

1:21B6. Recordkeeping; Sharing of Fees; Examination of Records

(a) Required Trust and Business Accounts. Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:

(1) a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and

(2) a business account into which all funds received for professional services shall be deposited.

One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

The names of institutions in which such primary attorney trust and business accounts are maintained and identification numbers of each account shall be recorded on the annual registration form

filed with the annual payment, pursuant to Rule 1:20B1(b) and Rule 1:28B2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20B1(c) shall constitute authorization to depository institutions to convert an existing non-interest bearing account [for nominal or short-term funds] to an IOLTA account.

(b) Account Location; Financial Institutions Reporting Requirements. An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for,

notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program, and must offer an IOLTA account to any attorney who wishes to open one, and must from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institution a just and reasonable return equivalent to its return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund.

Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor. Digital images of these records may be kept and produced by financial institutions provided that: (a) imaged copies of checks shall, when printed, be limited to no more than two checks per page (front and back) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(c) ... no change

(d) ... no change

(e) ... no change

(f) ... no change

(g) ... no change

(h) ... no change

(i) ... no change

(j) ... no change

Note: Source CR.R. 1:12B8A(a)(b)(c). Caption amended and paragraph (d) adopted July 1, 1970 effective immediately; paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended April 2, 1973 to be effective immediately; paragraph (c) amended July 17, 1975 to be effective September 8, 1975; caption and paragraph (a) amended July 29, 1977 to be effective September 6, 1977. Paragraphs (a) and (b) amended, new paragraph (c) adopted and former paragraphs (c), (d), (e), (f) and (g) redesignated and amended February 23, 1978 to be effective April 1, 1978; paragraphs (b), (c) and (h) amended November 22, 1978 to be effective January 1, 1979; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a), (b), (c), (g) and (h) amended January 31, 1984 to be effective February 15, 1984 except that the amendments to paragraph (a)(2) regarding designations to be placed on trust and business accounts shall not be effective until July 1, 1984; effective date of amendment to paragraph (a)(2) deferred on June 15, 1984 from July 1, 1984 to September 1, 1984; paragraphs (a)(1) and (2), (e)(1) and (h) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a), (e) and (f) amended November 1, 1984 to be effective March 1, 1985; paragraphs (b) and (c) amended and paragraph (i) adopted November 5, 1986 to be effective January 1, 1987; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(2) amended September 15, 1992 to be effective January 1, 1993; former paragraph (e) deleted and new paragraph (e) adopted November 18, 1996 to be effective January 1, 1997; paragraph (a) amended, new paragraph (b) added, former paragraphs (b) through (i) redesignated as paragraphs (c) through (j), and redesignated paragraphs (c), (d), (e), (h), and (i) amended July 12, 2002 to be effective September 3, 2002; caption of Rule and paragraphs (a) and (b) amended February 6, 2003 to be effective March 1, 2003.

RULE 1:28A. [INTEREST] INCOME ON NON- INTEREST BEARING LAWYERS TRUST
ACCOUNTS (IOLTA) FUND

1:28AB1. Purpose; Administration; Appointments

(a) Administration. The Supreme Court shall appoint six Trustees to administer and operate, in accordance with these Rules, the IOLTA Fund of the Bar of New Jersey, whose purpose is to provide a means of using [interest earned on nominal or short-term deposits, to be used] the return to IOLTA on income earned by depository institutions from funds held in IOLTA accounts to fund law-related, public-interest programs. In addition to the Trustees appointed by the Supreme Court, the following shall be ex officio members and will have the right to vote on all matters except grant applications made to the Board of Trustees, but they may participate in Board discussions of the grant applications: the President of the New Jersey State Bar Association; the First Vice President of the New Jersey State Bar Foundation; and the President of Legal Services of New Jersey, Inc.

(b) Qualification, Terms of Trustees. The original appointment shall be of two Trustees for a one-year term, one for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms all subsequent appointments shall be for a term of [five-years] five years, and no Trustee who has served a full five-year term shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof. At least four of the Trustees appointed by the Supreme Court shall be members of the bar of this State.

