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November 24, 2008 (via Hand Delivery)

The Honorable Michael Catalano
Clerk, Tennessee Supreme Court
Supreme Court Building, Room 100
401 Seventh Avenue North
Nashville, TN 37219

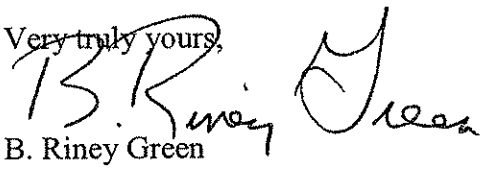
IN RE: PROPOSED AMENDMENT TO RULE 1.15 OF THE RULES OF PROFESSIONAL CONDUCT AND SUPREME COURT RULE 43 --- RESPECTING THE TENNESSEE INTEREST ON LAWYERS TRUST ACCOUNT (IOLTA) PROGRAM

Dear Mike:

On behalf of Petitioners the Tennessee Bar Foundation, the Tennessee Bar Association, the Tennessee Association for Justice and the Tennessee Alliance for Legal Services, attached for filing please find an original and six copies of a Petition in reference to the above new matter.

Thank you for your kind cooperation.

Very truly yours,



B. Riney Green
Chair-Elect
Tennessee Bar Foundation

cc: Chief Justice Janice Holder
Justice Cornelia Clark
Justice Gary Wade
Justice Bill Koch
Justice Sharon Lee
Allan F. Ramsaur, Executive Director, Tennessee Bar Foundation
George T. Lewis, President, Tennessee Bar Association
Debra L. House, Chair, Tennessee Alliance for Legal Services and Chair, TBA Access To Justice Committee
William L. Harbison, General Counsel, Tennessee Bar Association
Judge Steve Stafford, Chair, Tennessee Bar Foundation
Howard H. Vogel, Immediate Past Chair, Tennessee Bar Foundation
Barri Bernstein, Executive Director, Tennessee Bar Foundation
Daniel L. Clayton, President, Tennessee Association for Justice
Service List

IN THE SUPREME COURT OF TENNESSEE

IN RE	PROPOSED AMENDMENT TO RULE 1.15 OF THE RULES OF PROFESSIONAL CONDUCT AND SUPREME COURT RULE 43	)))))	No. _____

PETITION OF THE TENNESSEE BAR FOUNDATION, THE TENNESSEE BAR ASSOCIATION, THE TENNESSEE ASSOCIATION FOR JUSTICE AND THE TENNESSEE ALLIANCE FOR LEGAL SERVICES FOR THE APPROVAL OF RULES AMENDMENTS ENHANCING THE INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA) PROGRAM

Petitioners the Tennessee Bar Association ("TBA"), the Tennessee Bar Foundation (the "Bar Foundation"), the Tennessee Association For Justice ("TAJ") and the Tennessee Alliance for Legal Services ("TALS") respectfully petition this Honorable Court to amend RPC 1.15 of the Rules of Professional Conduct and this Court's Rule 43 to (1) require that all attorneys who hold eligible client funds participate in the Bar Foundation's Interest On Lawyers Trust Accounts (IOLTA) program, i.e., to make IOLTA mandatory (joining 38 other states), and (2) require that lawyers maintain their IOLTA accounts at financial institutions which pay IOLTA accounts the highest rate of interest or dividend generally available at an institution to its non-IOLTA customers when IOLTA accounts meet the same minimum balance or other requirements , i.e., interest rate comparability (joining 23 other states).

SUMMARY

Under the Tennessee IOLTA program, interest on pooled client trust accounts containing funds that could not generate any net interest for any one client is paid to the Bar Foundation to fund civil legal services for the poor and elderly of Tennessee and to improve the administration

of justice in Tennessee. Despite the fact that these funds otherwise sit idle, some Tennessee attorneys and law firms choose to "opt out" of the current IOLTA program. With interest rates declining throughout 2008 to historic lows and the U.S. and Tennessee experiencing an economic downturn, remittals from participating attorneys have shrunk substantially in the past twelve months[1]. Yet, with a change from "opt out" to mandatory participation, coupled with an interest rate comparability requirement, Tennessee's IOLTA program could become financially stronger and increase the availability of funding for important law-related services to the disadvantaged of Tennessee in these difficult economic times.

HISTORICAL BACKGROUND OF IOLTA

In 1981, Florida became the first state to adopt an IOLTA program (initially as a voluntary program and then converting to a mandatory program in 1989). In the ensuing years, all other states (including Tennessee by Order of this Court on October 30, 1984) have created an IOLTA program. "The result is that, whereas before 1980 the banks retained the value of the use of the money deposited in non-interest-bearing client trust accounts, today, because of the adoption of IOLTA programs, that value is transferred to charitable entities providing legal services for the poor." *Brown v. Washington Legal Found*, 538 U.S. 216, 221-222 (2003).

In March 2003, the United States Supreme Court ruled that the operation of a mandatory IOLTA program is constitutionally valid and does not result in an uncompensated taking under the Fifth Amendment. *Brown*, 538 U.S. at 240.

There are three primary types of IOLTA programs - mandatory, opt-out, and voluntary. While many states started out as voluntary, 38 states now have mandatory IOLTA programs

[1] From a monthly average of $203,012.00 during the third quarter of 2007, IOLTA revenue in Tennessee dropped 45% to a monthly average of $111,057.33 during the third quarter of 2008.

