

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2009-12

The following rules' amendments shall become effective January 1, 2010.

AMENDMENTS TO THE SUPREME COURT RULES OF PROCEDURE

I. SCR 2.002 (1), (4) and (5) Fiscal provisions

The amendments to sections (1), (4), and (5) of SCR 2.002 shall read:

(1) The fees collected by the Kentucky Office of Bar Admissions shall constitute a fund to provide for the ordinary and necessary expenses of the administration of the bar examination and the operation of both the Board of Bar Examiners and the Character and Fitness Committee.

(4) All fees collected by the Kentucky Office of Bar Admissions for the Board and the Committee shall be recorded and deposited promptly in a joint account of the Board of Bar Examiners and Character and Fitness Committee. Each repository of funds and each bank account shall be designated by the Board and the Committee and approved by the Court.

(5) All disbursements shall be in accordance with the budget and recorded. Checks shall bear such signatures and countersignatures as the Board and the Committee shall direct.

II. SCR 2.007 Qualification, compensation, expenses, and assistants of board of bar examiners and committee on character and fitness

The amendments to SCR 2.007 shall read:

Each member of the Board of Bar Examiners and each member of the Character and Fitness Committee shall have the qualifications of a circuit judge, and shall be engaged in the active practice of law, including active practice before the Supreme Court. Except for compensated expenses and allowances for services rendered as members of the Board and of the Committee as authorized by the Supreme Court to be paid out of special funds for such purposes, no member of the Board of Bar Examiners and no member of the Character and Fitness Committee shall knowingly receive, or agree to receive,

directly or indirectly, compensation for any services rendered or to be rendered, either by himself/herself or another, in any matter which is before the Kentucky Supreme Court relating to the admission of a person to practice law in this state. As appointees of the Supreme Court, neither the members of the Board of Bar Examiners nor the members of the Character and Fitness Committee constitute officers or employees of any agency within the meaning of KRS 45A.335, 45A.340 and 61.990. Subject to the approval of the Supreme Court, the Board of Bar Examiners and the Character and Fitness Committee each may employ such personnel as it deems appropriate, compensation therefore to be paid out of special funds for such purposes.

III. SCR 2.018 (1) Application packets

The amendments to section (1) of SCR 2.018 shall read:

(1) All applications for admission to the Kentucky Bar shall be on forms approved by the Board and Committee. Application packets will be available upon written request to the Kentucky Office of Bar Admissions and accompanied by a fee of \$10.00 made payable to the Kentucky Office of Bar Admissions.

IV. SCR 2.022 (3) and (7) Application for admission by examination

The amendments to sections (3) and (7) of SCR 2.022 shall read:

(3) Every person who intends to apply for admission to the Kentucky Bar by examination shall file with the Kentucky Office of Bar Admissions, a verified application on a form provided by the Kentucky Office of Bar Admissions. The applicant shall provide such information as requested on the form. An application must be complete at the time of filing including a properly executed Authorization & Release form.

(7) An applicant who wishes to withdraw from the Bar examination must notify the Kentucky Office of Bar Admissions, in writing, not later than five (5) days prior to the examination date or have a verified excuse, otherwise, the Bar examination fee shall be forfeited.

V. SCR 2.040 (1) Character and Fitness Committee; nominations

The amendments to section (1) of SCR 2.040 shall read:

(1) There is hereby created a Committee on Character and Fitness, hereinafter referred to as the Committee, to be composed of five attorneys, appointed by the Supreme Court for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Supreme Court of Kentucky shall appoint the Chair of the Committee.

