DISTRICT OF COLUMBIA BAR

September 16, 2009

The Honorable Eric T. Washington
Chief Judge
District of Columbia Court of Appeals
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001

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Re: Transmittal of Proposed Revisions to the Rules Governing Interest on Lawyers' Trust Accounts (IOLTA)

Dear Chief Judge Washington:

On behalf of the District of Columbia Bar, I am pleased to transmit to you for the Court's consideration, proposed amendments to the Rules Governing Interest on Lawyers' Trust Accounts (IOLTA).[1] The proposed amendments to Rule of Professional Conduct 1.15 and a new Section 20 of Rule XI of the D.C. Court of Appeals Rules Governing the Bar seek to increase IOLTA interest revenue and provide greater clarity to the trust account ethics rules. In sum, the revisions would make participation in the IOLTA program mandatory for D.C. Bar members; require that banks that wish to qualify as "Approved Depositories" provide interest rate comparability on IOLTA accounts; and house the provisions on interest rate comparability and other provisions about approved depositories in a new section of Rule XI.

The proposed amendments result from a review by the District of Columbia Bar Rules of Professional Conduct Review Committee ("Rules Review Committee")[2] of proposed revisions to the IOLTA rules that were submitted to the Bar by the D.C. Bar Foundation ("Bar Foundation").[3] On September 8, 2009, the Board of Governors approved the proposed amendments discussed above.

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[1] In this letter, "IOLTA Rules" refers to three rules: Rules of Professional Conduct 1.15 and 1.19 and Appendix B of Rule X of the Court Rules Governing the Bar. Currently, a Bar member who receives client money or the money of a third person must consider all three of the rules to be fully compliant with the ethical mandates of this jurisdiction.

[2] The Rules Review Committee is the standing committee of the D.C. Bar charged with the ongoing review of the D.C. Rules of Professional Conduct.

[3] The Bar Foundation submitted its proposed revisions to the Bar on November 6, 2007, after its own 14-month study process.

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On September 8, the Board also voted to reserve the transmittal of proposed amendments about an ancillary issue -- the monitoring of D.C. lawyers' participation in the DC IOLTA program -- pending the outcome of further study by the Bar's Regulations/Rules/Board Procedures Committee. [4]

After 18 months of study and analysis by the Rules Review Committee, a public comment period on the proposed IOLTA revisions by the Rules Review Committee, and numerous meetings with representatives of the Rules Review Committee and the Bar Foundation, the Rules Review Committee and the Bar Foundation came to a consensus on the majority of the proposed amendments. However, the Committee and the Foundation ultimately differed in their approach to one aspect of the proposed rules -- an exception to the IOLTA requirements for Bar members who are multi-state practitioners and may face conflicting or inconsistent trust account requirements in other jurisdictions.[5]

This letter summarizes the proposed amendments to the IOLTA rules and the work of the Rules Review Committee and the Bar Foundation. Details about the background and history of the existing trust account and IOLTA rules in the District of Columbia and the work of the Rules Review Committee and the Bar Foundation are provided in the Bar staff memorandum of July 9, 2009, attached as Appendix I.[6]

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[4] Discussion about the IOLTA monitoring proposal and the Bar Foundation's predecessor proposal of reporting and certification by D.C. lawyers begins on page 9.

[5] The Committee's proposed rule revisions would exempt a member from the D.C. IOLTA program if the member is otherwise compliant with the contrary mandates of a tribunal; <u>or</u> when the member is fully participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the member is <u>licensed and principally practices</u> -- the "licensed and principally practices" approach.

The Bar Foundation's proposed rule revisions would exempt a member from the D.C. IOLTA program only when a lawyer is otherwise compliant with the contrary mandates of a tribunal or the jurisdiction in which the lawyer is licensed and principally practices. If a member obtained the client funds as a result of the member's "out-of-state license," the member would not be subject to the D.C. IOLTA program for those particular funds – the "on your D.C. Bar license/contrary mandates" approach. Additional details and analysis about the two approaches are provided in the Bar staff memorandum of July 9, 2009, attached as Appendix I.

[6] Additional background materials include the February 5, 2009, <u>Report and Recommendations on the D.C. Rules Governing IOLTA</u> by the Rules Review Committee, which includes the Bar Foundation's November 2007 proposal to the Bar; comments received during a public comment period in response to the February 5, 2009, proposed revisions; a June 4, 2009, memorandum from the Rules Review Committee to the Board of Governors that includes a summary of the comments received and certain changes made to the proposed amendments by the Committee in light of the comments; a June 8, 2009, Bar staff memorandum to the Board about the Bar Foundation's initial proposal of an IOLTA certification and reporting requirement by Bar members; and July 30, 2009,

The Proposed Revisions

In 1985, the D.C. Court of Appeals established rules to allow a lawyer or law firm to hold client funds that are nominal in amount, or are to be held for a short period of time, in a single pooled client trust account, commonly known as an IOLTA account. The interest produced by such an account, which would amount to a small sum for each individual client, is distributed to the Bar Foundation, which in turn distributes a predominant amount of the interest revenue collected to legal services providers to help address the unmet legal needs of residents and families in the District. Under the current rules, a lawyer may "opt out" of placing IOLTA eligible funds into a D.C. IOLTA account if the lawyer otherwise properly holds the funds separately from the lawyer's own property. To "opt out" of the D.C. IOLTA requirements, the lawyer must make a one-time filing with the Court. A detailed history of the development of the D.C. IOLTA rules is provided in Appendix I.

However, since 1985, many jurisdictions have adopted changes to rules governing lawyers and IOLTA accounts that have significantly increased the interest revenue available to legal services providers in those jurisdictions.[7] Accordingly, the purpose of the proposed revisions submitted by the Bar is to increase revenue from D.C. IOLTA accounts and to increase the interest paid by banks on funds held in D.C. IOLTA accounts (a practice known as rate comparability). The proposed revisions would effect these changes by:

• Changing the current D.C. IOLTA program from one in which D.C. Bar members may "opt out" of participating to one which is mandatory for all D.C. Bar members. An exception to the mandatory IOLTA proposal is provided when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices. These changes are effected by proposed revisions to Rule of Professional Conduct 1.15 and its comments.

(n. 6 cont.) written comments from the Board on Professional Responsibility about the Bar Foundation's proposal of monitoring DC IOLTA accounts. Although these background materials are not included in this submission to the Court, we are happy to provide these materials to the Court upon request.

[7] At least 40 jurisdictions now have a comprehensive/mandatory IOLTA program, and at least 23 states have adopted some form of interest rate comparability for IOLTA accounts.

• Requiring that banks that wish to qualify as "Approved Depositories" -- institutions where lawyers are allowed to open and maintain client trust accounts -- agree to provide certain interest rates on IOLTA accounts.[8] This change is effected by the creation of a new Section 20 of Rule XI of the D.C. Court of Appeals Rules Governing the Bar. Other requirements for banking institutions with IOLTA accounts would also be moved to Section 20 of Rule XI.

Another proposed revision includes:

• The deletion in their entirety of existing Rule of Professional Conduct Rule 1.19 and Appendix B, with appropriate provisions from those rules relocated in Rule 1.15 and new Section 20 of Rule XI. Because these provisions address the jurisdictional authority of the Board of Professional Responsibility (BPR) and the Office of Bar Counsel (OBC) as to the financial institutions that elect to be approved depositories for the District of Columbia Bar, it is appropriate to house these provisions in Rule XI – the disciplinary rule.[9]

A redlined version of the proposed amendments is attached as Appendix II; a clean version is attached as Appendix III. New proposed Section 20 of Rule XI is attached as Appendix IV.

Multi-State Practitioner Exception and Other Concerns

From the outset, the Rules Review Committee supported amendments to the D.C. IOLTA rules that were consistent with the Bar Foundation's goals of increasing IOLTA interest revenue. However, the Committee was concerned that the Foundation's proposed rules could present serious conflict issues for multi-state practitioners because of conflicting or inconsistent trust account requirements in other jurisdictions. The Bar Foundation's proposed rules did not provide a safe harbor for a lawyer facing conflicting jurisdictional obligations.