(listed on Exhibit 1), including six of the eight states bordering Tennessee. See American Bar Association ("ABA"), IOLTA Handbook (not formally published, on file with the ABA Commission on IOLTA), (hereinafter the "2008 IOLTA Handbook"). Of the ten states closest in population to Tennessee, nine (all except Virginia) have mandatory IOLTA programs. See Exhibit 1. Tennessee and ten other states are the only remaining "opt out" states and South Dakota is the only state whose IOLTA program is still voluntary.[2] *Id.*

TENNESSEE BAR FOUNDATION AND IOLTA GRANTS

The Bar Foundation is a non-profit charitable foundation designated by this Court in 1984 to administer the IOLTA program in Tennessee and to disburse net IOLTA proceeds in support of the "delivery of legal services to the poor, student loans [and] to improve the administration of justice." Since inception the Bar Foundation has awarded grants from IOLTA funds exceeding $14,485,000 in furtherance of those purposes. The list of 2008 grants (totaling $1,400,000) and grant recipients is attached as Exhibit 2. All Tennessee lawyers who maintain client trust accounts in accordance Tennessee's IOLTA rules are members of the Bar Foundation.

The IOLTA program provides funding that is critical to maintaining and improving access to the justice system in the State of Tennessee, including long-time support for the State's established civil legal aid providers.

[2] Of other jurisdictions, the Virgin Islands has a voluntary program, while the District of Columbia's IOLTA program is opt-out., 2008 IOLTA Handbook at 3.

EFFECT OF CONVERTING TENNESSEE'S IOLTA PROGRAM FROM "OPT-OUT" TO MANDATORY

Current Rule of Professional Conduct 1.15 does not require Tennessee attorneys or law firms to establish IOLTA accounts. Instead, a lawyer who is not otherwise exempt (e.g., lawyers not engaged in private practice are exempt) may decline to participate by providing written notice annually to the Chief Justice of this Court. Tennessee Rules of Professional Conduct 1.15(a)(1)(iii). Consequently, Tennessee is what is known as an "opt-out" state. That is, attorneys and law firms may choose not to participate in IOLTA.

Converting an opt-out or a voluntary IOLTA program to a mandatory program can have a significant positive impact on the remittals received by an IOLTA program. Data from other states that have made the opt-out to mandatory conversion indicate that the Tennessee IOLTA program could generate appreciably higher IOLTA revenue if the rule amendments proposed herein are adopted. For example, according to the American Bar Association IOLTA Clearinghouse, based on the average yearly remittals preceding and following conversion from opt-out to mandatory which took place in 2005 in South Carolina and Utah, those states saw an increase in IOLTA income of 60% and 56%, respectively.

Officers of the Bar Foundation and the TBA have extensively consulted with the Chief Disciplinary Counsel of the Board of Professional Responsibility in the preparation of the proposed IOLTA Rules amendments. The proposed graduated enforcement sanctions for IOLTA compliance set forth in Section 14 of the proposed amended Rule 43 that would be exercisable by the Board of Professional Responsibility if the Rules amendments are adopted are patterned on the procedures and timetable used to enforce compliance in Tennessee with lawyers' continuing legal education obligations.

EFFECT OF ADOPTING A COMPARABILITY REQUIREMENT

Rule 1.15 (a)(1)(ii) of the current Rules of Professional Conduct and Tennessee Supreme Court Rule 43 govern the creation and operation of IOLTA accounts and the Bar Foundation's role as the recipient and the distributor of net IOLTA revenues. Current Rule 43 (1)(c) states: "the interest rate paid shall be no less than the highest interest rate generally available from the financial institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any." Petitioners believe that Rule 43 (1)(c) was intended to prohibit discriminatory treatment of IOLTA accounts.

Based on information available to the Bar Foundation, it appears that, despite the language of current Rule 43, some banks and financial institutions operating in Tennessee presently pay lower rates on IOLTA accounts than they do on non-IOLTA accounts with comparable balances. New banking products not anticipated nor specifically addressed in current RPC Rule 1.15 or Court Rule 43 apparently provide banks with the flexibility to differentiate between IOLTA and non-IOLTA accounts to the disadvantage of IOLTA accounts. The proposed amendment to Rule 43, in line with IOLTA comparability rules adopted in 23 other states in recent years, would specify how lawyers and the financial institutions they choose for their IOLTA account deposits would achieve interest rate comparability for IOLTA accounts. A listing of the states requiring interest rate comparability is attached as Exhibit 3.

In states which have adopted "comparability" standards for their IOLTA programs, interest rate parity results in substantially higher rates of interest being paid by financial institutions on larger balance IOLTA accounts than what is presently being paid by Tennessee financial institutions on larger balance IOLTA accounts. For example, on information and belief, banks and financial institutions in some southeastern or neighboring states that have adopted

interest rate comparability pay higher interest rates on high balance IOLTA accounts than the Tennessee offices of those same financial institutions pay on high balance Tennessee IOLTA accounts.

Based on the experience of other states which have adopted comparability requirements, upon information and belief, no financial institution has ceased offering IOLTA accounts to lawyers who became subject to interest rate comparability requirements for their IOLTA accounts.

In order to provide adequate time to ensure a smooth transition for lawyers and financial institutions to implement the proposed comparability requirement, the Petitioners propose that the Rule amendments become effective January 1, 2010.

CONCLUSION

Petitioners believe that if the rule changes requested by this Petition are made to require non-exempt attorneys to establish IOLTA accounts and to further require attorneys and law firms to maintain those IOLTA accounts in financial institutions that pay comparable interest rates and dividends on IOLTA accounts as they pay on equivalent non-IOLTA accounts, then the amount of IOLTA funds ultimately paid by financial institutions in Tennessee on IOLTA accounts would increase substantially. Accordingly, this change would likely result in substantially more money being awarded by the Bar Foundation in its IOLTA grants than is currently the case. As a result, more funding would be available to support the charitable causes of greater access to justice and better administration of justice.

