

**STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO MAINE BAR RULES
(As amended December 12, 2007)**

2008 Me. Rules 01

Effective: April 1, 2008

A majority of the Justices concurring therein, the following amendments to the Maine Bar Rules are hereby adopted, to become effective on April 1, 2008.

1. Maine Bar Rule 3.6(e) is amended to read as follows:

3.6 Conduct During Representation

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(e) Preserving Identity of Funds and Property.

(1) All funds of clients paid to a lawyer or law firm, other than retainers and advances for fees, costs and expenses, shall be deposited in one or more identifiable accounts maintained in the state in which the law office is situated at a financial institution authorized to do business in such state. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay institutional service charges may be deposited therein; and

(ii) Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive ~~it~~ the funds is disputed by the client; in that event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(2) A lawyer shall:

(i) Promptly notify a client of the receipt of the client's funds, securities, or other properties;

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;

(iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them; and

(iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(3) Unless the client directs otherwise, when a lawyer or law firm reasonably expects that client funds will earn ~~net~~ interest or dividends for the client in excess of the costs incurred to secure such income, as defined in paragraph (7) of this subdivision, such funds shall be deposited in a client trust account that may be either

(i) A separate, ~~insured, interest-bearing~~ trust account for the particular client or client's matter, ~~the net interest on which~~ the earnings net of any transaction costs or other account-related charges will be paid or credited to the client; or

(ii) A pooled, ~~insured, interest-bearing~~ trust account with subaccounting, ~~by the financial institution or the lawyer or law firm~~, which will provide for computation of ~~the interest earned by~~ earnings accrued on each client's funds and the payment thereon, net of any transaction costs or other account-related charges ~~or crediting of each client's net interest to the client.~~

~~(4) Unless a lawyer practicing alone, or a law firm, has made an annual election, or holds United States government funds, as provided in paragraph (5) of this subdivision, all funds of any client held by the lawyer or law firm that the lawyer or law firm reasonably and in good faith expects will not earn net interest as defined in paragraph (7) of this subdivision shall be deposited in one or more pooled, insured, interest-bearing accounts, each of which shall be subject to the following conditions:~~

~~(i) The financial institution in which the account is established shall be authorized to do business in Maine and shall be insured by either the~~

~~Federal Deposit Insurance Corporation or the National Credit Union Administration Share Insurance Fund.~~

~~(ii) Funds deposited in the account shall be subject to withdrawal upon request and without delay.~~

~~(iii) The lawyer or law firm shall file with the Board of Overseers of the Bar an order directing the financial institution to remit any net interest that may accrue on the account to the Maine Bar Foundation, a nonprofit corporation incorporated under the laws of the State of Maine that has in force a determination letter from the Internal Revenue Service that it qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 as from time to time amended. Such an order shall be filed by July 31, 1994, for any account maintained by the lawyer or law firm under this paragraph (4) as of July 1, 1994, and within 30 days after the subsequent opening of any account that is to be maintained hereunder.~~

~~(iv) No interest on the account shall be paid to the lawyer or law firm, and the lawyer or law firm shall not receive any direct or indirect pecuniary benefit by reason of the remittance of interest in accordance with subparagraph (iii).~~

~~(v) The lawyer or law firm shall give the public notice, by a prominently displayed sign or other reasonable means, of the lawyer's or firm's standing practice to use such an account and that the Maine Bar Foundation is the recipient of the net interest therefrom.~~

(4) All funds of any client held by the lawyer or law firm that are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income shall be deposited in an Interest on Lawyer's Trust Account (IOLTA) account and shall be subject to the following conditions:

(i) The financial institution in which the account is established shall be authorized to do business in Maine, shall be insured by the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund, and shall be an eligible institution selected by the lawyer in the exercise of ordinary prudence. "Eligible Institution" is one determined by the Maine Bar Foundation in accordance with Rule 6(a)(2), (3) and (4);

(ii) Funds deposited in the account shall be subject to withdrawal upon request and without delay;

(iii) Within 30 days after the opening of any IOLTA account that is to be maintained hereunder, the lawyer or law firm shall file with the Board of Overseers of the Bar an order directing the financial institution to remit any net interest or dividends that may accrue on the account to the Maine Bar Foundation, a nonprofit corporation incorporated under the laws of the State of Maine that has in force a determination letter from the Internal Revenue Service that it qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 as from time to time amended;

(iv) No interest or dividends on the account shall be paid to the lawyer or law firm, and the lawyer or law firm shall not receive any direct or indirect pecuniary benefit by reason of the remittance of interest in accordance with subparagraph (iii); and

(v) The determination of whether funds are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income, shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