The Committee was also concerned that the language and placement of the existing trust account rules, including the IOLTA Rules, were confusing. A final

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[8] The D.C. Board on Professional Responsibility approves banks as "Approved Depositories" for D.C. IOLTA accounts.

[9] Section 20 of Rule XI includes the authority of the BPR to approve depositories where D.C. lawyers deposit client funds, reporting obligations of the depositories to the BPR, the Office of Bar Counsel and the Bar Foundation, the proposed "interest rate comparability" rule and the role of the Bar Foundation in administering the IOLTA program. Depending on the outcome of further study by the Bar's Rules/Regulations/Board Procedures Committee, the Bar may subsequently propose that these provisions be housed in a newly created, separate court rule. See infra p. 11.

concern was that the Bar Foundation's proposed broad reach of a mandatory IOLTA rule, superimposed on existing Rule 1.19(b), was likely to increase both administrative burdens and the risk for trust account errors (a serious ethical violation). The Committee believed that the increased burden and risk were likely to fall disproportionately on solo and small firm lawyers who principally practice outside of the District, by requiring such lawyers who might only have a few District matters to open and maintain separate trust accounts in addition to existing operating and home state trust accounts.

The Committee noted the unique posture of the D.C. Bar as to multi-jurisdictional lawyers[10] and the substantial cross-border practice with our sister jurisdictions, Virginia and Maryland. The D.C. Bar has over 68,000 active members; nearly 49,000 of these members practice in the metropolitan Washington, D.C. area, which includes the District and parts of Virginia and Maryland. Of those members, a significant number may not maintain a District office, yet represent District clients. Likewise, there are District lawyers who maintain offices only in the District, but who are also licensed and practice in Virginia and/or Maryland.

Because the Committee did not want to subject District lawyers to mandatory rules that conflicted with mandatory rules of other jurisdictions, absent an appropriate guideline and safe harbor to reconcile conflicting obligations, the Committee proposed an IOLTA rule to which all D.C. Bar members would be subject but that also would provide a means for reconciling conflicting mandatory rules. The Rules Review Committee and the Bar Foundation worked together to develop a rule that would address the primary concerns of both groups. Ultimately, the Rules Review Committee produced a report and recommendations, including a multi-state practitioner exception, that were supported by the Bar Foundation. The proposed recommendations were published in the Rules Review Committee report of February 5, 2009.

Public Comments

The Bar sought comments on the proposed revisions from D.C. Bar members and community leaders during a public comment period from February 10 to April 6, 2009. Copies of the draft report were also made available to members and staff of the Board on Professional Responsibility and the Office of

[10] For example, a lawyer with licenses to practice in at least one other jurisdiction in addition to the District of Columbia. Many of the members of the District of Columbia Bar are admitted to practice in at least one other jurisdiction.

Bar Counsel. Twenty-two comments were received from individuals and organizations. The comments were made available to the Bar Foundation.

Maryland and Virginia

As described in more detail in Appendix I, the Bar received written comments from bar associations and other organizations from its sister jurisdictions of Maryland and Virginia.[11] Maryland expressed concern that the proposed "multi-jurisdictional exception" would have a negative impact on Maryland's IOLTA revenue. Virginia's concerns seemed to arise from confusion in interpreting the proposed language of the exception.

The Rules Review Committee took seriously the concerns expressed by Virginia and Maryland and revised its multi-jurisdictional practitioner exception. The revised exception would exempt a member from the D.C. IOLTA rules when the member is otherwise compliant with the contrary mandates of a tribunal; or when the member is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the member is licensed and principally practices – the "licensed and principally practices" approach. Although the Committee recognized that under its revised proposal, there likely will be some IOLTA revenue generated from District clients or District transactions that is deposited in another jurisdiction's IOLTA account, the amount of that revenue is unquantifiable, and the Committee believed that its approach was clearer and more straightforward than the approach initially recommended by the Bar Foundation (and rejected by the Rules Review Committee) in its November 2007 proposal.

The Bar Foundation did not concur with the Committee's revised exception. The Bar Foundation believed that the amended proposal created an overly broad exemption for Bar members who are licensed and principally practice in another jurisdiction. The Bar Foundation's proposed exception would exempt a member from the D.C. IOLTA rules only when a member is otherwise compliant with the contrary mandates of a tribunal or the jurisdiction in which the lawyer is licensed and principally practices. If a member obtained the client funds as a result of the member's "out-of-state license," the member would not be subject to the D.C. IOLTA program for those particular funds – the "on your D.C. Bar license/contrary mandates" approach.

[11] The Maryland State Bar Association, the Bar Association of Montgomery County, and the Maryland Legal Services Corporation each submitted a comment. The Legal Services Corporation of Virginia and the Virginia State Bar submitted a joint comment.

Board Meetings of June 9, July 21, 2009, and September 8, 2009

On June 9, 2009, the Rules Review Committee's Chair and Vice-Chair, Eric Hirschhorn and Daniel Schumack, presented the Committee's final recommendations of June 4, 2009, to the Board of Governors. The final recommendations included the Committee's revised multi-jurisdictional practitioner exception that was drafted in response to the comments received from Maryland and Virginia. The Bar Foundation's then-President, Stephen Pollak, and Executive Director, Katherine Garrett, presented proposed revisions to the Rules Review Committee's final recommendation.

On July 21, 2009, the Board considered three IOLTA proposals. Each proposal recommended that participation in the D.C. IOLTA program become mandatory for all D.C. Bar members and interest rate comparability provisions be required for all D.C. approved financial depositories, but differed in its approach to creating an exception for members who are multi-state practitioners and who may face conflicting or inconsistent trust account requirements in other jurisdictions. The three approaches were:

1) No specific exception in the proposed revised rules or comments; [12]
2) A "licensed and principally practices" IOLTA exception for Bar members; and
3) An "on your license/contrary mandates" IOLTA exception for Bar members.

In addition to the Chair and Vice-Chair of the Rules Review Committee and the then-President and Executive Director of the Bar Foundation, the Bar Counsel and the Executive Attorney of the Board on Professional Responsibility were invited to attend and comment on the proposals before the Board. Briefings were also made by Bar staff, including the Assistant Executive Director, Programs; the Director, Regulation Counsel; the Assistant Director for Legal Ethics, Regulation Counsel; and the Manager, Practice Management Advisory Service (PMAS).[13] The Board of Governors found all of the comments helpful in

[12] Because the Bar Foundation had informally indicated that it would support its initial proposals in its November 2007 report, the Board included those proposals for consideration at the July 21, 2009, meeting.

[13] The PMAS manager advises Bar members on the business and management aspects of the practice of law, provides on-site office consultations for Bar members, and conducts intensive training sessions for Bar members about how to run a solo practice.

the Board's deliberations, in particular, those of the PMAS Manager who works with many solo and small firm lawyers. The PMAS Manager noted that many experienced lawyers have misconceptions about IOLTA in particular and trust accounts in general. His experience in working with solos, who often have no staff, and can sometimes make inadvertent mistakes by neglecting administrative and management matters that lead to disciplinary consequences, have led him to conclude that any IOLTA rules that are adopted should be clear and easy to follow.

The Board was mindful that a number of constituencies would be affected by the Board's decision on the proposed IOLTA revisions: members of the D.C. Bar who would be subject to the IOLTA rules; the clients of D.C. lawyers whose money and property the ethics rules protect; the legal services community of the District (who would be the beneficiaries of any increased revenue that results from changes in the IOLTA rules); and other jurisdictions, particularly Virginia and Maryland (and their respective legal communities.).

The Board considered the following questions to keep the various constituencies in mind when considering the proposals:

(1) Does the language of the proposed rule and its requirements provide sufficient clarity to Bar members to help them comply with the rule and to help them avoid an inadvertent violation of the rule (thus avoiding interaction with the disciplinary system)?

(2) Would the proposed rule subject client money to increased risk, which undermines the fundamental purpose of the safekeeping of property ethics rules?

(3) Would the language of the proposed rule potentially cause Maryland and Virginia to adopt new IOLTA rules to counter the District's IOLTA rules? The Bar recognizes that its decisions – particularly proposed changes to the ethics rules -- are in part subject to external reactions and the cooperation of other jurisdictions in the clear application of the rules in practice.