As a consequence of the current economic downturn, lower market interest rates, a decrease in the numbers of transactions generating trust accounts for clients and the fact that

attorneys and law firms may opt-out of IOLTA on the one hand and the increased need for legal services in Tennessee on the other, there is now a growing difference between IOLTA funds available to distribute to grantees in current and future years, and amounts needed to support the needs of IOLTA grantees and their programs. TALS reports that its legal aid/services organization members are experiencing a growing need by the low income Tennesseans they serve for civil legal services.

The Board of Trustees of the Bar Foundation and the governing boards of the TBA, the TAJ and TALS have approved the proposed rule amendments described in this Petition that would make IOLTA mandatory (as is now required by 38 states) and that would establish IOLTA account interest rate comparability (as is required by 23 states).

The Petitioners respectfully move this Court to amend Rule 1.15 of the Rules of Professional Conduct and Rule 43 of this Court (1) to require that all attorneys who hold eligible client funds participate in the Bar Foundation's Interest On Lawyers Trust Accounts (IOLTA) program (joining 38 other states), and (2) to require that lawyers maintain their IOLTA accounts at financial institutions which pay IOLTA accounts a rate of interest or dividend that is not less than the rate of interest or dividend those institutions pay to their equivalent non-IOLTA accounts (joining 23 other states).

A copy of the proposed RPC Rule 1.15 is attached as Exhibit 4 and one blacklined to show changes from the current RPC Rule 1.15 is attached as Exhibit 5. A copy of the proposed Supreme Court Rule 43 is attached as Exhibit 6 and one blacklined to show changes from the current Rule 43 is attached as Exhibit 7.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit 8 by regular U.S. Mail, postage prepaid on November 26, 2008.

B. Riney Green
B. Riney Green

Exhibit 1

Mandatory	Opt-Out	Voluntary
Alabama	Alaska	South Dakota
Arizona	Delaware	Virgin Islands
Arkansas	District of Columbia	
California	Idaho	
Colorado	Kansas	
Connecticut	Kentucky	
Florida	Nebraska	
Georgia	New Hampshire	
Hawaii	Rhode Island	
Illinois	Tennessee	
Indiana	Virginia	
Iowa	Wyoming	
Louisiana		
Maine		
Maryland		
Massachusetts		
Michigan		
Minnesota		
Missouri		
Mississippi		
Montana		
Nevada		
New Jersey		
New Mexico*		
New York		
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Oregon		
Pennsylvania		
South Carolina		
Texas		
Utah		
Vermont		
Washington		
West Virginia		
Wisconsin		

*On January 1, 2009, the mandatory IOLTA provision will become effective in New Mexico..

Exhibit 2

2008 Grants of the Tennessee Bar Foundation

Abuse Alternatives, Inc.	$5,000
Aging Services for the Upper Cumberlands	$9,000
Avalon Center	$11,000
CAN-LEARN Project	$5,000
CASA - the Center for Family Development	$10,000
CASA Corridor of East Tennessee	$5,000
CASA for Kids, Inc.	$9,000
CASA of Campbell County, Inc.	$6,000
CASA of East Tennessee, Inc.	$10,000
CASA of Madison and Henderson Counties	$8,000
CASA of Maury County, Inc.	$10,000
CASA of Memphis & Shelby County, Inc.	$9,000
CASA of Rutherford County	$7,000
CASA of the Tennessee Heartland, Inc.	$14,000
CASA, Inc. of Nashville	$10,000
Catholic Charities / Immigrant Services	$7,500
Catholic Charities / Parent Place	$12,000
CEASE Domestic Violence & Sexual Assault	$5,500
Community Legal Center	$32,000
Community Mediation Services	$5,000
Community Reconciliation, Inc.	$7,500
Disability Law & Advocacy Center of TN	$4,200
Dismas House of Nashville	$5,000
Domestic Violence Intervention Center	$2,500
Domestic Violence Program, Inc.	$15,400
Exchange Club Family Center of the Mid-South, Inc.	$10,000
Families In Crisis, Inc.	$2,000
Genesis House, Inc.	$10,000
Hope House	$10,000
Knoxville Family Justice Center	$11,000
Legal Aid of East Tennessee	$212,157
Legal Aid Society of Middle Tennessee and the Cumberlands	$242,648
Mediation Services of Putnam County, Inc.	$12,000
Memphis Area Legal Services, Inc.	$150,495
Mid South Mediation Services	$8,000
Monroe County Health Council	$6,000
Morning Star Sanctuary	$5,000
Putnam County CASA	$7,500
Reconciliation, Inc.	$13,000
Safe Haven Center	$7,500
Southeast Tennessee Legal Services	$10,000
Sumner County CASA	$5,000
Tennessee Coalition Against Domestic and Sexual Violence	$25,000
Tennessee Justice Center	$275,000
The Exchange Club Family Center	$10,000
The H.O.P.E. Center	$7,000
The Mediation Center	$6,000
University of Memphis School of Law Scholarship	$3,000
UT College of Law Scholarship	$3,000
VORP/Community Mediation Center, Inc.	$15,000
West Tennessee Legal Services, Inc.	$72,300
Williamson County CASA, Inc.	$3,800

Wilson County CASA	$7,000
YWCA of Greater Memphis	$10,000
YWCA of Knoxville	$12,000
YWCA of Oak Ridge	$4,000
	$1,400,000

Exhibit 3

States That Require IOLTA Rate Comparability

Alabama
Arkansas
California
Connecticut
Florida
Hawaii
Illinois
Indiana
Louisiana
Maryland
Massachusetts
Maine
Michigan
Minnesota
Mississippi
Missouri
New Jersey
New Mexico*
New York
Ohio
Pennsylvania
Texas
Utah

*On January 1, 2009, the comparability requirement will become effective in New Mexico.

EXHIBIT 4

Proposed RPC Rule 1.15

Proposed
Rule 1.15
Safekeeping Property and Funds

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the overdraft notification program as required by Supreme Court Rule 9. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose.

