitted to practice in Arkansas shall, as a condition thereof, be conclusively deemed to have consented to the trust account overdraft reporting and production requirements mandated by this Section.

B. Overdraft Notification Agreement Required. A financial institution shall be approved as a depository for lawyer trust accounts only if it files with the Arkansas Supreme Court Office of Professional Conduct (the "Office") an agreement, in a form provided by the Office, to report to that Office whenever any properly payable instrument is presented against any lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Office may establish additional procedures, to be approved by the Supreme Court, governing approval and revocation of approved status for financial institutions. The Office shall annually file with the Supreme Court Clerk and the Arkansas Access to Justice Foundation, and post on the Court's website, not later than January 1, a current list of approved financial institutions. No attorney or law firm trust account shall be maintained in any financial institution that does not agree to so report and is not approved by the Office. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days written notice to the Office.

C. Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution to the Office 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 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.

D. Timing of Reports. Reports under subsection 28(C) 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 five (5) banking days of the date of presentation for payment against insufficient funds.

E. Costs. 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 Section.

F. Trust Accounts. Lawyers who practice law in Arkansas shall deposit all funds held in trust in Arkansas in accordance with Rule 1.15(a) of the Arkansas Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor, or otherwise. Lawyer trust accounts shall be maintained only in financial institutions approved by the Office.

G. Account Records. Every lawyer engaged in the practice of law in Arkansas shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings, or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

H. Definitions. For purposes of this Section: (1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers. (2) "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 Arkansas. (3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under Arkansas law, upon presentation of an instrument, that the institution dishonors. (4) "Office" means the Office of Professional Conduct of the Arkansas Supreme Court.

I. Form of Overdraft Reporting Agreement. The form of the "Attorney Trust Account Overdraft Reporting Agreement" attached hereto, and as may be subsequently revised, is approved for use.

J. Disapproval or Revocation of Approval of Financial Institutions. (1) Refusal of the Office to approve a financial institution due to failure of the financial institution to timely submit an initial properly executed written agreement on the form approved by the Court or the Office is not appealable or otherwise subject to challenge, including by civil action in any court. (2) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found by the Executive Director to have engaged in a pattern of neglect or to have acted in bad faith in not complying with its obligations under the written agreement. (3) The Executive Director shall communicate any decision to revoke approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for the revocation decision and advise of any right to reconsideration or review. The financial institution shall have thirty (30) days from the date of receipt of the written notice to file a written request with the Executive Director seeking reconsideration of the Executive Director's decision or a review of that decision by a panel of the Committee on Professional Conduct. The financial institution may request a review by either ballot vote of a panel or a public hearing before a panel, following the Procedures. The decision of the panel shall be final and not subject to any review. The approved status of the financial institution shall continue until such time as this review process is final. (4) Once the approval of the financial institution has been finally revoked, the institution shall not thereafter be approved as a depository for attorney trust accounts until such time as the financial institution petitions the Office for new approval, including in the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future, and approval is granted. (5) Within fifteen (15) days of receipt of the notice of revocation, or final order of revocation if reviewed by a panel, of its approved status, a financial institution shall give written notification of the revocation action to all holders of attorney trust accounts on deposit with the financial institution, and file a report with the Office of all such attorney notification contacts within thirty (30) days of the date of receipt by the financial institution of the notice or final order of revocation. (6) Any attorney or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked shall remove all trust accounts from the financial institution within thirty (30) days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the Office, including the name and address of the new trust account depository institution. (7) Failure of any financial institution, attorney, or law firm to comply with the provisions of Section 28 may be treated as contempt of the Arkansas Supreme Court upon petition by the Office, and punished as such upon a finding of contempt.

ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT

To: Arkansas Supreme Court Office of Professional Conduct (the "Office") Justice Building, Room 110 625 Marshall Street Little Rock, AR 72201-1054

The undersigned, being a duly authorized officer of (name of institution) _____, a financial institution doing business in the State of Arkansas, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to receive attorney trust accounts in the State of Arkansas. In consideration of approval by the Office of this financial institution, the financial institution agrees to comply with the overdraft reporting requirements for such financial institutions as set forth in Section 28 of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (Rev. 2011) (the "Procedures"), which is incorporated herein by reference, and any other rules or procedures for overdraft reporting promulgated by the Arkansas Supreme Court or the Office, and any later amendments to such rules or procedures.

Specifically, the named financial institution agrees to report to the Office all events involving trust account instruments, and to report 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 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.

