

Rules of Professional Conduct

16-115. Safekeeping Property

(D) Pooled interest-bearing trust accounts. Except as provided in Subparagraph (8) of this paragraph, a lawyer or law firm shall create and maintain a pooled interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions. This account may be referred to as an IOLTA account.

- (1) No interest income from an IOLTA account shall be made available to a lawyer or law firm.
- (2) The IOLTA account shall include all clients' funds which are nominal in amount or to be held for a short period of time.
- (3) An IOLTA interest-bearing trust account may be established with any bank, savings and loan association or credit union authorized by federal or state law to do business in New Mexico and insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration. Funds in each interest-bearing account shall be subject to withdrawal upon request and without delay.
- (4) The rate of interest payable on any IOLTA account shall not be less than the rate paid by the depository institution to regular, nonlawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.
- (5) Lawyers or law firms depositing client funds in an IOLTA trust account established pursuant to this paragraph shall direct the depository institution:
 - (a) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the Center for Civic Values ("center") which shall hold such funds as trustee for the benefit of the programs set forth below;
 - (b) to transmit with each remittance to the center a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and
 - (c) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Center, the rate of interest applied, and the average account balance of the period for which the report is made.
- (6) All interest transmitted to the Center for Civic Values ("center") shall be distributed periodically in accordance with a plan of distribution which shall be prepared at least annually and approved by the Supreme Court of New Mexico for the following purposes:
 - (a) to provide legal assistance to the poor;
 - (b) to provide legal education;
 - (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 Supreme Court of New Mexico from time to time.

- (7) Every lawyer subject to these rules shall include in the annual certificate of compliance required by Rule 17-204 of the Rules Governing Discipline that all clients' funds which are nominal in amount or to be held for a short period of time are deposited in an IOLTA account unless the lawyer or the law firm with which the lawyer is associated declines by January 10 of the calendar year to maintain an IOLTA account for the calendar year.
- (8) A lawyer or law firm may decline to maintain an IOLTA account by submitting in writing a letter to the clerk of the Supreme Court on or before January 10 of each calendar year the lawyer wishes to decline participation in the IOLTA program.