(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges)and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest On Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

(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 funds or other property. If a dispute

arises between the client and a third person with respect to their respective interests in the funds or property held by the lawyer, the portion in dispute shall be kept separate and safeguarded by the lawyer until the dispute is resolved.

(d) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests.

Comments

[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 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. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Paragraph (b) of this Rule contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account. All such accounts, including IOLTA accounts, must be part of the overdraft notification program established under Supreme Court Rule 9, Section 29.1.

[3] Under Supreme Court Rule 43, Tennessee lawyers are obligated to report their compliance with their obligations concerning their IOLTA accounts and the handling of client funds. Tennessee lawyers are required to comply with certain requirements imposed by Rule 43. This Rule requires Tennessee lawyers to establish IOLTA accounts only at eligible financial institutions. Tennessee lawyers may rely upon the list of eligible financial institutions maintained pursuant to Rule 43 in establishing an IOLTA account to comply with subparagraph (b)(2).

[4] A lawyer is also responsible for assuring the payment of any financial institution service charges or fees on such trust accounts. Subparagraph (b)(1) of this Rule makes clear that any interest earned on non-IOLTA trust accounts belongs to the client or third party whose funds generate the interest, and that the interest earned on them may be used by a lawyer to pay bank charges or fees. A detailed accounting of such interest and fees may be necessary to avoid the payment of any client- or matter-specific bank charges or fees (for example, charges for a certified check obtained solely for the benefit of one client) by a client other than the one on whose behalf the charge or fee was incurred.

[5] In determining whether client or third person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer should take into consideration a number of factors, including the amount of funds to be deposited; the expected duration of the deposit; the rate of interest or yield available from the financial institution where the funds are to be deposited; the service charges, fees, and other costs that are reasonably expected to be associated with the deposit of funds; the cost of establishing

and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that are reasonably likely to affect the ability of the client or third person to earn income, in excess of any service charges, fees, or other costs incurred to secure such income from the funds

[6] Subparagraph (b)(3) expressly recognizes that a lawyer's decision concerning whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) is a discretionary one, and provides that a lawyer who makes such a determination in good faith shall not be subject to any disciplinary sanction for this decision. A lawyer or law firm should review the account at reasonable intervals to determine if the amount of the funds or expected duration change the type of account in which funds should be deposited.

[7] In no event may overdraft charges imposed upon a trust account be paid from interest on a trust account.

[8] In order to allow a lawyer to pay appropriate financial institution service charges or fees on a trust account, paragraph (b) of the Rule expressly relaxes the prohibition on commingling lawyer and client funds in a trust account to permit a lawyer to deposit the lawyer's own funds in the trust account for the sole purpose of paying financial institution service charges or fees, but only in an amount reasonably necessary for that very limited purpose. Lawyers should exercise great care in using this limited permission to deposit funds in a trust account, given the cardinal importance of the principle otherwise banning commingling of funds.

[9] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention in a dispute with the client. 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 shall be promptly distributed.

[10] 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. If not inconsistent with the interests of the client, the lawyer may file an interpleader action concerning funds in dispute between the client and a third party.

[11] 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.

[12] In certain circumstances, Tennessee law governing abandoned property may apply to monies in lawyer trust accounts or other property left in the hands of lawyers and may govern its disposition. See Tenn. Code Ann. §§ 66-29-101 to 66-29-204 (Uniform Disposition of Unclaimed Property Act).

7282033.4

EXHIBIT 5

Blacklined Comparison of Proposed RPC Rule 1.15

To Current RPC Rule 1.15

Proposed
Rule 1.15

~~SAFEKEEPING PROPERTY~~

Safekeeping Property and Funds

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds. ~~A lawyer in possession of clients' or third persons' property and funds incidental to representation shall hold said property and funds separate from the lawyer's own property and funds.~~

(~~1~~b) Funds belonging to clients or third persons shall be ~~kept~~deposited in a separate account maintained in an ~~insured~~FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the overdraft notification program as required by Supreme Court Rule 9. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying ~~bank~~financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose.

(~~i~~1) Except as provided by subparagraph (~~a~~b)(~~1~~)(~~ii~~2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges), ~~fees of the depository institution,~~ and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(~~ii~~2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time ~~in a pooled account that participates in the~~ such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest On Lawyers' Trust ~~Accounts~~Account" ("IOLTA") ~~program, which provides that all interest earned be paid to the Tennessee Bar Foundation,~~ in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are ~~nominal in amount or are to be held for a short period of time~~required to be deposited in an IOLTA account.

pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer~~, and no~~. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in ~~that regard.~~ making such a determination.

~~(iii)A lawyer may decline to participate in the IOLTA program by submitting a notice of such declination in writing, no less frequently than annually, to the Chief Justice of the Tennessee Supreme Court. In accordance with the provisions of Supreme Court Rule 43, such notice may be filed at the time the lawyer files the registration statement with the Board of Professional Responsibility.~~

~~(b~~(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 funds or other property. If a dispute arises between the client and a third person with respect to their respective interests in the funds or property held by the lawyer, the portion in dispute shall be kept separate and safeguarded by the lawyer until the dispute is resolved.

(ed) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests.

~~COMMENTS~~

Comments

[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 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. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] ~~The first paragraph of Section (a)(1~~Paragraph (b) of this Rule contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account. All such accounts, ~~whether or not they are a part of the Interest On Lawyers' Trust Accounts ("IOLTA") program,~~including IOLTA accounts, must be part of the overdraft notification program established under Supreme Court Rule 9, Section 29.1.

[3] Under Supreme Court Rule 43, Tennessee lawyers are obligated to report their compliance with their obligations concerning their IOLTA accounts and the handling of client funds. Tennessee lawyers are required to comply with certain requirements imposed by Rule 43. This Rule requires Tennessee lawyers to establish IOLTA accounts only at eligible financial institutions. Tennessee lawyers may rely upon the list of eligible

financial institutions maintained pursuant to Rule 43 in establishing an IOLTA account to comply with subparagraph (b)(2).