All reports shall be made within the following time periods:

(1) In the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;

(2) In the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds. This agreement shall apply to all branches of the named financial institution and shall not be cancelled except upon thirty (30) days written notice to the Executive Director of the Office at the address listed above. Name and address of financial institution:

_____
_____

Date:
_____
_____

Signature of Authorized Official

(Corporate Seal)

Printed or Typed Name of Authorized Official _____

Title or Position of Authorized Official _____

ACKNOWLEDGMENT

On this ____ day of _____, 2____, before me, a Notary Public for the State of Arkansas, appeared the above-named individual, known to me to the person executing this instrument, and acknowledged and executed this instrument as his/her free and voluntary act.

_____

Notary Public (signature)

My Commission Expires: _____

ACCEPTANCE

The above-named financial institution is hereby approved by the Arkansas Supreme Court Office of Professional Conduct as a depository for attorney trust accounts in the State of Arkansas until such time as this agreement is cancelled by the financial institution upon thirty (30) days written notice to the Office, or is revoked by action of the Executive Director of the Office.

Date _____
_____

Executive Director, Office of Professional Conduct

Associated Court Rules:
Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

Source URL: https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/section-28-attorney-trust-account-and-automatic

REPORT OF UNCLAIMED OR UNIDENTIFIABLE TRUST ACCOUNT FUNDS

To: Arkansas Access to Justice Foundation
IOLTA Program
1300 West 6th Street, Room 113
Little Rock, AR 72201

CC: Arkansas Supreme Court Office of Professional Conduct
2100 Riverfront Drive, Suite 200
Little Rock, AR 72202-1747

Pursuant to Arkansas Rule of Professional Conduct 1.15(c), the undersigned hereby remits to the Arkansas Access to Justice Foundation, Inc., $_____ from the [CLIENT, ATTORNEY, OR FIRM NAME ON ACCOUNT] trust account held at [NAME OF FINANCIAL INSTITUTION]. This amounts represents funds whose owner/owners (check one):

☐ I cannot locate.
☐ I cannot identify.

The name and last known address of each person appearing from the firm's records to be entitled to the funds are as follows (attach letter if additional space needed):

I have made reasonable efforts to identify or locate the owner of these funds, including the following (attach letter if additional space needed):

I have made such efforts for a period of at least two (2) years, to no avail.

_____ _____
SIGNATURE OF ATTORNEY OR ESTATE REPRESENTATIVE DATE

_____ _____
NAME OF FIRM OR ATTORNEY'S ESTATE BAR #

Signer's Name: _____

Address: _____

City, State, Zip: _____ Email: _____

Phone: _____

INSTRUCTIONS

This form should be completed by an attorney responsible for the IOLTA account from which the unclaimed or unidentifiable funds are being paid. If the funds are being paid from an IOLTA account belonging to a deceased attorney, the executor, executrix, or personal representative of the attorney's estate should complete the form.

Please provide the amount remitted, the name of the account as it reads on the bank statement (e.g., IOLTA Trust Account of the Jones Law Firm or Client Trust Account of Jane Doe) and the name of the financial institution where the account is held. If there are unclaimed funds for more than one client, a separate form should be submitted for each client.

If more than one party is potentially entitled to the funds remitted, last known contact information should be provided for all such parties.

Examples of efforts to identify or locate the rightful owner of funds may include, but are not limited to, the following:

- Reviewing all available trust account ledgers and bank statements;
- Attempting to send mail to the last known address of the rightful owner(s);
- Calling the last known phone number of the rightful owner(s);
- Contacting any known family members or friends of the rightful owner(s);
- Conducting online searches using Google, White Pages, social media, or public records databases; and
- Hiring a private investigator.

A greater outlay of time and expense may be warranted when larger amounts of money are at issue. For more information about what efforts are considered "reasonable" under the circumstances, please consult the *Arkansas Guidebook for Attorneys and Financial Institutions* available at www.arkansasjustice.org/ioltarules.

SAMPLE AFFIDAVIT FOR RETURN OF FUNDS
PURSUANT TO ARK. R. PROF'L CONDUCT 1.15(c)(2)

I, _____, do hereby swear and affirm that the following statements are true:

1. I am/was an attorney licensed to practice in the State of Arkansas and maintain/maintained an IOLTA account pursuant to the Arkansas Rules of Professional Conduct and Administrative Order No. 22 [OR] I am the testator/testatrix/personal representative of the Estate of [ATTORNEY NAME], who maintained an IOLTA account pursuant to the Arkansas Rules of Professional Conduct and Administrative Order No. 22.

