



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

ORDER

WHEREAS, the Supreme Court of Alabama is responsible for promulgating rules governing the practice of law in the State of Alabama and encouraging assistance to underserved populations needing access to the courts of Alabama for adjudication of their disputes;

WHEREAS, the Supreme Court of Alabama finds that greater oversight is needed to certify and confirm that interest and dividends earned from IOLTA accounts are allocated appropriately and spent properly;

WHEREAS, the Supreme Court of Alabama finds that it possesses the requisite administrative oversight of IOLTA funds;

WHEREAS, the Supreme Court of Alabama desires to amend the Rules of Professional Conduct to limit the distribution of funds to bona fide nonprofit organizations promoting greater access to the courts of Alabama for citizens otherwise unable to afford competent counsel;

WHEREAS, prior to the distribution of any and all IOLTA funds, the Supreme Court of Alabama shall approve the beneficiary and the amount of any such distribution; and

WHEREAS, prior to the effective date of this Order and the amendment of Rule 1.15, Alabama Rules of Professional Conduct, attached as an appendix hereto, IOLTA funds may be administered under the Rules existing as of December 1, 2024; provided however, that any and all distributions and disbursements shall be submitted to and approved by a majority of the members of the Alabama Supreme Court then sitting.

NOW, THEREFORE, IT IS ORDERED that Rule 1.15, Alabama Rules of Professional Conduct, be amended to read in accordance with the appendix to this order;



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

IT IS FURTHER ORDERED that this amendment is effective February 15, 2025;

IT IS FURTHER ORDERED that the Alabama Civil Justice Foundation ("the ACJF") may continue to distribute funds generated from IOLTA accounts in accordance with the previously existing Rule 1.15(m), Alabama Rules of Professional Conduct, subject to the requirement that it shall provide the Clerk of the Supreme Court of Alabama the name of each beneficiary and the amount proposed to be distributed to each beneficiary for approval by a majority of the members of the Court then sitting. Notwithstanding the foregoing, any funds generated from IOLTA accounts and received by the ACJF from a financial institution after February 14, 2025, shall be paid over to the Alabama Law Foundation ("the ALF") to be administered by the ALF in accordance with this Order and amended Rule 1.15; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 1.15:

"Note from the reporter of decisions: The order amending Rule 1.15, Alabama Rules of Professional Conduct, effective February 15, 2025, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 20th day of December, 2024.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
December 20, 2024**

**Clerk of Court
Supreme Court of Alabama**



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

APPENDIX

Rule 1.15. Safekeeping Property

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

"IOLTA account" means a pooled interest- or dividend-bearing trust account benefiting the Alabama Law Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in subsection (k).

"Interest- or dividend-bearing trust account" means a federally insured checking account or a business checking account with an automated investment feature, such as an overnight sweep and investment in a government money-market fund or daily (overnight) financial-institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay except as permitted by law.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

"Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) a reasonable IOLTA account administrative fee.

"U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(a) A lawyer shall hold the 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 shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Any funds while in the lawyer's trust account that the lawyer is entitled to receive as a fee, reimbursement, or costs shall not be used by the lawyer for any personal or business expenses until such funds are removed from the trust account.

Interest or dividends, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(k), and the lawyer shall have no right or claim to the interest, dividends, or other earnings. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

(b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, 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 that property.

(c) 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 a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of non-collection, replace the funds in the separate account.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

(e) A lawyer who practices in Alabama shall maintain current financial records as provided in these Rules and as required by Rule 1.15 of these Rules and shall retain the following records for a period of six (6) years after termination of the representation:

1. Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee, and purpose of each disbursement;
2. Ledger records for all client trust accounts showing, for each separate trust client or third person, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;
3. Copies of retainer and compensation agreements with clients as required by Rule 1.5 of these Rules;
4. Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
5. Copies of bills for legal fees and expenses rendered;
6. Copies of records showing disbursements on behalf of clients;
7. The physical or electronic equivalents of all trust-account checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

8. Records of all electronic transfers from client trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient, and confirmation from the financial institution of the trust-account number from which money was withdrawn and the date and the time the transfer was completed;

9. Copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyers; and

10. Copies of those portions of client files that are reasonably related to client trust-account transactions.

(f) With respect to client trust accounts required by Rule 1.15 of these Rules:

1. Only a lawyer admitted to practice in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or shall authorize transfers from a client trust account;

2. Receipts shall be deposited intact, and records of deposit should be sufficiently detailed to identify each item; and

3. Withdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer.

(g) Records required by Rule 1.15 may be maintained by electronic, photographic, or other media, provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

(h) Upon dissolution of a law firm or of any legal professional organization, the partners, shareholders, or members (as the case may be) shall make reasonable arrangements for the maintenance of client trust-account records specified in these Rules.