[4] A lawyer is also responsible for assuring the payment of any ~~bank~~financial institution service charges or fees on such trust accounts. ~~Section (a~~Subparagraph (b)(1)~~(i)~~ of this Rule makes clear that any interest earned on non-IOLTA trust accounts belongs to the client or third party whose funds generate the interest, and that the interest earned on them may be used by a lawyer to pay bank charges or fees. A detailed accounting of such interest and fees may be necessary to avoid the payment of any client- or matter-specific bank charges or fees (for example, charges for a certified check obtained solely for the benefit of one client) by a client other than the one on whose behalf the charge or fee was incurred.

~~[4] Similarly, Section (a)(1)(ii) of this Rule and Supreme Court Rule 43 authorize a bank participating in the IOLTA program to deduct from any interest generated from an IOLTA account service charges (other than overdraft charges), fees of the depository institution, and intangible taxes collected with respect to the deposited funds, so long as such deductions do not diminish client funds and are not charged to interest in other IOLTA accounts. *See* Supreme Court Rule 43, Section (1)(d).~~

[5] In determining whether client or third person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer should take into consideration a number of factors, including the amount of funds to be deposited; the expected duration of the deposit; the rate of interest or yield available from the financial institution where the funds are to be deposited; the service charges, fees, and other costs that are reasonably expected to be associated with the deposit of funds; the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that are reasonably likely to affect the ability of the client or third person to earn income, in excess of any service charges, fees, or other costs incurred to secure such income from the funds

[6] Subparagraph (b)(3) expressly recognizes that a lawyer's decision concerning whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) is a discretionary one, and provides that a lawyer who makes such a determination in good faith shall not be subject to any disciplinary sanction for this decision. A lawyer or law firm should review the account at reasonable intervals to determine if the amount of the funds or expected duration change the type of account in which funds should be deposited.

[7] In no event may overdraft charges imposed upon a trust account be paid from interest on a trust account.

[~~6~~8] In order to allow a lawyer to pay appropriate ~~bank~~financial institution service charges or fees on a trust account, ~~Section (a)(1)(i~~paragraph (b) of the Rule expressly

relaxes the prohibition on commingling lawyer and client funds in a trust account to permit a lawyer to deposit the lawyer's own funds in the trust account for the sole purpose of paying ~~bank~~financial institution service charges or fees, but only in an amount reasonably necessary for that very limited purpose. Lawyers should exercise great care in using this limited permission to deposit funds in a trust account, given the cardinal importance of the principle otherwise banning commingling of funds.

[~~7~~2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention in a dispute with the client. 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 shall be promptly distributed.

[~~8~~10] 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. If not inconsistent with the interests of the client, the lawyer may file an interpleader action concerning funds in dispute between the client and a third party.

[~~9~~11] 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.

[~~10~~12] In certain circumstances, Tennessee law governing abandoned property may apply to monies in lawyer trust accounts or other property left in the hands of lawyers and may govern its disposition. See Tenn. Code Ann. §§ 66-29-101 to 66-29-204 (~~1993 and Supp. 1999)~~ (Uniform Disposition of Unclaimed Property Act). ~~[Amended by order filed May 14, 2003]~~

~~**DEFINITIONAL CROSS-REFERENCES**~~

~~None.~~

EXHIBIT 6

Proposed S. Ct. Rule 43

Proposed
Supreme Court Rule 43

Interest On Lawyers' Trust Accounts

Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.15, requires that Tennessee lawyers who maintain pooled trust checking accounts for the deposit of client funds participate in the IOLTA (Interest On Lawyers' Trust Accounts) program.

The following rule shall govern the operation of IOLTA accounts and the IOLTA program:

1. The determination of whether or not a financial institution is an eligible institution which meets the requirements of this Rule shall be made by the Tennessee Bar Foundation, the organizational administrator of the IOLTA program. The Foundation shall maintain a list of eligible financial institutions and shall make that list available to Tennessee lawyers.

2. Eligible institutions are those financial institutions which voluntarily offer IOLTA accounts and comply with the requirements of this Rule, including maintaining IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. To determine the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered when setting

interest rates or dividends for customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. Nothing in this Rule shall prohibit an eligible institution from paying an interest rate or dividend higher than required herein.

3. An eligible financial institution may satisfy requirements of this Rule by electing one of the following options:

a. Establish qualifying IOLTA accounts as the comparable interest rate or dividend-paying product; or

b. Pay the comparable interest rate or dividend on the qualifying IOLTA account in lieu of actually establishing the comparable interest rate or dividend-paying product; or

c. Pay an amount on funds that would otherwise qualify for the investment options described in Section 4 of this Rule equal to X% of the Federal Funds Target Rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable service charges or fees. This benchmark yield rate may be adjusted once per year by the Foundation, upon 90 days written notice to financial institutions participating in the IOLTA program.

4. IOLTA accounts may be established as:

a. A business checking account with an automated investment feature, such as an overnight investment in repurchase agreements or money market funds fully collateralized by or invested solely in United States government securities which are direct debt obligations of the government of the United States of America or of agencies or instruments thereof guaranteed by the full faith and credit of the government of the United States of America as to the payment of principal and interest at maturity;

b. A checking account paying preferred interest rates, such as money market or indexed rates;

c. A government interest-bearing checking account such as accounts used for municipal deposits; or

d. Any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers.

5. A daily financial institution repurchase agreement shall be fully collateralized by United States 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.