~~(5) A lawyer practicing alone, or a law firm, may elect to deposit all client funds that are reasonably and in good faith not expected to earn net interest, as defined in paragraph (7) of this subdivision, in one or more insured, non-interest bearing accounts, instead of in the interest-bearing account or accounts required by paragraph (4) of this subdivision. Such election shall be effective only upon written notice to the Board of Overseers of the Bar given not later than July 31, 1994, and thereafter annually in conjunction with the filing of the list of trust accounts required by Rule 6(a)(2). A lawyer practicing alone, or a law firm, holding funds of the United States government that by law may not earn interest, shall deposit those funds in one or more insured, non-interest bearing accounts, whether or not the lawyer or firm has made the election provided by this paragraph for other client funds.~~

(6) If the circumstances on which a lawyer or law firm has based a determination to deposit client funds in an account under either paragraph (4) or ~~paragraph (5)~~ of this subdivision change, so that ~~net interest or dividends in excess~~

of costs may reasonably be expected to be earned on such funds, the lawyer or law firm shall transfer the principal amount originally deposited to the appropriate account established under paragraph (3) of this subdivision.

(7) For purposes of this rule, the term “net interest or dividends in excess of costs” means the net of interest or dividends earned on a particular amount of one client's funds over the administrative costs allocable to that amount. In estimating the gross amount of interest or dividends to be earned, the lawyer or law firm shall consider the principal amount involved; available interest or dividend rates; and the time the funds are likely to be held, taking into account the likelihood of delay in any relevant proceeding or transaction.

(8) For purposes of this rule, the term “administrative costs” means that portion of the following costs properly allocable to a particular amount of one client’s funds paid to a lawyer or law firm:

(i) Financial institutional service charges for opening, maintaining, or closing an account, or accounting for the deposit and withdrawal of funds and payment of interest or dividends.

(ii) Reasonable charges of the lawyer or law firm for opening, maintaining or closing an account; accounting for the deposit and withdrawal of funds and payment of interest or dividends; and obtaining information and preparing or forwarding any returns or reports that may be required by a revenue taxing agency as to the interest or dividends earned on a client’s funds.

2. Maine Bar Rule 6(a)(2), (3) is repealed and replaced as follows:

RULE 6. REGISTRATION; LIST OF TRUST ACCOUNTS

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~~(2) — *List of Trust Accounts.* — A lawyer or law firm that maintains one or more trust accounts in accordance with either Rule 3.6(e)(4) or Rule 3.6(e)(5) shall, not later than July 31, 1994, file with the Board a list of all such accounts maintained as of July 1, 1994, indicating the account number of each account and the financial institution where it is maintained. Thereafter, annually in conjunction with the filing of the annual registration statement, a lawyer or law firm maintaining an account or accounts under Rule 3.6(e)(4) shall report to the Board the account number and financial institution of any account added to or deleted~~

~~from the list of accounts during the preceding 12 months; and a lawyer or law firm maintaining an account or accounts under Rule 3.6(e)(5) shall file with the Board a list of all such accounts maintained as of July 1 of the current year, indicating the account number and financial institution of each.~~

(2) *IOLTA Accounts.* Every lawyer admitted to practice in this State shall annually certify to the Board of Overseers of the Bar in connection with the annual renewal of the lawyer's registration, that:

(A) To the lawyer's knowledge after reasonable investigation

(1) the lawyer or the lawyer's law firm maintains at least one IOLTA account, and

(2) the lawyer has taken reasonable steps to ensure that all client funds are held in client trust accounts meeting the requirements of these Rules, or

(B) That the lawyer is exempt from maintaining an IOLTA or other trust account because the lawyer:

(1) is not engaged in the private practice of law;

(2) does not have an office within the State of Maine;

(3) is (i) a judge or other judicial officer employed full time by the United States Government, the State of Maine or another state government, (ii) on active duty with the armed services, or (iii) employed full time as an attorney by a local, state, or federal government, and is not otherwise engaged in the private practice of law;

(4) is counsel for a corporation or non-profit organization or a teacher or professor employed by an educational institution, and is not otherwise engaged in the private practice of law;

(5) has been exempted by an order of the Court which is cited in the certification; or

(6) holds no client funds other than retainers or advances for fees, costs and expenses.

(3) IOLTA Account Defined. An IOLTA account is a pooled trust account earning interest or dividends at an eligible institution in which a lawyer or law firm holds funds on behalf of client(s), which funds are small in amount or held for a short period of time such that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income and the account is:

(A) an interest-bearing checking or share draft account;

(B) a money market account with or tied to check-writing;

(C) an account whose funds are invested solely in repurchase agreements;

or

(D) an account whose funds are invested solely in qualified money market funds.