(4) Will the proposed rule benefit the Bar Foundation and the District's legal service providers by increasing IOLTA participation, interest revenue, and/or available interest rates?

After thorough discussion by the Board and the invited representatives at the July 21 Board meeting, the Board of Governors decisively approved the proposal that included the "licensed and principally practices" approach to an exception from the D.C. IOLTA program for members with multijurisdictional practices.

On September 8, 2009, the Board of Governors once again considered the IOLTA issues. Invited representatives from the Bar Foundation and the OBC and

the BPR also attended the September 8 meeting. At the meeting, the Board approved specific language in the proposed amendments. The specific language, in a new Comment [4] to Rule 1.15(b), is intended to provide guidance when a lawyer must make a good faith determination of the jurisdiction in which the lawyer principally practices in order to determine whether he or she falls within the exception of the D.C. IOLTA program.

The Bar Foundation's IOLTA Certification and Monitoring Proposals

On September 8, the Board also voted to reserve the transmittal of proposed amendments about an ancillary issue – the monitoring of D.C. lawyers' participation in the DC IOLTA program -- pending the outcome of further study by the Bar's Regulations/Rules/Board Procedures Committee. Although the Bar is not forwarding a monitoring proposal to the Court at this time, we are providing a brief background about the evolution of the IOLTA monitoring proposal and the IOLTA certification proposal that preceded it.

The Bar Foundation's IOLTA Certification Proposal

The Bar Foundation's 2007 proposal to the Bar included an amendment to the Rules in which lawyers would be required to advise the Bar Foundation of the opening and closing of D.C. IOLTA accounts, and report and periodically certify to the Bar Foundation compliance with, or exemption from, the IOLTA requirements.[14] Non-compliance with the certification requirement would have been treated as a disciplinary violation. The Rules Review Committee's February 5, 2009, proposed revisions left untouched this proposal of the Bar Foundation[15]

In their written comments the BPR and the OBC stated that non-compliance with a certification requirement should not subject a member to disciplinary suspension because a member's failure to do so does not directly implicate the public interest.[16] Additionally, they commented that enforcing a certification requirement would divert the resources of the Office of Bar Counsel from prosecuting serious and contested disciplinary cases. Instead, they

[14] The Bar Foundation believed that gathering and tracking information about Bar members' IOLTA accounts would help to increase its interest revenue.

[15] Because the Committee was not asked to consider the specific "form and manner" of this requirement, it did not analyze this part of the Foundation's proposal and did not take a position on it.

[16] The BPR and the OBC concurred with the Committee's other IOLTA recommendations.

recommended that enforcement of the IOLTA provisions be through administrative suspensions.

Considered analysis of certification was performed by Bar headquarters staff. Ultimately, it was concluded that certification would be unduly administratively burdensome and expensive, with no assurance that imposing such a requirement would produce more revenue for the Foundation or, if more revenue, enough additional revenue to offset the costs of administering a certification program. In addition, the Bar staff concurred with the views expressed by the BPR and the OBC in their written comments that non-compliance with a certification requirement should not be subject to disciplinary suspension. Contrary to the alternative suggested by the BPR and OBC, however, Bar headquarters staff also took the position that non-compliance with a certification requirement should not result in administrative suspension, i.e., the loss of one's license to practice law, under D.C. Bar Rule II or any other Bar rule. Because the certification proposal was withdrawn as described below, however, it appears that this issue is moot.[17]

Monitoring of Bar Members' IOLTA Accounts by the Bar Foundation

At the June 9, 2009, Board of Governors meeting, the Bar Foundation withdrew its proposal for disciplinary enforcement of a certification and reporting requirement. As a result, the Board did not consider this proposal. Instead, the Foundation proposed a provision in a comment to Rule 1.15 and Section 20(h) of Rule XI that would provide notice to Bar members that the Bar Foundation may monitor members' participation in the D.C. IOLTA program. On July 21, the Board approved in principle provisions that would provide notice to Bar members that the Bar Foundation may monitor Bar members' participation in the IOLTA program. At the meeting, Elizabeth Branda, Executive Attorney of the BPR, asked that the BPR have the opportunity to review and comment on any monitoring proposals, because of concerns about disciplinary implications.

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[17] Typically, the non-disciplinary parts of the Bar have had responsibility for handling matters where non-disciplinary enforcement is appropriate.

Although the BPR recommended administrative suspension for non-compliance with a certification requirement, the BPR did not consider the option of no suspension because that question was not before it when it reviewed the Rules Review Committee's report.

BPR Comments of July 30, 2009, on Proposed Provisions for Monitoring IOLTA Accounts by the Bar Foundation

On July 30, the BPR submitted written comments about the proposed monitoring provisions. In its comments, the BPR raised several questions and concerns: (1) Whether the monitoring provisions are necessary given that the Bar Foundation currently conducts monitoring activities; (2) If the proposed provisions are intended to increase the authority of the Bar Foundation, the additional activities that would be authorized need to be identified; and (3) Whether placement of the authority of the Bar Foundation to conduct monitoring activities in Rule XI would suggest that the Bar Foundation plays a role in the disciplinary process. The BPR recommended the creation of a separate new D.C. Bar Rule to address the role of the Bar Foundation in the IOLTA program.

At its September 8 meeting, the Board of Governors reconsidered the proposed monitoring provisions. After thorough discussion by the Board and invited representatives, the Board voted to reserve the proposed monitoring language for clarification. The Board will direct the Bar's Regulations/Rules/Board Procedures Committee to study the implications of the issues raised by BPR and, based on the results of that study, will forward recommendations on IOLTA monitoring to the Court at a later time.

To make a recommendation, the Board will be seeking clarity on what a monitoring plan would entail and what would be its implications for members in a mandatory IOLTA program as compared to the current voluntary program. Other relevant issues such as the applicability of the Bar's policies on membership records and IT policies and procedures will also need to be addressed.

The Bar respectfully asks that the Court consider the attached proposed IOLTA rules. Because monitoring of IOLTA accounts by the Bar Foundation is not anticipated to begin until at least the third year after implementation of the revised IOLTA rules, and is ancillary to the proposed revisions on mandatory IOLTA and IOLTA interest rate comparability, the Bar believes that the Court should not delay adopting provisions that would authorize the implementation of mandatory IOLTA, which would greatly assist the important work of the Bar Foundation. Indeed, assuming that the Court changes the IOLTA rules, the immediate focus for implementation would be on education. The Bar plans to work with the Bar Foundation to conduct an intensive member education campaign to provide notice to Bar members about the new IOLTA rules and how to comply with them.

Timing of Implementation of IOLTA Rules

The Bar also respectfully asks that the Court delay the effective date of the changes to the IOLTA rules, if any, for at least four months after the date of the Court's adoption of the rules. The delay will allow the Bar to begin the process of notifying members about the rules changes; implement a member education program similar to the one conducted in 2006-07 in response to the substantial changes to the Rules of Professional Conduct; and work with the Bar Foundation in educating area banks about the rules changes. Because the Bar has found it helpful for the education of our members, the Bar also respectfully asks that the Court publish any rules changes in a red-lined version, in addition to a clean version.

Please let me know if you or other members of the Court have any questions or require anything further. I can be reached at (202) 380-6200 or by e-mail at keenankim80@gmail.com.

Respectfully yours,

Kim Michele Keenan

Enclosures

cc: Board of Governors
W. Mark Smith, Esq., President, D.C. Bar Foundation
Katherine L. Garrett, Esq., Executive Director, D.C. Bar Foundation
Members, Rules of Professional Conduct Review Committee
Charles J. Willoughby, Esq.
Katherine A. Mazzaferri, Esq.
Cynthia D. Hill, Esq.
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Hope C. Todd, Esq.