6. An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities and shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

7. An eligible financial institution participating in the IOLTA program must also:

a. Remit interest or dividends net of any allowable service charges or fees, preferably monthly, but at least quarterly, to the Tennessee Bar Foundation;

b. Transmit to the Tennessee Bar Foundation, in a format specified by the Tennessee Bar Foundation, a report which contains:

(i) the name of the lawyer or law firm on whose account the remittance is sent;

(ii) the account number;

(iii) the balance on which the interest rate is applied;

(iv) the rate of interest or dividends applied;

(v) the gross interest or dividends earned;

(vi) the type and amount of any allowable service charges or fees deducted; and

(vii) the net amount remitted.

c. Transmit information to the lawyer or law firm maintaining that account in accordance with the institution's normal procedures for reporting to depositors.

8. No financial institution service charges or fees may be deducted from the principal of any IOLTA account.

9. Deductions by the financial institution from interest earned may only be for allowable reasonable service charges or fees calculated in accordance with the institution's standard practice for non-IOLTA customers. For purposes of this Rule, "allowable reasonable service charges or fees" are defined as:

(a) per check charges;

(b) per deposit charges;

(c) a fee in lieu of minimum balance;

(d) federal deposit insurance fees;

(e) a sweep fee; and

(f) a reasonable IOLTA account administrative fee.

Other financial institution service charges or fees shall not be deducted from IOLTA account interest and shall be the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. Nothing in this Rule shall be construed to require that a financial institution charge fees on an IOLTA account, nor does anything in this Rule prohibit a financial institution from waiving or discounting fees associated with an IOLTA account.

10. Allowable reasonable service charges or fees in excess of the interest earned on any one IOLTA account may not be deducted from interest earned on any other IOLTA account.

11. A lawyer or law firm who objects to a decision of the Tennessee Bar Foundation with respect to whether a financial institution is an eligible institution under Section 1 through 10 of this Rule or whether the lawyer is eligible for an exemption under Section 13(e) may appeal such decision to the Board of Professional Responsibility in accordance with regulations adopted by the Board of Professional Responsibility.

12. Interest transmitted shall, after deductions for the necessary and reasonable administrative expenses of the Tennessee Bar Foundation for operation of the IOLTA program, be distributed by that entity, in proportions it deems appropriate, for the following purposes:

(a) To provide legal assistance to the poor;

(b) To provide student loans, grants, and/or scholarships to deserving law students;

(c) To improve the administration of justice; and

(d) For such other programs for the benefit of the public as are specifically approved by the Tennessee Supreme Court.

13. Unless exempt under this Section 13, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration statement required by Tennessee Supreme Court Rule 9, Section 20.5, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.15(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and account number(s) where such funds are

deposited. This certification shall be made on a form provided by the Board of Professional Responsibility and shall be submitted by the lawyer within the time period set forth in Rule 9, Section 20, for the annual registration statement.

A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

(a) the lawyer is not engaged in the private practice of law in the State of Tennessee;

(b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, corporate counsel, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;

(c) the lawyer does not have an office in Tennessee; however, for purposes of this Rule, a lawyer who practices, as a principal, employee, of counsel, or in any other capacity, with a firm that has an office in Tennessee shall be deemed for purposes of this Rule to have an office in Tennessee if the lawyer utilizes one or more offices of the firm located in Tennessee more than the lawyer utilizes one or more offices of the firm located in any other single state;

(d) under regulations adopted by the Board of Professional Responsibility under criteria established upon recommendation of the Tennessee Bar Foundation, the

lawyer or law firm is exempted from maintaining an IOLTA account because such an IOLTA account has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or

(e) the lawyer is exempted by the Tennessee Bar Foundation from the application of this Rule following a written request for exemption by the lawyer and determination by the Tennessee Bar Foundation that no eligible financial institution (as defined and determined in accordance with this Rule 43) is located within reasonable proximity of that lawyer.

14. Upon its receipt of a lawyer's certification under Section 13 of this Rule, the Tennessee Bar Foundation shall, on or before March 31 of each year, report to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with this Rule will result in the following action:

(a) On or before May 15 of each year, the Board of Professional Responsibility shall compile a list of those lawyers who are not in compliance with this Rule. On or before the first business day of May of each year, the Board of Professional Responsibility shall serve each lawyer on the list compiled under this Rule a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice on or before May 31 of that year. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars ($100.00). Such Noncompliance Fee shall be paid on or before May 31 of that year, unless the lawyer shows to the satisfaction of

the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before May 31 of that year, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such deficiency or fails to timely file such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars ($200.00).

(c) On or before June 30 of each year, the Board of Professional Responsibility shall: (i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance and who failed to remedy their deficiencies by May 31; (ii) submit the proposed Suspension Order to the Supreme Court; and (iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order. The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(d) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and

the Delinquent Compliance Fee, a Five Hundred Dollar ($500.00) Suspension Fee as a condition of reactivation of his or her law license. Payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

(e) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9, Section 20.5, and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

15. The Board of Professional Responsibility, acting in concert with the Tennessee Bar Foundation, may promulgate such forms and procedures to implement Sections 13 and 14 of this Rule and of Supreme Court Rule 8, RPC 1.15.

16. The information contained in the statements forwarded to the Tennessee Bar Foundation under Section 13 and/or Section 14 of this Rule shall remain confidential other than as to Tennessee Supreme Court or the Board of Professional Responsibility. The Tennessee Bar Foundation shall not release any information contained in such statements other than as a compilation of data from such statements, except as directed in writing by the Tennessee Supreme Court or the Board of Professional Responsibility or in response to a subpoena.

17. Transition Provisions. For the purpose of adopting regulations consistent with this Rule and educating the bar and financial institutions regarding the new requirements, the provisions of Rule 43 authorizing regulations and approval shall take effect upon entry of order adopting the Rule by the Tennessee Supreme Court.