(c) ... no change

(d) ... no change

(e) ... no change

Note: Adopted February 23, 1988, to be effective March 1, 1988; paragraphs (a), (b), (c) and (d) amended September 15, 1992, to be effective January 1, 1993; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; caption of Rule 1:28A and paragraphs (a) and (b) of Rule 1:28A-1 amended February 6, 2003 to be effective March 1, 2003.

1:28AB2. Attorney IOLTA Trust Accounts

(a) Attorney Participation. Commencing on the date established by regulations to be adopted by the Board of Trustees pursuant to Rule 1:28AB1(d), every attorney who practices in this State shall maintain in a financial institution in New Jersey, in the attorney's own name or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability entity of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed, an IOLTA non-interest-bearing trust account or accounts for all clients' funds that are [nominal in amount, are to be held for a short period of time, or otherwise are not likely to realize income for the clients in compliance with the following provisions:] not placed at interest for the benefit of the client.

(1) The IOLTA non-interest-bearing trust account may be established with any financial institution approved by the Supreme Court to hold attorney trust funds under R. 1:21B6(a) and insured by the Federal Deposit Insurance Corporation or an analogous federal government agency. Funds in each IOLTA non-interest-bearing trust account will be subject to withdrawal on request and without delay.

(2) Funds shall be deposited in an IOLTA non-interest-bearing trust account authorized by this Rule when an attorney determines that a trust account deposit will not be placed at interest for a client. Such a determination shall be made whenever an attorney determines that either (A) the amount of the funds or the period of time that the funds are held, if deposited in an interest-bearing account, would not earn interest in excess of the cost incurred to secure such interest, or (B) [when an attorney determines that] because of particular costs in accounting, administration, or attribution of income, as may occur when multiple parties or clients pool advance payments against the costs of litigation in a single fund, a client's funds should not be deposited in an interest-bearing account because they will not realize

income. No ethical impropriety will attend an attorney's depositing such funds in an IOLTA non- interest-bearing trust account in accordance with this Rule. [The Fund will be the owner of any interest generated by the funds deposited in an IOLTA interest-bearing trust account.]

(3) An attorney or law firm shall maintain one or more IOLTA non-interest-bearing trust accounts and shall submit to the [bank or banks with which his, her, or its short term, nominal, and other non-interest bearing funds are currently deposited, or to another bank or banks that are approved depositories, a form authorizing the bank to convert any existing non-interest bearing trust accounts to IOLTA interest-bearing trust accounts or to open IOLTA interest-bearing trust] approved financial institutions in which such accounts are maintained such forms as may be necessary to establish and maintain such accounts, on forms prescribed by the Trustees, and provide a copy of such form to the IOLTA Fund Trustees. If such a form is not filed, the signed registration statement required by Rule 1:20B1 and Rule 1:21B6 shall constitute such authorization.

(b) ... no change

(c) ... no change

(d) ... no change

(e) Duties of Financial Institution. The financial institution [will] must:

(1) [remit to the Fund, at least quarterly, interest or dividends, as the case may be, net of any service charges or fees, which may include reimbursement for the reasonable costs of administering the account, computed in accordance with the institution's customary pricing procedures for interest-bearing transaction accounts.] from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institutions a just and reasonable return equivalent to their return on similar non-

IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund. And

(2) [transmit with each remittance to the Fund a statement showing the name of the attorney or law firm for whom the remittance is sent, the remittance sent for the period, and the balance on the closing date. There shall be transmitted such other information as may be agreed on between the Board of Trustees and the New Jersey Bankers Association, the New Jersey Council of Savings Institutions, and the New Jersey Savings League.] report in the form provided by the Fund.

Note: Adopted February 23, 1988, to be effective March 1, 1988; former rule deleted and R. 1:28AB3 renumbered as 1:28AB2 September 15, 1992, to be effective January 1, 1993; paragraph (a)(1) of former R. 1:28AB3 amended November 7, 1988, to be effective January 2, 1989; rule amended September 15, 1992, to be effective January 1, 1993; new paragraph (d) adopted and former paragraph (d) redesignated as paragraph (e) December 13, 1993, to be effective January 3, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (e) amended February 6, 2003 to be effective March 1, 2003.