APPENDIX I

MEMORANDUM

TO: Board of Governors

FROM: Hope C. Todd
Assistant Director for Legal Ethics

RE: History of the Existing D.C. Trust Account and IOLTA Rules
And Context for the Proposed Amendments

Date: July 9, 2009

I. Introduction

Today, a D.C. Bar member who receives client money or the money of a third person must consider and understand THREE separate Rules to be fully compliant with the ethical mandates of this jurisdiction:

1) D.C. Rule of Professional Conduct 1.15;
2) D.C. Rule of Professional Conduct 1.19; and
3) Appendix B (Rule X of the Court Rules Governing the Bar).[1]

This memorandum provides a history of the development of these rules. It also provides a framework to understand how the Rules of Professional Conduct Review Committee ("Rules Review Committee") and the D.C. Bar Foundation have developed and arrived at their respective proposed amendments to the Rules Governing the Interest on Lawyer Trust Accounts (IOLTA). The history and framework provide a context in which to understand how the different proposed amendments to the IOLTA rules may affect some Bar members.

Although some provisions of the rules discussed below govern lawyer behavior related to other property (not money), disputed property, and other conduct, this memo focuses only on the provisions of the relevant rules related to maintaining Trust Accounts and IOLTA Accounts, a particular type of Trust Account.

II. History of D.C. Rule 1.15 – Safekeeping Property - and Appendix B – Interest on Lawyers' Trust Accounts Program

From the early 1970s to 1985 the only ethics rule pertaining to client funds existed under the D.C. Code of Professional Responsibility. DR 9-103(a) (the predecessor to D.C. Rule 1.15) provided in pertinent part that:

[1] Rule X is the Rules of Professional Conduct.

"All funds of a client paid to the lawyer ….shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer…shall be deposited therein."

This rule served both to protect the client's money and to avoid the appearance of impropriety.[2]

In 1985, the District of Columbia Court of Appeals adopted Appendix B to *allow a lawyer or law firm to hold client funds that are nominal in amount, or are to be held for a short period of time*, in a single pooled client trust account, commonly known as an IOLTA account ("Interest on Lawyers Trust Account"). The interest revenue produced by such an account, which would amount to a small sum for each individual client, would be distributed to the D.C. Bar Foundation, which in turn distributes a predominant amount of the interest revenue collected to legal services providers serving low income individuals in the District of Columbia. Simultaneously, the Court added paragraph (c) to DR 9-103 that provided that nothing in DR 9-103 would preclude a lawyer from holding client funds consistent with Appendix B and the IOLTA Program.

Appendix B allows a lawyer to "opt out" of placing IOLTA eligible funds into a D.C. IOLTA account if the lawyer otherwise properly holds the funds separately from the lawyer's own property. To "opt out" of the D.C. IOLTA requirements, the lawyer must make a one-time filing with the District of Columbia Court of Appeals.[3]

Effective January 1991, the Court of Appeals replaced the D.C. Code of Professional Responsibility with the D.C. Rules of Professional Conduct. D.C. Rule 1.15 replaced DR 9-103 and became the rule governing the safekeeping of client property.[4] Specifically, D.C. Rule 1.15(e) continued to track the language of former D.C. Code DR 9-103(c), which permitted lawyers to hold eligible funds in IOLTA accounts pursuant to Appendix B.

However, although DR 9-103(a) (cited above), and the ABA Model Rule 1.15 provided that "funds should be kept in a separate account maintained in the state *where the lawyer's office is situated…"*, the Jordan Committee did not recommend this language in 1.15(a). Instead, "the [Jordan] Committee modified paragraph (a) to require that client

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[2] *See* E.C. 9-5. At that time, the ABA Model Code contained a requirement that any client account be labeled as "Client's Funds Account" or "Trust Funds Account" or similar words, but the requirement did not exist in the D.C. rule.

[3] Although Appendix B appears to allow a lawyer to opt out of the IOLTA program only in the month of March, the Rules Review Committee understands that since the adoption of the IOLTA program in 1985, there has been no systematic retention of filings of attorneys "opting out" of the IOLTA program.

[4] The ABA adopted the ABA Model Rules replacing the ABA Model Code in 1982. Shortly thereafter, the D.C. Bar began an intensive review of the D.C. Code and comparison to the ABA Model Rules and ultimately, through a committee chaired by Robert Jordan, recommended to the D.C. Bar Board of Governors adoption of the D.C. Rules. The Rules were in fact adopted by the Court of Appeals to be effective in January 1991.

funds be kept in financial institutions which are authorized to do business in the District of Columbia and which are members of the FDIC, the FSLIC, or successor agencies." There was no overt public policy reason for the Jordan Committee's divergence from the ABA's Model Rule; rather, the only reason for this particular change was a drafting decision to make the language of D.C. Rule 1.15 consistent with the existing language of Appendix B.

This different approach is relevant to the debate because as explained in more detail below, the initial suggestion of the Rules Review Committee in resolving potential multi-jurisdictional conflicts in trust account rules was to recommend that the Bar Foundation's proposed mandatory IOLTA rule be limited to those lawyers with offices located in the District of Columbia. Such a construction is consistent with the general trust rules that have existed and continue to exist in the ABA Model Rule, which many other jurisdictions, including Virginia, have adopted.

With the exception of amendments to Rule 1.15(d) in 1998 dealing with how a lawyer may treat advances in unearned fees and expenses, the requirements of D.C. Rule 1.15 have remained essentially the same since 1991.

III. History of Rule 1.19 – Trust Account Overdraft Notification

D.C. Rule 1.19 is unique to the District of Columbia and has no counterpart in the ABA Model Rules. It was added to the D.C. Rules of Professional Conduct in April 1992 based on recommendations of the Board of Governors and the Board on Professional Responsibility.[5]

Unless a specific exception applies, Rules 1.19(a) and (b) require that all trust funds[6] be placed in an account maintained only in banking institutions approved by the Board on Professional Responsibility ("D.C. Bar Approved Depositories").[7] Such institutions have agreed to report promptly any overdraft notifications on attorney trust accounts to the Office of Bar Counsel, and to respond promptly to any subpoenas from the Office of Bar Counsel seeking such account records.[8] Additionally, 1.19(a) provides for specific labeling of Trust accounts and Rule 1.19(c) through 1.19(f) sets forth the obligations of banks that agree to become approved depositories.

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[5] It was adopted as Rule 1.17 and later renumbered to be Rule 1.19, effective Feb 1, 2007.

[6] Generally, this includes all fee advances (unless the client otherwise gives informed consent pursuant to Rule 1.15[d]), settlement proceeds, and any other funds belonging to a client or to a third party.

[7] Opening a Trust account in a branch office of an approved depository in another jurisdiction is perfectly acceptable under the Rules.

[8] See Rules 1.19(b) and (c).

A. Rule 1.19 and Members who Practice Outside of the District

The most interesting and potentially confusing aspect of Rule 1.19 resides in Rule 1.19(b). Rule 1.19(b) provides direction to lawyers who "practice outside the District of Columbia." The existing Rule operates similarly to a long-arm statute in that it states that if a lawyer is a member of the D.C. Bar and practices law outside the District of Columbia, "D.C. Bar Approved Depositories" shall be used for deposits of trust funds that are related to the District of Columbia under any of these three categories:

1) Trust funds received by the lawyer in the District of Columbia;
2) Trust funds received by the lawyer from, or for the benefit of, parties or persons located in the District of Columbia; and/or
3) Trust funds received by the lawyer that arise from transactions negotiated or consummated in the District of Columbia.

One area of confusion is the intersection of Rule 1.19(b) with Appendix B. Simply put, if a D.C. lawyer has opted out of the D.C. IOLTA program, Rule 1.19(b) operates independently from Appendix B. If a D.C. lawyer has NOT opted out of the D.C. IOLTA program, the two rules must be read and analyzed together.

A. WHEN AN OUT OF STATE D.C. LAWYER HAS OPTED OUT OF THE D.C. IOLTA PROGRAM

When a D.C. lawyer who practices outside of the District of Columbia[9] and has opted out of the D.C. IOLTA program receives D.C.-related money (as defined by Rule 1.19(b)), the lawyer may place those funds in ***any*** out of state trust account ***as long as*** that account is maintained in a branch office of a D.C. Approved Depository.[10]

For example, a D.C. lawyer who practices in Virginia and who has opted out of the D.C. IOLTA program is permitted to hold D.C.-related money in a Virginia trust account -- which is not required to be an IOLTA account -- in a Virginia branch office of Bank of America (because this bank is a D.C. approved depository).