2. On [DATE], I remitted funds in the amount of $_____ to the Arkansas Access to Justice Foundation, which funds I determined at the time were unclaimed or unidentifiable. *See* Report of Unclaimed or Unidentifiable Trust Funds, attached as Exhibit A.

3. I have since located [OR] identified and located the rightful owner of the funds previously remitted to the Foundation and have obtained a refund of those funds for the purpose of returning those funds to the rightful owner.

4. I attest that these funds were returned in full to the rightful owner on [DATE].

5. I swear under oath that the statements contained in this Affidavit are true and correct to the best of my knowledge, information, and belief.

_____
[Signature]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF _____)

On this _____ day of_____, 20___, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily

proven) to be the person who subscribed to the within instrument and acknowledged that he/she executed the same for the consideration, use and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this __ day of _____, 20___.

_____
NOTARY PUBLIC

My Commission Expires:

_____
(S E A L)

ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT

To: Arkansas Supreme Court Office of Professional Conduct (the "Office")
2100 Riverfront Drive, Suite 200
Little Rock, Arkansas 72202-1747

The undersigned, being a duly authorized officer of (name of institution)

_____,

a financial institution doing business in the State of Arkansas, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to receive attorney trust accounts in the State of Arkansas. In consideration of approval by the Office of this financial institution, the financial institution agrees to comply with the overdraft reporting requirements for such financial institutions as set forth in Section 28 of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (Rev. 2002) (the "Procedures"), which is incorporated herein by reference, and any other rules or procedures for overdraft reporting promulgated by the Arkansas Supreme Court or the Office, and any later amendments to such rules or procedures.

Specifically, the named financial institution agrees to report to the Office all events involving trust account instruments, and to report 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 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.

All reports shall be made within the following time periods:

(1) In the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;

(2) In the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.

This agreement shall apply to all branches of the named financial institution and shall not be cancelled except upon thirty (30) days written notice to the Executive Director of the Office at the address listed above.

Name and address of financial institution:

_____

_____

Date: _____

_____
Signature of Authorized Official

Corporate Seal

_____
Printed or Typed Name of Authorized Official

_____
Title or Position of Authorized Official

_____
Phone Number of Authorized Official

_____
Email Address of Authorized Official

ACKNOWLEDGMENT

On this ____ day of _____, 2____, before me, a Notary Public for the State of Arkansas, appeared the above-named individual, known to me to the person executing this instrument, and acknowledged and executed this instrument as his/her free and voluntary act.

_____
Notary Public (signature)

My Commission Expires: _____

ACCEPTANCE

The above-named financial institution is hereby approved by the Arkansas Supreme Court Office of Professional Conduct as a depository for attorney trust accounts in the State of Arkansas until such time as this agreement is cancelled by the financial institution upon thirty (30) days written notice to the Office, or is revoked by action of the Executive Director of the Office.

Date _____ _____
Executive Director, Office of Professional Conduct

(02-11-2013 ed.)

NEW IOLTA ACCOUNT AGREEMENT

In order to establish a new IOLTA account, the Attorney and a representative of the Financial Institution must complete this form in its entirety and submit it to the IOLTA Program of the Arkansas Access to Justice Foundation at the address below. This form will be in addition to any forms that the Financial Institution requires the attorney to complete, such as a signature card.

TO BE COMPLETED BY ATTORNEY

Attorney Name Bar Number

Firm Name

Address

City, State, Zip

Phone Number Fax Number

Email Address

TO BE COMPLETED BY FINANCIAL INSTITUTION

Name of Financial Institution

Financial Institution Representative

Address

City, State, Zip

Phone Number Fax Number

Email Address

By completing and submitting this form, the undersigned Attorney acknowledges that:

- The Attorney has confirmed that the Financial Institution is an "eligible institution" as defined by Ark. Sup. Court Admin. Order No. 22 and is approved by the Arkansas Supreme Court Office of Professional Conduct as a depository for lawyer trust accounts;
- The Attorney authorizes the Financial Institution to remit the interest on this account to the Arkansas Access to Justice Foundation by ACH pre-authorized debit or by check or by any other method approved by the Federal Reserve System; and
- The names and bar numbers of all attorneys who will use this account in the ordinary course of their practice are attached.