For the purposes of certification on annual registrations by lawyers required in Tennessee Supreme Court Rule 43 and the provisions of Tennessee Supreme Court Rule 8, RPC 1.15 requiring deposit in IOLTA accounts, these amendments shall take effect on January 1, 2010.

7282597.5

EXHIBIT 7

Blacklined Comparison of Proposed Rule 43

To Current Rule 43

Proposed
Supreme Court Rule 43~~—~~

Interest ~~on~~On Lawyers[2]' Trust Accounts~~.~~

Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.15, requires that Tennessee lawyers who maintain pooled trust checking accounts for the deposit of client funds participate in the IOLTA (Interest On Lawyers' Trust Accounts) program~~, unless they decline to participate, as described in section 4(c) below.~~.

The following rule shall govern the operation of IOLTA accounts and the IOLTA program:

~~(1) Lawyers or law firms that deposit client funds in a pooled trust checking account in the IOLTA program shall direct the financial institution:~~

1. The determination of whether or not a financial institution is an eligible institution which meets the requirements of this Rule shall be made by the Tennessee Bar Foundation, the organizational administrator of the IOLTA program. The Foundation shall maintain a list of eligible financial institutions and shall make that list available to Tennessee lawyers.

2. Eligible institutions are those financial institutions which voluntarily offer IOLTA accounts and comply with the requirements of this Rule, including maintaining IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or

other eligibility qualifications, if any. To determine the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered when setting interest rates or dividends for customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. Nothing in this Rule shall prohibit an eligible institution from paying an interest rate or dividend higher than required herein.

3. An eligible financial institution may satisfy requirements of this Rule by electing one of the following options:

a. Establish qualifying IOLTA accounts as the comparable interest rate or dividend-paying product; or

b. Pay the comparable interest rate or dividend on the qualifying IOLTA account in lieu of actually establishing the comparable interest rate or dividend-paying product; or

c. Pay an amount on funds that would otherwise qualify for the investment options described in Section 4 of this Rule equal to X% of the Federal Funds Target Rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable service charges or fees. This benchmark

yield rate may be adjusted once per year by the Foundation, upon 90 days written notice to financial institutions participating in the IOLTA program.

4. IOLTA accounts may be established as:

a. A business checking account with an automated investment feature, such as an overnight investment in repurchase agreements or money market funds fully collateralized by or invested solely in United States government securities which are direct debt obligations of the government of the United States of America or of agencies or instruments thereof guaranteed by the full faith and credit of the government of the United States of America as to the payment of principal and interest at maturity;

b. A checking account paying preferred interest rates, such as money market or indexed rates;

c. A government interest-bearing checking account such as accounts used for municipal deposits; or

d. Any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers.

5. A daily financial institution repurchase agreement shall be fully collateralized by United States 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.

6. An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities and shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

7. An eligible financial institution participating in the IOLTA program must also:

~~(a) To remit~~a. Remit interest or dividends net of any allowable service charges or fees, preferably monthly, but at least quarterly, ~~calculated as described in sections 1(c) and 1(d) below~~ to the Tennessee Bar Foundation;

~~(b) To transmit with each remittance~~

b. Transmit to the Tennessee Bar Foundation ~~a statement showing:~~, in a format specified by the Tennessee Bar Foundation, a report which contains:

(i) ~~(i)~~ the name of the lawyer or law firm on whose account the remittance is sent;

(ii) ~~(ii)~~ the account number;

(iii) ~~(iii)~~the balance ~~against~~on which the interest rate is applied;

(iv) ~~(iv)~~ the rate of interest or dividends applied;

(v) ~~(v)~~ the gross interest or dividends earned;

(vi) ~~(vi)~~the type and amount of any allowable service charges ~~against the interest; and~~ or fees deducted; and

(vii) ~~(vii)~~the net ~~interest~~amount remitted.

~~Duplicate~~ c. Transmit information ~~shall be transmitted~~ to the lawyer or law firm maintaining that account.

~~(c) That the interest rate paid shall be no less than the highest interest rate generally available from the financial institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. (d) That deductions by the financial institution from interest earned may include charges for reasonable fees (other than overdraft charges), which shall be computed~~ in accordance with the ~~financial~~ institution's ~~customary pricing procedures for interest-bearing accounts.~~ normal procedures for reporting to depositors.

8. No financial institution service charges or fees may be deducted from the principal of any IOLTA account.

9. Deductions by the financial institution from interest earned may only be for allowable reasonable service charges or fees calculated in accordance with the institution's standard

practice for non-IOLTA customers. For purposes of this Rule, "allowable reasonable service charges or fees" are defined as:

(a) per check charges;

(b) per deposit charges;

(c) a fee in lieu of minimum balance;

(d) federal deposit insurance fees;

(e) a sweep fee; and

(f) a reasonable IOLTA account administrative fee.

~~Overdraft charges~~ Other financial institution service charges or fees shall not be deducted from ~~accrued~~IOLTA account interest and shall be the responsibility of, and may be charged to, the lawyer~~,~~ or law firm maintaining the IOLTA account. Nothing in this Rule shall be construed to require that a financial institution charge fees ~~concerning~~on an IOLTA account, nor does anything in this Rule prohibit a financial institution from waiving or discounting fees associated with an IOLTA account. ~~Financial institutions participating in the IOLTA program are encouraged to discount or write off fees associated with IOLTA accounts as an institutional contribution to the community.~~

~~(e) That fees or~~10. Allowable reasonable service charges or fees in excess of the interest earned on ~~the account for any month or quarter shall not be taken~~any one IOLTA account may not be deducted from interest earned on ~~other IOLTA accounts.~~ any other IOLTA account.