Anecdotally, this is how many smaller firm/solo lawyers who principally practice in Maryland and Virginia operate today. These lawyers place trust funds that are related to D.C. clients or D.C. transactions in their home state's Trust Account (many of which are Maryland or Virginia IOLTA accounts). Again, these accounts must all be in branch offices of D.C. Approved Depositories (e.g., Bank of America, Wachovia, SunTrust, PNC). There are, of course, also multi-state lawyers who maintain two or more IOLTA

[9] The Rule applies to any lawyer who "is a member of the D.C. Bar and practices law outside of the District of Columbia." Thus, on its face, the rule applies to all D.C. multi-jurisdictional members regardless of where they principally practice.

[10] A complete list of D.C. Approved Depositories can be found at http://www.dcbar.org/for_lawyers/ethics/discipline/board_on_professional_responsibility/banks.cfm

accounts and place D.C. client money in the D.C. IOLTA account, and the Maryland and Virginia client money in the Maryland and Virginia IOLTA accounts, respectively.

B. WHEN AN OUT OF STATE D.C. LAWYER PARTICIPATES IN THE D.C. IOLTA PROGRAM

When an out-of-state D.C. lawyer has NOT opted out of the D.C. IOLTA Program, all money that is nominal in amount or to be held for a short duration of time AND is subject to 1.19(b) must be held in a D.C. IOLTA Account at an approved D.C. Bar Approved depository.

For example, a D.C. lawyer who practices in Virginia and who has **not** opted out of the D.C. IOLTA program must hold D.C.-related money in a D.C. IOLTA account. The IOLTA account could, however, be located in a Virginia branch office of Bank of America (because this bank is a D.C. approved depository).

The Bar Foundation's initial proposal of November 2007 would have made this latter example the rule for all IOLTA eligible client funds that are subject to Rule 1.19(b).

IV. 2007 Amendments to the Rules of Professional Conduct

On August 1, 2006, the Court of Appeals amended the D.C. Rules effective February 1, 2007. These amendments were largely based on the work and recommendations of the D.C. Bar's Rules Review Committee. The Rules Review Committee focused its review of the rules on the changes to the ABA Model Rules as recommended by the ABA Ethics 2000 Commission and the ABA Corporate Responsibility Task Force.

Because the ABA did not significantly amend Model Rule 1.15, and because there is no counterpart in the ABA Model Rules to D.C. Rule 1.19 or Appendix B, the Rules Review Committee did not revisit the structure, language or content of Rules 1.15, 1.19, or Appendix B. [11]

V. The Bar Foundation Study Committee

In November 2007, after a 14 month study process, the Bar Foundation proposed revisions to the existing D.C. Rules Governing IOLTA with the primary purpose of increasing interest revenue derived from D.C. IOLTA accounts. The Bar Foundation's proposed revisions would effect two principal changes: (1) all D.C. Bar members who receive "IOLTA eligible funds" must place those funds in a D.C. IOLTA account (thus, the existing voluntary "opt out" program would become mandatory); and (2) for a banking institution to qualify as an "Approved Depository" -- an institution where

[11] Language suggested by the Office of Bar Counsel was added to a few Comments to Rule 1.15, as was a sentence to 1.15(e) explicitly incorporating Appendix B into the rule although the incorporation was already implied in the former rule.

lawyers are allowed to open and maintain client trust accounts -- the bank must agree to provide certain interest rates on IOLTA Accounts (rate comparability).[12]

To achieve these changes, the Foundation in large part superimposed the revised mandatory IOLTA requirements for lawyers and banks on and within the morass of existing D.C. rules governing Trust Accounts, including Rule 1.15, 1.19 and Appendix B (although at the urging of the Office of Bar Counsel, Appendix B was to be renumbered as Rule 1.20, so that lawyers would have clear notice that the rule existed).

VI. The Rules Review Committee

From the outset, the Rules Review Committee has supported and continues to support the Bar Foundation's goals of increasing IOLTA interest revenue by (1) making the IOLTA Program mandatory for members of the D.C. Bar; and (2) adopting rate comparability provisions for approved depositories. Upon consideration of the Bar Foundation's specific proposed revisions of November 2007, however, the Committee concluded that the territorial reach of the proposed rules was overbroad.

Specifically, the Committee was concerned that the reach of the Foundation's proposed rules could present conflict issues for multi-state practitioners because of conflicting or inconsistent trust account requirements in other jurisdictions. A second concern was that the language and placement of the existing trust account rules, including the IOLTA Rules, were confusing. One goal of the Committee was to provide greater clarity to the trust rules.

A final concern was that the broad reach of a mandatory IOLTA rule, superimposed on existing Rule 1.19(b), was likely to increase both administrative burdens and the risk for trust account errors (a serious ethical violation). This increased burden and risk was likely to fall disproportionally on solo and small firm lawyers who principally practice outside of the District of Columbia, by requiring such lawyers who might only have a few D.C. matters to open and maintain separate Trust accounts in addition to existing operating and home state Trust accounts.

Below is a summary of some of the issues and potential solutions discussed by the Rules Review Committee and the Bar Foundation over the past 18 months. Sections VII and VIII describe the current proposals of the Rules Review Committee and the Bar Foundation, respectively, that are before the Board of Governors for its consideration.

A. "WHERE THE LAWYER'S OFFICE IS LOCATED" OPTION

[12] Historically, banks have paid very low interest on IOLTA accounts. A bank voluntarily participates in the IOLTA Program when it chooses to become a depository for attorney trust accounts and is approved by the Board on Professional Responsibility. At least 39 states now have a comprehensive/mandatory IOLTA program, and at least 23 states have adopted some form of rate comparability for IOLTA accounts.

In trying to remedy the perceived overreaching of 1.19(b), the Committee's initial suggestion, in April 2008,[13] was to limit the reach of the Rule to those D.C. lawyers who have offices physically located in the District (to include P.O. boxes). This proposal was consistent with both the ABA Model Rule and the former D.C. Code provision, and is consistent with those rules of those jurisdictions who have adopted Model Rule 1.15.

However, the Bar Foundation expressed that a "where your office is located" test would fail to capture too many IOLTA funds from lawyers whose physical offices were located in other jurisdictions (particularly in Maryland and Virginia) but who nevertheless conducted a substantial amount, maybe even the majority, of their legal business in the District and for D.C. clients.

B. COMPROMISE PROPOSAL: CONTRARY MANDATES OF THE JURISDICTION IN WHICH A LAWYER PRINCIPALLY PRACTICES

The Rules Review Committee and the Bar Foundation worked together to develop a rule that would address the primary concerns of both groups. The result was a rule that would apply to all D.C. Bar members –but would exempt a multijurisdictional lawyer who was subject to contrary rules in a jurisdiction in which that lawyer principally practiced.

The thrust of the "contrary mandates" language was that if the rules of the jurisdiction in which the lawyer principally practiced required particular funds to be placed in that jurisdiction's IOLTA account, the lawyer would be exempt from the D.C. IOLTA Rules.

Both groups agreed to improved clarity of drafting. The Committee proposed a single rule governing all ethical obligations of D.C. lawyers relating to the safekeeping of client property. The Committee therefore revised Rule 1.15, and deleted both Rule 1.19 and Appendix B, moving those provisions that related solely to banking institutions, such as overdraft notification requirements and rate comparability, to a new proposed Section 20 of Rule XI and moving all remaining relevant provisions that apply to lawyers into revised Rule 1.15.

This version of revised Rule 1.15 and Section 20 Rule XI was submitted to the Board of Governors in February 5, 2009. The Bar then published these revised rules for a public comment period from February 11, 2009 to April 6, 2009.

VII. Public Comments (and Unintended Consequences)

As noted above, in its proposal of February 5, 2009, the Rules Review Committee proposed that Rule 1.15 mandate participation in the District of Columbia's IOLTA Program by all active D.C. Bar members, regardless of where the lawyer principally

[13] Through representatives, the Committee and the Bar Foundation held many informal meetings to try to understand each others' concerns and to work to achieve a unified proposal. This memo summarizes these discussions not as "official positions" of either group, but so that the Board can get a sense of the debate and issues discussed.

practices, *except* when the lawyer is required by any tribunal, or by a foreign jurisdiction in which that lawyer principally practices, to follow a contrary rule about particular trust accounts. This would have included the requirements of a foreign jurisdiction's IOLTA Program where the lawyer is voluntarily participating either by failing to "opt out" or by affirmatively "opting in." To the extent that Rule 1.15 did not resolve a multi-jurisdictional conflict, the general conflict of laws provisions of Rule 8.5 would govern.