By completing and submitting this form, the undersigned representative acknowledges on behalf of the Financial Institution that:

- The IOLTA account established under this agreement is an FDIC-insured interest-bearing checking or money-market account whose funds are subject to withdrawal upon request as soon as permitted by law;
- The IOLTA account has been established using the **tax identification number of the Arkansas Access to Justice Foundation, Inc. (71-0611874)** with interest creditable to the Foundation and NOT to the attorney or firm listed on the account. The bank is NOT required to report the interest income (IRS Form 1099); and
- Effective as of the date below, interest on this account, computed in accordance with the institution's standard accounting practice, will be reported and remitted to the Arkansas Access

to Justice Foundation on a monthly basis using ACH or other electronic transfer. At this time, wire transfers are NOT permitted.

IOLTA Account Confirmation (to be completed by Financial Institution)

Account Name: The Arkansas IOLTA Account of _____
(Name of Attorney or Firm)

Trust Account Number: _____ Routing Number: _____

Date Account Opened: _____

Attorney: Please list the names and bar numbers of all other attorneys who will use this account in the course of their practice (attach additional page(s) if needed):

_____ (Name)	_____ (Bar Number)
_____ (Name)	_____ (Bar Number)
_____ (Name)	_____ (Bar Number)
_____ (Name)	_____ (Bar Number)
_____ (Name)	_____ (Bar Number)
_____ (Name)	_____ (Bar Number)

Attorney Signature Date	Bank Representative Signature Date

Please fax, mail, or email this completed form to the Arkansas Access to Justice Foundation, Inc., 1300 W. 6th St., Room 113, Little Rock, AR 72201, (501) 682-9415, or update@arkansasiolta.org. For more information about the IOLTA Program of the Arkansas Access to Justice Foundation, including a comprehensive *Guidebook for Attorneys and Financial Institutions* that provides definitions and further guidance on proper setup and maintenance of IOLTA accounts, please visit www.arkansasjustice.org/iolta.

New Account ATJF 101
(12-2015)

ATTORNEY CHANGE OF STATUS

This form should submitted to the IOLTA Program of the Arkansas Access to Justice Foundation when an attorney's contact information or participation status in the IOLTA Program changes. If closing an IOLTA account, please note that **it is the attorney's responsibility to ensure that any interest accrued on the account is remitted to the Arkansas Access to Justice Foundation before the account is closed**.

I am submitting this form to (check all that apply):

- ☐ Notify the IOLTA Program of a change of address or employment (Complete Section A)
- ☐ Close an IOLTA account (Complete Sections A and B)
- ☐ Notify the IOLTA Program that I no longer participate because I now qualify for an exemption (Complete Section A and, if applicable, Section B AND attach updated Annual IOLTA Compliance Statement)

Section A – REQUIRED ☐ Check here if this a NEW name or contact information

Name: _____ Bar #: _____

Employer: _____ Phone: _____

Address: _____

City, State, Zip: _____ Email: _____

Current Bank Name: _____

Current Account Name: _____

Current IOLTA Account Number: _____

Section B – Notice of Closed Account

I am closing the following account on _____ (date) and attaching a list of names and bar numbers of any additional attorneys who are associated with this account.

In closing this account, I am (choose one of the following):

- ☐ Opening a new IOLTA Account and providing a completed New IOLTA Account Agreement
- ☐ Using another IOLTA Account in my/my firm's name (acct #): _____
- ☐ Joining a firm that has an IOLTA Account (acct #):_____
- ☐ No longer participating in the IOLTA Program because I satisfy an exemption on the attached and completed Annual IOLTA Compliance Statement

_____ _____

Signature Date

Please mail, fax, or email this form to the Arkansas IOLTA Program at 1300 W. 6th Street, Room 113, Little Rock, AR 72201, (501) 682-9415, or update@arkansasiolta.org. For additional information, visit our website at www.arkansasjustice.org/iolta and consult our FAQs or download the *IOLTA Program Guidebook for Attorneys and Financial Institutions*.

NOTICE TO CLIENTS

ARKANSAS ACCESS TO JUSTICE
REPRESENTING HOPE

In conformity with the Arkansas Code of Professional Conduct, this law firm maintains an interest-bearing trust account where client funds that are nominal in amount or to be held for a short time are deposited.

If funds belonging to you are deposited in this firm's trust account, any interest earned therefrom will be forwarded by the depository bank to a nonprofit organization that will dispense the funds to support programs that provide legal aid to the poor, that promote and support access to the civil justice system, that educate the public regarding the need for access to justice, that provide loans and scholarships for the education of lawyers, that improve the administration of justice, or that carry out other purposes approved by the Arkansas Supreme Court.