~~(2) As provided in Supreme Court Rule 8, RPC 1.15(a)(1), lawyers or law firms may deposit their own funds in such an account for the sole purpose of paying bank service charges on that account, but only in an amount reasonably necessary for that purpose.~~

11. A lawyer or law firm who objects to a decision of the Tennessee Bar Foundation with respect to whether a financial institution is an eligible institution under Section 1 through 10 of this Rule or whether the lawyer is eligible for an exemption under Section 13(e) may appeal such decision to the Board of Professional Responsibility in accordance with regulations adopted by the Board of Professional Responsibility.

~~(3)~~ 12. Interest transmitted shall, after deductions for the necessary and reasonable administrative expenses of the Tennessee Bar Foundation for operation of the IOLTA program, be distributed by that entity, in proportions it deems appropriate, for the following purposes:

(a) ~~(a)~~ To provide legal assistance to the poor;

(b) ~~(b)~~ To provide student loans, grants, and/or scholarships to deserving law students;

(c) ~~(c)~~ To improve the administration of justice; and

(d) ~~(d)~~ For such other programs for the benefit of the public as are specifically approved by the Tennessee Supreme Court ~~from time to time.~~.

~~(4) The~~13. Unless exempt under this Section 13, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration ~~form~~statement required by Tennessee Supreme Court Rule 9, Section ~~20.5 shall also include an IOLTA compliance statement. Each lawyer completing that statement will advise the Board of Professional Responsibility as to his or~~

~~her compliance with this Rule as follows: (a) A lawyer who deposits client funds in a pooled trust checking account that participates in the IOLTA program~~20.5, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.15(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and ~~the~~ account number(s); ~~(b) A lawyer who does not maintain a pooled trust checking account for deposit of client funds shall advise~~ where such funds are deposited. This certification shall be made on a form provided by the Board of Professional Responsibility~~, utilizing the options printed on the statement, why he or she does not maintain such account~~; and shall be submitted by the lawyer within the time period set forth in Rule 9, Section 20, for the annual registration statement.

~~(c) A lawyer who deposits client funds in a pooled trust checking account that does not participate in the IOLTA program must notify the Chief Justice of the Supreme Court of his or her declination to participate. The notice must be given to the Chief Justice annually, in the form of a letter, submitted to the Board of Professional Responsibility in conjunction with the registration statement.~~

~~(5) Copies of the IOLTA compliance portion of the registration statements and any letters of declination to participate in the IOLTA program shall be transmitted to the Tennessee Bar Foundation by the Board of Professional Responsibility.~~

A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

(a) the lawyer is not engaged in the private practice of law in the State of Tennessee;

(b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, corporate counsel, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;

(c) the lawyer does not have an office in Tennessee; however, for purposes of this Rule, a lawyer who practices, as a principal, employee, of counsel, or in any other capacity, with a firm that has an office in Tennessee shall be deemed for purposes of this Rule to have an office in Tennessee if the lawyer utilizes one or more offices of the firm located in Tennessee more than the lawyer utilizes one or more offices of the firm located in any other single state;

(d) under regulations adopted by the Board of Professional Responsibility under criteria established upon recommendation of the Tennessee Bar Foundation, the lawyer or law firm is exempted from maintaining an IOLTA account because such an IOLTA account has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or

(e) the lawyer is exempted by the Tennessee Bar Foundation from the application of this Rule following a written request for exemption by the lawyer and determination by the Tennessee Bar Foundation that no eligible financial

institution (as defined and determined in accordance with this Rule 43) is located within reasonable proximity of that lawyer.

14. Upon its receipt of a lawyer's certification under Section 13 of this Rule, the Tennessee Bar Foundation shall, on or before March 31 of each year, report to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with this Rule will result in the following action:

(a) On or before May 15 of each year, the Board of Professional Responsibility shall compile a list of those lawyers who are not in compliance with this Rule. On or before the first business day of May of each year, the Board of Professional Responsibility shall serve each lawyer on the list compiled under this Rule a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice on or before May 31 of that year. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars ($100.00). Such Noncompliance Fee shall be paid on or before May 31 of that year, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before May 31 of that year, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such

deficiency or fails to timely file such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars ($200.00).

(c) On or before June 30 of each year, the Board of Professional Responsibility shall: (i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance and who failed to remedy their deficiencies by May 31; (ii) submit the proposed Suspension Order to the Supreme Court; and (iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order. The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(d) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar ($500.00) Suspension Fee as a condition of reactivation of his or her law license. Payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

(e) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9, Section 20.5, and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

~~(6)~~ 15. The Board of Professional Responsibility, acting in concert with the Tennessee Bar Foundation, may promulgate such forms and procedures ~~as will~~to implement ~~paragraphs four~~Sections 13 and ~~five~~14 of this Rule and of Supreme Court Rule 8, RPC ~~1.15, as amended herein. [Adopted by order filed August 27, 2002.][Amended by order filed may 14, 2003.]~~1.15.

16. The information contained in the statements forwarded to the Tennessee Bar Foundation under Section 13 and/or Section 14 of this Rule shall remain confidential other than as to Tennessee Supreme Court or the Board of Professional Responsibility. The Tennessee Bar Foundation shall not release any information contained in such statements other than as a compilation of data from such statements, except as directed in writing by the Tennessee Supreme Court or the Board of Professional Responsibility or in response to a subpoena.

17. Transition Provisions. For the purpose of adopting regulations consistent with this Rule and educating the bar and financial institutions regarding the new requirements, the provisions of Rule 43 authorizing regulations and approval shall take effect upon entry of order adopting the Rule by the Tennessee Supreme Court.

For the purposes of certification on annual registrations by lawyers required in Tennessee Supreme Court Rule 43 and the provisions of Tennessee Supreme Court Rule 8, RPC 1.15 requiring deposit in IOLTA accounts, these amendments shall take effect on January 1, 2010.

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EXHIBIT 8

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