The Bar received written comments submitted by the Maryland State Bar Association, the Bar Association of Montgomery County, and the Maryland Legal Services Corporation. The primary concern expressed by the Maryland organizations was that Maryland, while a mandatory IOLTA jurisdiction, long has exempted from the Maryland IOLTA rules Maryland lawyers who certify that they are participating in *any jurisdiction's* IOLTA program. The Maryland commentators contended that in the absence of a "contrary mandate" in Maryland, many Maryland/District lawyers will abandon Maryland IOLTA accounts for D.C. IOLTA accounts. The Maryland organizations recommended that the District adopt Maryland's approach of exempting lawyers who certify that they are participating in any state's IOLTA program.

The Bar also received a joint comment from the Legal Services Corporation of Virginia and the Virginia State Bar. Virginia's primary concern was that its voluntary IOLTA program will never pose a contrary mandate. (This was not the intent of the Rules Review Committee but more likely the reflection of confusion in interpreting the "contrary mandate" language in the Committee's original proposal.) Indeed, the Virginia comment posed several questions that evidenced that the language as proposed did not clearly identify when multijurisdictional lawyers would be subject to the D.C. rule and when they would be exempt. The Virginia commentators recommended that the District adopt Maryland's broad exemption.

VIII. Rules Review Committee's Revised Proposal

Upon further reflection, the Rules Review Committee concluded that the "contrary mandates" language was, in fact, confusing and did not achieve the clarity that the Committee hoped would be achieved. The Committee also took seriously the concerns expressed by Virginia and Maryland and revised its recommendation. Specifically, the Committee recommends language that requires each D.C. Bar member to participate in the D.C. IOLTA program but exempts the member from D.C. IOLTA if the member is fully participating in an IOLTA program in the jurisdiction where the member is *licensed and principally practices*. (Lawyers are also exempt if they are following the contrary mandates of a tribunal about deposits that are subject to that tribunal's oversight).[14]

[14] The Committee also recommends that the exceptions in Rule 1.15(b) apply to all attorney trust funds, including those held in non-IOLTA accounts. Thus, if the lawyer principally practices in a foreign jurisdiction in which the lawyer is also licensed, and the lawyer maintains trust accounts compliant with that foreign jurisdiction's trust accounting rules, the lawyer may deposit trust funds to an approved depository or to a banking institution acceptable to that foreign jurisdiction. This recommendation remedies an unintended gap in the originally proposed rule.

The Committee recognizes that under its proposal, there likely will be some IOLTA revenue generated from District clients or District transactions that is deposited in another jurisdiction's IOLTA account, but the amount of that revenue is unquantifiable and the Committee believes that its approach is clearer and more straightforward than the approach recommended by the Bar Foundation. Indeed, Maryland's position is that under Maryland's current IOLTA exemption, some IOLTA revenue from Maryland's clients and transactions is today going to D.C.'s IOLTA program. Under the Committee's revised proposal, lawyers who are licensed in both the District and Maryland but who principally practice in Maryland will be allowed to choose which IOLTA program they wish to participate in, an option that is available to those lawyers under the existing Maryland and District of Columbia rules. Additionally, because Virginia retains an opt-out IOLTA program, those D.C. Bar members who principally practice and are licensed in Virginia, but have opted out of Virginia's IOLTA Program, will now be subject to D.C. IOLTA rules, unless or until those lawyers affirmatively choose to opt into Virginia's program.

The Rules Review Committee's revised proposed 1.15(b) is as follows:

> **Rule 1.15—Safekeeping Property**
>
> **(b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account."** ***The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.*** (Italics added.)

IX. Revised Bar Foundation Proposal

The Foundation contends that the Rules Review Committee's amended proposal creates an overly broad exemption for lawyers who are licensed and principally practice in another jurisdiction. Specifically, the Foundation believes that there are significant numbers of D.C. Bar members who are also licensed in Virginia or Maryland and who,

while principally practicing in Virginia or Maryland, nevertheless represent District clients or handle District transactions that potentially generate a significant amount of IOLTA interest revenue.

The Foundation recommends keeping the "contrary mandates" language of the February 5, 2009 proposal, but adding further clarification in the Comments that if a multi-jurisdictional lawyer obtained the client funds as a result of a D.C. lawyer's "out of state license," the lawyer would not be subject to the D.C. rule for those particular funds.

The Bar Foundation's revised proposed 1.15(b) is as follows:

> **(b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account."** ***The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal or the jurisdiction in which the lawyer is licensed and principally practices.*** (Italics added.)

The Bar Foundation's revised proposed Comment [3] provides in pertinent part:

> **By way of example, paragraph (b) is intended to exempt, because subject to a contrary mandate, IOLTA-eligible client funds received by an attorney licensed in Maryland as a result of his or her Maryland license, and, for attorneys opting to participate in Virginia's IOLTA program, IOLTA-eligible funds of clients located in Virginia or from a transaction arising in Virginia.**

The Rules Review Committee is concerned that little clarification is provided by such a comment, as it can be difficult for a lawyer to conclude on which license particular funds may have been generated.

APPENDIX II

Red-line Proposed Rule 1.15
September 2009

Rule 1.15—Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). ~~shall be kept in a separate account maintained in a financial institution which is authorized by federal, District of Columbia, or state law to do business in the jurisdiction where the account is maintained and which is a member of the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, or successor agencies.~~ Other property shall be identified as such and appropriately safeguarded.~~; provided, however, that funds need not be held in an account in a financial institution if such funds (1) are permitted to be held elsewhere or in a different manner by law or court order, or (2) are held by a lawyer under an escrow or similar agreement in connection with a commercial transaction.~~ Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account." The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.

(c) ~~(b)~~ Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property, subject to Rule 1.6.

(d) ~~(c)~~ When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of paragraph (a) and (b).

(e) ~~(d)~~ Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

~~(e) Nothing in this rule shall prohibit a lawyer or law firm from placing clients' funds which are nominal in amount or to be held for a short period of time in one or more interest-bearing accounts for the benefit of the charitable purposes of a court-approved "Interest on Lawyers Trust Account (IOLTA)" program. The IOLTA program rules are set forth in Appendix – to Rule X of the Court's Rules Governing the Bar of the District of Columbia, and are hereby incorporated into these rules.~~

(f) Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer's funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.

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 should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts maintained with financial institutions meeting the requirements of this rule. ~~paragraph (a). Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.~~ This rule, among other things, sets forth the longstanding prohibitions of the misappropriation of entrusted funds and the commingling of entrusted funds with the lawyer's property. This rule also requires that a lawyer safeguard "other property" of clients, which may include client files. For guidance concerning the disposition of closed client files, *see* D.C. Bar Legal Ethics Committee Opinion No. 283.