VI. SCR 2.080 (4) Bar examinations

The amendments to section (4) of SCR 2.080 shall read:

(4) An applicant must pass both the essay and Multistate (MBE) portions of the examination. A general average of 75% or higher on the essay portion of the examination shall be deemed a passing score on the essay portion of the examination. A scaled score of 132 or higher on the Multistate (MBE) portion of the examination shall be deemed a passing score on the Multistate portion of the examination. After failing to pass five (5) Kentucky Bar Examinations, an applicant shall not be permitted to sit for the Kentucky Bar Examination. An applicant who has failed only one portion of the exam must only reapply to sit for the failed portion; however, a passing score on one portion of the exam may only be used for a period of three years to exempt the applicant from taking that portion of the examination. An applicant who has taken the Multistate (MBE) examination in another jurisdiction within three years of the date of the Kentucky examination may transfer a score of 132 or higher and need only sit for the essay portion of the examination. In situations where the applicant has first passed the Kentucky essay portion of the examination, subsequently has taken the Multistate (MBE) examination in another jurisdiction, and wishes to be admitted by transferring in a score of 132 or higher that applicant must first file an update form for a character and fitness re-certification as prescribed in SCR 2.062.

VII. SCR 2.110 (2) Admission without examination

The amendments to section (2) of SCR 2.110 shall read:

(2) An attorney applying for admission under this Rule shall file with the Kentucky Office of Bar Admissions, on the form provided for application for admission, such information as shall be requested thereon accompanied by a fee of twelve hundred dollars (\$1200), no part of which shall be refunded. An applicant shall file with the Character and Fitness Committee such other affidavits, certificates, documents and materials as shall be required to satisfy the Committee of the applicant's good moral character and fitness to be a member of the bar of this state. With respect to character and fitness, the Character and Fitness Committee shall process such applications pursuant to Rule 2.040.

VIII. SCR 2.111 (1), (2), (3), (4)(b) and (6) Limited certificate of admission to practice law

The amendments to sections (1), (2), (3), and sub-section (b) of section 4 and section (6) of SCR 2.111 shall read:

(1) Every attorney not a member of the Bar of this Commonwealth who performs legal services in this Commonwealth solely for his/her employer, its parent, subsidiary, or affiliated entities, shall file with the Kentucky Office of Bar Admissions on a form provided, an application for limited certificate of admission to practice law in this Commonwealth. Such application shall be reviewed by the Character and Fitness Committee. If approved, a limited certificate of admission

to practice law shall be granted, and shall be effective as of the date such application is approved, provided that the following prerequisites are satisfied.

(a) The applicant must be admitted to practice in the highest court of another state or the District of Columbia, and be a member in good standing at the Bar of such court, or in such state, at the time of filing such application.

(b) The attorney applying for limited certificate of admission to practice law shall sign a sworn statement certifying to the Court that:

(i) He/she has completed the study of law in an accredited law school;

(ii) He/she has been admitted to practice in the highest Court of another state or the District of Columbia;

(iii) He/she is presently in good standing at the Bar of such Court, or such state;

(iv) He/she will perform legal services in this Commonwealth solely for his employer, its parent, subsidiary, or affiliated entities.

(c) A statement signed by a representative of such applicant's employer stating that such applicant is an employee for such employer, and performs legal services in this Commonwealth for such employer, its parent, subsidiary, or affiliated entities, shall be filed with the application.

(2) Such applicant shall pay to the Kentucky Office of Bar Admissions, at the time of submission of such application a fee of one thousand dollars (\$1,000) and shall make payment of the current annual dues or fees to the Kentucky Bar Association, as authorized under SCR 3.040.

(3) Upon granting of such limited certificate of admission to practice law, and issuance of said limited certificate by the Clerk of the Supreme Court of Kentucky, such applicant shall be and shall remain, during the period the limited certificate of admission to practice law remains in effect, an active member of the Kentucky Bar Association, subject to all duties and obligations of members admitted under SCR 2.110, SCR 2.120, and SCR 3.661.

(4) The only restrictions and limitations applicable to such membership in the Kentucky Bar Association and to such attorney's right to practice in this Commonwealth shall be:

(b) Such attorney shall not appear as attorney of record for his employer, its parent, subsidiary or affiliated entities, in any case or matter pending before the Courts of this Commonwealth, without first engaging a member of the Association, admitted under SCR 2.120 or SCR 2.110, as co-counsel, whose

presence shall be necessary, when required by the Court, at all trials or other times specified by the Court. Nothing herein shall prevent such attorney from appearing on his/her own behalf or representing himself/herself in any case or matter to which he/she is a party, or appearing in the Small Claims Division of the District Court as otherwise provided in Rule 3.020.

