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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The Foundation may monitor 1) fulfillment of the requirements of paragraphs (f) and (g) of this Rule by institutions that elect to offer and maintain DC IOLTA accounts; and 2) compliance by lawyers with the IOLTA reporting requirements of Rule 1.15(b) of the DC Rules of Professional Conduct.

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

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

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

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

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

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

(4) "DC IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for IOLTA-eligible

funds at a financial institution from which funds may be withdrawn upon request by the depositor as soon as permitted by law.

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

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

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