[2] Paragraph (a) concerns trust funds arising from "a representation." 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 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. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

~~[3] The District of Columbia Court of Appeals has promulgated specific rules allowing lawyers to place clients' funds that are nominal in amount, or that are to be held for a short period of time, into interest-bearing accounts for the benefit of the charitable purposes of a court-approved "Interest on Lawyers Trust Account (IOLTA)" program.~~

[3] Paragraph (b) mandates where trust deposits shall be held and further mandates participation in the District of Columbia's IOLTA program. This paragraph is intended to reach every lawyer who is admitted in this jurisdiction regardless of where the lawyer practices, unless a stated exception applies. Thus, a lawyer should follow the contrary mandates of a tribunal regarding deposits that are subject to that tribunal's oversight. Similarly, if the lawyer principally practices in a foreign jurisdiction in which the lawyer is also licensed, and the lawyer maintains trust accounts compliant with that foreign jurisdiction's trust accounting rules, the lawyer may deposit trust funds to an approved depository or to a banking institution acceptable to that foreign jurisdiction. Finally, a lawyer is not obligated to participate in the District of Columbia IOLTA program if the lawyer is participating in, and compliant with, the IOLTA program in the jurisdiction in which the lawyer is licensed and principally practices. IOLTA programs are known by different names or acronyms in some jurisdictions; this rule and its exceptions apply to all such programs, however named. This rule anticipates that a law firm with lawyers admitted to practice in the District of Columbia may be obligated to maintain accounts compliant with the IOLTA rules of other jurisdictions where firm lawyers principally practice. A lawyer who is not participating in the IOLTA program of the jurisdiction in which the lawyer principally practices because the lawyer has exercised a right to opt out of, or not to opt into, the jurisdiction's IOLTA program, or because the jurisdiction does not have an IOLTA program, shall not thereby be excused from participating in the District of Columbia's IOLTA program. To the extent paragraph (b) does not resolve a multi-jurisdictional conflict, see Rule 8.5. Nothing in this rule is intended to limit the power of any tribunal to direct a lawyer in connection with a pending matter, including a lawyer who is admitted *pro hac vice*, to hold trust funds as may be directed by that tribunal. For a list of approved depositories and additional information regarding DC IOLTA program compliance, see Rule XI, Section 20, of the Rules Governing the District of Columbia Bar, and the D.C. Bar Foundation's website www.dcbarfoundation.org.

[4] The exception to Rule 1.15(b) requires a lawyer to make a good faith determination of the jurisdiction in which the lawyer principally practices. The phrase "principally practices" refers to the conduct of an individual lawyer, not to the principal place of practice of his or her law firm (which might yield a different result for a lawyer with partners). For purposes of this rule, an individual lawyer principally practices in the jurisdiction where the lawyer is licensed and generates the clear majority of his or her income. If there is no such jurisdiction, then a lawyer should identify the physical

location of the office where the lawyer devotes the largest portion of his or her time. In any event, the initial good faith determination of where the lawyer principally practices should be changed only if the lawyer's circumstances change significantly and the change is expected to continue indefinitely.

[5] The determination, under paragraph (b), whether trust funds are not expected to earn income in excess of costs, rests in the sound judgment of the lawyer. The lawyer should review trust practices at reasonable intervals to determine whether circumstances require further action with respect to the funds of any client or third party. Because paragraph (b) is a lawyer-specific obligation, this rule anticipates that a law firm may be obligated to maintain accounts compliant with the IOLTA rules of other jurisdictions, to the extent the lawyers in that firm do not all principally practice in the District of Columbia.

~~[4]~~ [6] Paragraphs (c) and (d) recognize that ~~L~~lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds should be promptly distributed.

~~[5]~~ [7] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. *See* D.C. Bar Legal Ethics Committee Opinion 293.

~~[2]~~ [8] Paragraph (e) ~~(d) of Rule 1.15~~ permits advances against unearned fees and unincurred costs to be treated as either the property of the client or the property of the lawyer, but absent informed consent by the client to a different arrangement, the rule's default position is that such advances be treated as the property of the client, subject to the restrictions provided in paragraph (a). In any case, at the termination of an engagement, advances against fees that have not been incurred must be returned to the client as provided in Rule 1.16(d). For the definition of "informed consent," see Rule 1.0(e).

~~[6] 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 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.~~

~~[7] A "clients' security fund" 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 should participate.~~

~~[8]~~ [9] With respect to property that constitutes evidence, such as the instruments or proceeds of crime, *see* Rule 3.4(a).

APPENDIX III

Clean Proposed Rule 1.15
September 2009

Rule 1.15—Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account." The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property, subject to Rule 1.6.

(d) When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of paragraph (a) and (b).

(e) Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

(f) Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer's funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.

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 should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts maintained with financial institutions meeting the requirements of this rule. This rule, among other things, sets forth the longstanding prohibitions of the misappropriation of entrusted funds and the commingling of entrusted funds with the lawyer's property. This rule also requires that a lawyer safeguard "other property" of clients, which may include client files. For guidance concerning the disposition of closed client files, *see* D.C. Bar Legal Ethics Committee Opinion No. 283.

[2] Paragraph (a) concerns trust funds arising from "a representation." 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 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. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[3] Paragraph (b) mandates where trust deposits shall be held and further mandates participation in the District of Columbia's IOLTA program. This paragraph is intended to reach every lawyer who is admitted in this jurisdiction regardless of where the lawyer practices, unless a stated exception applies. Thus, a lawyer should follow the contrary mandates of a tribunal regarding deposits that are subject to that tribunal's oversight. Similarly, if the lawyer principally practices in a foreign jurisdiction in which the lawyer is also licensed, and the lawyer maintains trust accounts compliant with that foreign jurisdiction's trust accounting rules, the lawyer may deposit trust funds to an approved depository or to a banking institution acceptable to that foreign jurisdiction. Finally, a lawyer is not obligated to participate in the District of Columbia IOLTA program if the lawyer is participating in, and compliant with, the IOLTA program in the jurisdiction in which the lawyer is licensed and principally practices. IOLTA programs are known by different names or acronyms in some jurisdictions; this rule and its exceptions apply to all such programs, however named. This rule anticipates that a law

firm with lawyers admitted to practice in the District of Columbia may be obligated to maintain accounts compliant with the IOLTA rules of other jurisdictions where firm lawyers principally practice. A lawyer who is not participating in the IOLTA program of the jurisdiction in which the lawyer principally practices because the lawyer has exercised a right to opt out of, or not to opt into, the jurisdiction's IOLTA program, or because the jurisdiction does not have an IOLTA program, shall not thereby be excused from participating in the District of Columbia's IOLTA program. To the extent paragraph (b) does not resolve a multi-jurisdictional conflict, see Rule 8.5. Nothing in this rule is intended to limit the power of any tribunal to direct a lawyer in connection with a pending matter, including a lawyer who is admitted *pro hac vice*, to hold trust funds as may be directed by that tribunal. For a list of approved depositories and additional information regarding DC IOLTA program compliance, see Rule XI, Section 20, of the Rules Governing the District of Columbia Bar, and the D.C. Bar Foundation's website www.dcbarfoundation.org.

[4] The exception to Rule 1.15(b) requires a lawyer to make a good faith determination of the jurisdiction in which the lawyer principally practices. The phrase "principally practices" refers to the conduct of an individual lawyer, not to the principal place of practice of his or her law firm (which might yield a different result for a lawyer with partners). For purposes of this rule, an individual lawyer principally practices in the jurisdiction where the lawyer is licensed and generates the clear majority of his or her income. If there is no such jurisdiction, then a lawyer should identify the physical location of the office where the lawyer devotes the largest portion of his or her time. In any event, the initial good faith determination of where the lawyer principally practices should be changed only if the lawyer's circumstances change significantly and the change is expected to continue indefinitely.

[5] The determination, under paragraph (b), whether trust funds are not expected to earn income in excess of costs, rests in the sound judgment of the lawyer. The lawyer should review trust practices at reasonable intervals to determine whether circumstances require further action with respect to the funds of any client or third party. Because paragraph (b) is a lawyer-specific obligation, this rule anticipates that a law firm may be obligated to maintain accounts compliant with the IOLTA rules of other jurisdictions, to the extent the lawyers in that firm do not all principally practice in the District of Columbia.

[6] Paragraphs (c) and (d) recognize that lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds should be promptly distributed.

[7] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law

to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. *See* D.C. Bar Legal Ethics Committee Opinion 293.

[8] Paragraph (e) permits advances against unearned fees and unincurred costs to be treated as either the property of the client or the property of the lawyer, but absent informed consent by the client to a different arrangement, the rule's default position is that such advances be treated as the property of the client, subject to the restrictions provided in paragraph (a). In any case, at the termination of an engagement, advances against fees that have not been incurred must be returned to the client as provided in Rule 1.16(d). For the definition of "informed consent," see Rule 1.0(e).

[9] With respect to property that constitutes evidence, such as the instruments or proceeds of crime, *see* Rule 3.4(a).

