

## 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in an eligible institution for the deposit of nominal or short-term funds of clients or third persons, which may be withdrawn upon request as soon as permitted by law.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.

## ***HISTORY***

Adopted and effective by per curiam order November 5, 2015.