For more information, visit www.arkansasjustice.org/iolta.

ARKANSAS ACCESS TO JUSTICE FOUNDATION
IOLTA PROGRAM

FINANCIAL INSTITUTION IOLTA ERROR REPORT FORM

To be completed by the institution for each IOLTA account for which a remittance error was made.

ELIGIBLE INSTITUTION

_____
(Name)

_____
(Address)

_____ _____ _____
(City) (State) (Zip Code)

_____ _____ (____)_____
(Contact) (Department) (Telephone)

LAWYER/LAW FIRM

_____
(Name)

_____
Address)

_____ _____ _____
(City) (State) (Zip Code)

_____ (Do not omit any numbers)
(IOLTA Account Number)

REMITTANCE INFORMATION

	Actual Transaction	**Correct Transaction**
Reporting period	_____ to _____	_____ to _____
Interest Rate/Dividend	_____	_____
Gross interest/dividend earned for period	$_____	$_____
Permissible service charges/fees (if any) deducted:		
IOLTA Handling fee	$_____	$_____
Per check charge	$_____	$_____
Per deposit charge	$_____	$_____
Fee in lieu of minimum balance	$_____	$_____
Other (describe):		
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

Correct remittance due the Foundation $_____

Actual remittance paid the Foundation $_____

(_____)
(Date) (Check number)

Difference $_____

Payable to ____ Financial Institution *(the Foundation will issue a refund)*

____ Foundation *(return your check with this form)*

EXPLANATION _____

_____

_____

_____

_____

_____
(Authorized official)

_____
(Name)

_____
(Title)

_____
(Date)

RETURN COMPLETED FORM TO:
Arkansas Access to Justice Foundation, Inc.
IOLTA Program
1300 W. 6th Street, Room 113
Little Rock, AR 72201
Fax: 501-682-9415
Email: contact@arkansasiolta.org

For assistance in completing this form, or for more information about the IOLTA program, please visit the Foundation's website at www.arkansasjustice.org/iolta or call (501) 682-9421.

2016 IOLTA COMPLIANCE STATEMENT

All lawyers licensed to practice law in Arkansas are required to annually certify their compliance with Rule 1.15 of the Arkansas Rules of Professional Conduct. YOU ARE STRONGLY ENCOURAGED TO COMPLETE YOUR CERTIFICATION ONLINE BY GOING TO https://attorneyinfo.aoc.arkansas.gov. If you choose instead to submit this paper certification, you must check ONE of the appropriate statements regarding IOLTA below. Print and sign your name, and provide the number assigned to you by the Supreme Court of Arkansas. Please also complete and return the attached statement regarding your pro bono activities this past year.

_____ I am an Arkansas lawyer who receives or disburses client funds in Arkansas, and, in order to comply with the Model Rules of Professional Conduct Rule 1.15, I have (my law firm has, or the public or private entity for which I work has) established one or more pooled client trust account(s), all of which are interest-bearing for the benefit of the IOLTA Program of the Arkansas Access to Justice Foundation. **Information regarding my IOLTA account is provided below. (Please attach additional pages listing account information for any additional IOLTA accounts.)**

_____ _____
Print the Firm Name as it appears on the account City where Firm is located

_____ _____
Print the Bank Name as it appears on the account Account number

_____ I am licensed to practice law in Arkansas, but I do not handle client or third-party funds subject to rule 1.15 (includes government and military attorneys, judges, in-house counsel, and attorneys who maintain an active law license but do not practice).

_____ I am licensed to practice law in Arkansas, but I primarily practice in another state and I am in compliance with that state's IOLTA rules.

_____ I am retired or inactive.

I hereby certify that the above information is true and correct to the best of my knowledge and belief.

_____ _____
Signature of Lawyer Date

_____ _____
Print Full Name Supreme Court Bar Number

Your responses below will not be maintained on an identifiable basis. Aggregate data will be provided to the Arkansas Access to Justice Commission for the purpose of assessing the provision of pro bono legal services in Arkansas.

I provided a total ___ hours of pro bono public service, as defined in Rule 6.1 of the Rules of Professional Conduct, during calendar year 2015. My activities included the following (check all applicable):

__ Provided legal services to persons of limited means

__ Provided legal services to charitable, religious, civic, community, governmental, or educational organizations in matters designed primarily to address the needs of persons of limited means, or in matters in furtherance of their organizational purposes

__ Provided legal services to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights

__ Participated in activities for improving the law, legal system, or legal profession