(i) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or (2) if the request is honored by the financial institution and the overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this rule and shall hold harmless the financial institution



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(j) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§ 34-3-17 and -18, shall maintain a separate account to hold funds of a client or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold funds for clients or third persons; is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state, or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(k) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited; the estimated 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 ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affect the ability of the client or third-person funds to earn income in excess of the costs incurred to secure such funds. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination whether the funds of a client or third person can earn income in excess of costs as provided in (k) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment.

Offering IOLTA accounts is voluntary for financial institutions. Lawyers may place trust accounts only in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.

A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its non-IOLTA customers) by either using the identified product type as an IOLTA account or paying the



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

1. An interest-bearing checking account, such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.
2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money-market funds as described in the definitions.
3. A government (such as for municipal deposits) interest-bearing checking account.
4. A checking account paying preferred interest rates, such as money-market or indexed rates.
5. Any other suitable interest- or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.

As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, that would otherwise qualify for investment options described in 1 through 4 above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

1. Accounts that have limited check-writing capability required by law or government regulation may not be



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

considered as comparable to IOLTA accounts in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.

2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation the highest interest or dividend rate for each of the accounts they offer within the above-listed account types. The foundation will certify participating financial institutions' compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted at least quarterly to the Alabama Law Foundation.

Interest or dividends shall be calculated in accordance with the institution's standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Fees or charges in excess of the interest or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or to waive any or all fees on IOLTA accounts.

A statement should be transmitted to the Alabama Law Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, if any, the average account balance for the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

(1) All interest or dividends transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(k) shall be distributed by it for one or more of the following purposes:

1. To provide civil legal aid to the poor through access-to-justice programs administered by organizations recognized as exempt from taxation under Section 501(c)(3) of the



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

Internal Revenue Code of 1986, as amended, including, but not limited to, Volunteer Lawyers Programs in Alabama and the Alabama Civil Justice Foundation;

2. To provide for the administration of civil justice, including, but not limited to, in rural communities in Alabama;

3. To provide law-related educational programs to the public, including, but not limited to, training for guardians ad litem and Court Appointed Special Advocates; and

4. For such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(m) Rules governing the receipt, disbursement, and retainage of funds received pursuant to Rule 1.15(l):

1. Not more than ten percent (10%) of such funds received in any calendar year shall be used to pay the costs, expenses, and fees associated with the administration of such funds.

2. In any subsequent calendar year, at least fifty percent (50%) of such funds received in the previous calendar year shall be distributed, and any remaining funds may be retained and held as part of an endowment.

3. Prior to distributing any such funds, the Alabama Law Foundation shall provide the Clerk of the Supreme Court of Alabama the name of each beneficiary and the amount proposed to be distributed to such beneficiary for approval by a majority of the members of the Court then sitting.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

(n) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

(o) Beginning with the calendar quarter ending June 30, 2019, and continuing for each and every quarter thereafter, the Alabama Law Foundation shall report to the Supreme Court of Alabama the total funds received from IOLTA accounts, the total funds distributed by the foundation, and a certification that the information reported to the Supreme Court is correct. Such report shall be filed with the Clerk of the Supreme Court of Alabama within thirty (30) days after the end of each such calendar quarter. The quarterly report and the certification shall be in a form substantially similar to the form appended to this Rule 1.15.



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

APPENDIX TO RULE 1.15

IOLTA Foundation Disclosure Form (Rule 1.15(o))

Name of Foundation: _____

Date: _____

Report for Quarter Ending: _____

During the designated calendar quarter, the foundation identified above received \$_____ pursuant to Rule 1.15(k) of the Alabama Rules of Professional Conduct.

Also during this calendar quarter, the foundation disbursed the following funds received from any source to the following organizations:

| Name | Amount |
|------|--------|
| 1. | |
| 2. | |
| 3. | |
| 4. | |

TOTAL: \$_____

Of the total funds received by the foundation from all sources during this quarter, the following was spent for the following purposes:

Salaries and employment benefits \$_____

Rent \$_____



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

| | |
|---------------|-----------------|
| Travel | \$ _____ |
| Utilities | \$ _____ |
| Other | \$ _____ |
| TOTAL: | \$ _____ |

CERTIFICATION

I, _____, certify that the information contained on this IOLTA Foundation Disclosure Form is true and correct to the best of my knowledge, after due inquiry and investigation.

Date

Foundation representative (Name)