A “qualified money market fund” is an open-end investment company registered under the Investment Company Act of 1940 that is regulated as a money market fund under Rule 270.2a-7 thereof (or any successor regulation) and that, at the time of the investment, has total assets of at least \$250,000,000, substantially all of which are invested in U.S. Government Securities. A “repurchase agreement” is a daily overnight repurchase agreement which must be fully collateralized by U.S. Government Securities and may be established only with a bank or other depository institution that is deemed to be “well capitalized” or “adequately capitalized” under applicable regulations of the Federal Deposit Insurance Corporation and National Credit Union Share Insurance Fund. U.S. Government Securities, for the purpose of this section, include securities of Government Sponsored Entities, including but not limited to Federal National Mortgage Association Securities, Government National Mortgage Association Securities, and Federal Home Loan Mortgage Corporation Securities.

(4) Account Qualifications. An IOLTA account must meet all of the following conditions:

(A) the account is held in an eligible institution which is required to:

(i) remit the interest and dividends on this account, net of any allowable reasonable fees, at least quarterly to the Maine Bar Foundation;

(ii) transmit with each remittance a report on a form approved by the Maine Bar Foundation that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest and dividends applied, the amount of interest and dividends, the amount and type of account-related charges deducted, if any, and the average account balance for the period in which the report is made; and

(iii) transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(B) the account meets the requirements of paragraph 3 above as a client trust account.

(C)(1) An “Eligible Institution” for IOLTA accounts is a bank, trust company, savings bank, credit union, or savings and loan association authorized by federal or state law to do business in Maine, the deposits of which are insured by an agency of the federal government, and which has been designated by the Maine Bar Foundation as meeting the conditions of this subsection (C).

(2) To qualify as an eligible institution, the institution must pay on IOLTA accounts interest or dividends no less than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers on accounts having similar minimum balances and other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution’s standard practice. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an institution may consider in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and other accounts and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. The eligible institution may choose to pay the higher interest rate or dividend on an IOLTA account in lieu of establishing it as a higher rate product. Nothing contained in this Rule will be deemed to prohibit an institution from paying a higher interest rate or dividend on IOLTA accounts than required by this Rule or from electing to waive any fees and service charges on an IOLTA account. Lawyers may only maintain IOLTA accounts at eligible institutions which meet this Rule’s requirements, as determined from time to time by the Maine Bar Foundation.

(3) Eligible institutions may comply with the rate requirements of this Rule by electing to pay an amount on funds which would otherwise qualify for the options noted above, equal to 65% of the Federal Funds Target Rate in effect on July 1 of each year, which rate remains in effect for twelve months, and which amount is deemed to be already net of allowable reasonable fees. The Federal Funds Target Rate as of January 1, 2008, shall be in effect until July 1, 2008.

(4) “Allowable reasonable fees” for IOLTA accounts are per check charges, per deposit charges, sweep fees, a fee in lieu of a minimum balance, federal deposit or share insurance fees, and a reasonable IOLTA account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to the lawyer maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the amount.

(5) *Maine Bar Foundation Actions.*

(A) The Maine Bar Foundation shall publish annually a list of eligible institutions that may hold IOLTA accounts.

(B) By March 1 of each year, beginning in 2009, the Maine Bar Foundation shall complete a financial report of the IOLTA funds received and distributed by it for the previous calendar year. The financial report shall be conducted according to generally accepted accounting principles and shall include indication of the purposes for which IOLTA funds have been expended in the previous year. Copies of the financial report shall be provided to the Court.

~~(3)~~(6) *Receipt of Voluntary Contributions.* As part of its notification to attorneys to file annual registration statements, the Board may invite attorneys to make a voluntary contribution to the Campaign for Justice to assist in the funding of legal services for low income individuals. The Board may also provide a means for making the voluntary contribution at the same time that the annual fee is paid and is authorized to utilize its administrative staff and facilities to receive these voluntary contributions and forward them to the Campaign for Justice.

3. These amendments shall take effect April 1, 2008.

Dated: September 21, 2007.
(Amended December 12, 2007)

S/ _____
Leigh I. Saufley, Chief Justice

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Robert W. Clifford, Associate Justice

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Donald G. Alexander, Associate Justice

S/ _____
Susan Calkins, Associate Justice

S/ _____
Jon D. Levy, Associate Justice

S/ _____
Warren M. Silver, Associate Justice

S/ _____
Andrew M. Mead, Associate Justice

* Justice Clifford and Justice Alexander do not join this rule amendment.