APPENDIX IV

Proposed Rule XI § 20
Approved Depositories for Lawyers' Trust Accounts
and
District of Columbia Interest on Lawyers Trust Accounts Program

(a) To be listed as an approved depository for lawyers' trust accounts, a financial institution shall file an undertaking with the Board on Professional Responsibility (BPR), on a form to be provided by the board's office, agreeing (1) promptly to report to the Office of Bar Counsel each instance in which an instrument that would properly be payable if sufficient funds were available has been presented against a lawyer's or law firm's specially designated account at such institution at a time when such account contained insufficient funds to pay such instrument, whether or not the instrument was honored and irrespective of any overdraft privileges that may attach to such account; and (2) for financial institutions that elect to offer and maintain District of Columbia IOLTA (DC IOLTA) accounts, to fulfill the requirements of subsections (f) and (g) below. In addition to undertaking to make the above-specified reports and, for financial institutions that elect to offer and maintain DC IOLTA accounts, to fulfill the requirements of subsections (f) and (g) below, approved depositories, wherever they are located, shall also undertake to respond promptly and fully to subpoenas from the Office of Bar Counsel that seek a lawyer's or law firm's specially designated account records, notwithstanding any objections that might be raised based upon the territorial limits on the effectiveness of such subpoenas or upon the jurisdiction of the District of Columbia Court of Appeals to enforce them.

Such undertakings shall apply to all branches of the financial institution and shall not be canceled by the institution except upon thirty (30) days written notice to the Office of Bar Counsel. The failure of an approved depository to comply with any of its undertakings hereunder shall be grounds for immediate removal of such institution from the list of BPR-approved depositories.

(b) Reports to Bar Counsel by approved depositories pursuant to paragraph (a) above shall contain the following information:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders.

(2) In the case of an instrument that was presented against insufficient funds but was honored, the report shall identify the depository, the lawyer or law firm maintaining the account, the account number, the date of presentation for payment and the payment date of the instrument, as well as the amount of overdraft created thereby.

The report to the Office of Bar Counsel shall be made simultaneously with, and within the time period, if any, provided by law for notice of dishonor. If an instrument presented against insufficient funds was honored, the institution's report shall be mailed to Bar Counsel within five (5) business days of payment of the instrument.

(c) The establishment of a specially designated account at an approved depository shall be conclusively deemed to be consent by the lawyer or law firm maintaining such account to that institution's furnishing to the Office of Bar Counsel all reports and information required hereunder. No approved depository shall incur any liability by virtue of its compliance with the requirements of this rule, except as might otherwise arise from bad faith, intentional misconduct, or any other acts by the approved depository or its employees which, unrelated to this rule, would create liability.

(d) The designation of a financial institution as an approved depository pursuant to this rule shall not be deemed to be a warranty, representation, or guaranty by the District of Columbia Court of Appeals, the District of Columbia Bar, the District of Columbia Board on Professional Responsibility, the Office of Bar Counsel, or the District of Columbia Bar Foundation as to the financial soundness, business practices, or other attributes of such institution. Approval of an institution under this rule means only that the institution has undertaken to meet the reporting and other requirements enumerated in paragraph (a) and (b) above.

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

(f) Participation by financial institutions in the DC IOLTA program is voluntary. A financial institution that elects to offer and maintain DC IOLTA accounts shall fulfill the following requirements:

(1) The institution shall pay no less on its DC IOLTA accounts than the interest rate or dividend rate in (A) or (B):

(A) The highest interest rate or dividend rate generally available from the institution to its non-IOLTA customers when

the DC IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend rate generally available from the institution to its non-IOLTA customers, an institution may consider in addition to the balance in the DC IOLTA account, factors customarily considered by the institution when setting interest rates or dividend rates for its non-IOLTA customers, provided that such factors do not discriminate between DC IOLTA. accounts and non-IOLTA accounts and that these factors do not include the fact that the account is a DC IOLTA account.

(i) An institution may offer, and the lawyer or law firm may request, an account that provides a mechanism for the overnight investment of balances in the DC IOLTA account in an interest- or dividend-bearing account that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund.

(ii) An institution may choose to pay the higher interest rate or dividend rate on a DC IOLTA account in lieu of establishing it as a higher rate product.

(B) A "benchmark" rate set periodically by the Foundation that reflects the Foundation's estimate of an overall comparability rate for accounts in the DC IOLTA program and that is net of allowable reasonable fees. When applicable, the Foundation will express the benchmark rate in relation to the Federal Funds Target Rate.

(2) Nothing in this Rule shall preclude a financial institution from paying a higher interest rate or dividend on a DC IOLTA account than described in subparagraph (f)(1) above.

(3) Allowable reasonable fees are the only fees and service charges that may be deducted by a financial institution from interest or dividends earned on a DC IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on a DC IOLTA account only at the rates and in accordance with the customary practices of the financial institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on a DC IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the

sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the DC IOLTA account. Allowable reasonable fees in excess of the interest or dividends earned on one DC IOLTA account for any period shall not be taken from interest or dividends earned on any other DC IOLTA account or accounts or from the principal of any DC IOLTA account. Nothing in this rule shall preclude a financial institution from electing to waive any fees and service charges on a DC IOLTA account.

(g) On forms approved by the Foundation, a financial institution that maintains DC IOLTA accounts shall:

(1) Remit all interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in each DC IOLTA account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the Foundation. The institution may remit the interest or dividends on all of its DC IOLTA accounts in a lump sum; however, the institution shall provide, for each individual DC IOLTA account, to the Foundation the information described in subparagraph (g)(2), and to the lawyer or law firm the information in subparagraph (g)(3).

(2) Transmit with each remittance to the Foundation a report showing the following information for each DC IOLTA account: the name of the lawyer or law firm in whose name the account is registered, the amount of interest or dividends earned, the rate and type of interest or dividend applied, the amount of any allowable reasonable fees assessed during the remittance period, the net amount of interest or dividends remitted for the period, the average account balance for the remittance period, and such other information as is reasonably required by the Foundation.

(3) Transmit to the lawyer or law firm in whose name the account is registered a periodic account statement in accordance with normal procedures for reporting to depositors.

(h) The Foundation shall maintain records of each remittance and statement received from a financial institution for a period of at least three years and shall, upon request, promptly make available to a lawyer or law firm the records or statements pertaining to that lawyer's or law firm's DC IOLTA accounts.

(i) All interest and dividends transmitted to the Foundation shall, after

deduction for the necessary and reasonable administrative expenses of the Foundation for operation of the DC IOLTA program, be distributed by the Foundation for the following purposes: (1) at least eighty-five percent for the support of legal assistance programs providing legal and related assistance to poor persons in the District of Columbia who would otherwise be unable to obtain legal assistance; and (2) up to fifteen percent for those programs to improve the administration of justice in the District of Columbia as are specifically approved from time to time by this court.

(j) Definitions. As used in this rule, the terms below shall have the following meanings:

(1) "Allowable reasonable fees" for DC IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable DC IOLTA account administrative or maintenance fee.

(2) "Foundation" means the District of Columbia Bar Foundation, Inc.

(3) "Interest- or dividend-bearing account" means (i) an interest-bearing account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund. A daily (overnight) financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000.

(4) "DC IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for IOLTA-eligible funds at a financial institution from which funds may be withdrawn upon request by the depositor as soon as permitted by law.

(5) “IOLTA-eligible funds" means those funds from a client or third-party that are nominal in amount or are expected to be held for a short period of time, and that cannot earn income for the client or third party in excess of the costs incurred to secure such income.

(6) "Law Firm" - Includes a partnership of lawyers, a professional or non-profit corporation of lawyers, and combination thereof engaged in the practice of law.

(7) "Financial Institution" - Includes banks, savings and loan associations, credit unions, savings banks and any other business that accepts for deposit funds held in trust by lawyers or law firms which is authorized by federal, District of Columbia, or state law to do business in the District of Columbia or the state in which the financial institution is situated and that maintains accounts which are insured by an agency or instrumentality of the United States.

RULE OF PROFESSIONAL CONDUCT 1.19 – TRUST ACCOUNT OVERDRAFT NOTIFICATION

[Delete in its entirety.]

APPENDIX B OF THE RULES GOVERNING THE DISTRICT OF COLUMBIA BAR-INTEREST ON LAWYERS' TRUST ACCOUNTS PROGRAM

[Delete in its entirety.]