(6) The limited certificate of admission to practice law in this Commonwealth shall expire if such attorney is granted a certificate of admission to practice, or is admitted to the Bar of this Commonwealth under any other rule of this Court, or if such attorney ceases to be an employee for the employer or its parent, subsidiary, or affiliated entities, listed on such attorney's application, whichever shall first occur; *provided, however*, that if such attorney, within thirty (30) days of ceasing to be an employee for the employer or its parent, subsidiary, or affiliated entities listed on such attorney's application, becomes employed by another employer for which such attorney shall solely perform legal services, such attorney may maintain his admission under this Rule by promptly filing with the Clerk of the Supreme Court a statement to such effect, stating the date on which his prior employment ceased and his new employment commenced, identifying his new employer and reaffirming that he shall not provide legal services, in this Commonwealth, to any other individual or entity. In the event that the employment of an attorney admitted under this rule shall cease with no subsequent employment by a successor employer within thirty (30) days, such attorney shall promptly file with the Clerk of the Supreme Court a statement to such effect, stating the date that such employment ceased.

IX. SCR 2.112 (4) Attorney participants in defender or legal services programs

The amendments to section (4) of SCR 2.112 shall read:

(4) Payment of a fee of one hundred dollars (\$100.00) made payable to the Kentucky Office of Bar Admissions (cashier's or certified check or money order).

X. SCR 2.120 Certificate of admission to practice law

The amendments to SCR 2.120 shall read:

When an applicant is approved for admission under SCR 2.085, 2.110, 2.111 or 2.112 that applicant must apply for and be granted a certificate of admission prior to engaging in the practice of law in this state. As prerequisites for the issuance of such a certificate an applicant shall submit to the Clerk satisfactory evidence of payment of the current annual dues or fees of the Kentucky Bar Association authorized under SCR 3.040 and of payment of a final Board Certification Fee of fifty dollars (\$50.00) to the Kentucky Office of Bar Admissions, and shall be administered the Constitutional Oath of Office

either by a Justice of the Supreme Court or by the Clerk of the Supreme Court. Upon completion of the prerequisites, the Clerk shall deliver to the applicant a certificate of admission on a form approved by the Court, and the issuance of the certificate shall be duly recorded by the Clerk.

XI. SCR 2.300 (1)(a) and (b) Reinstatement of persons to practice law

The amendments to sub-sections (a) and (b) of section (1) of SCR 2.300 shall read:

Scope and Purpose of Reinstatement Guidelines.

The guidelines set forth in SCR 2.300 apply to applications for reinstatement filed by any person who has been suspended from the practice of law, who seeks reinstatement under the provisions of SCR 3.510, and whose application is referred by the Kentucky Bar Association to the Office of Bar Admissions, Character and Fitness Committee.

These guidelines have been formulated to govern the manner in which Reinstatement Applications are processed so that all parties, including the public at large, are insured that a systematic and thorough character and fitness investigation is conducted and applicants are assured that their applications are addressed in a timely and procedurally consistent manner.

(1) Initial Reinstatement Application Process:

(a) The initial forms necessary to apply for reinstatement may be obtained from the Kentucky Bar Association. Completed applications for reinstatement, along with the necessary fees, must be delivered or mailed to the Kentucky Bar Association in accordance with SCR 3.500 and SCR 3.510.

(b) Upon receipt of a complete application for reinstatement and payment of necessary fees by an applicant who has been suspended more than 180 days (and in some cases where the suspension has been less than 180 days) the Kentucky Bar Association will refer the application to the Kentucky Office of Bar Admissions, Character and Fitness Committee for investigation, for a hearing, if necessary, and for a formal recommendation regarding the disposition of the application in accordance with SCR 3.500, SCR 3.505 and SCR 3.510.

XII. SCR 3.480 (1), (2), (3) and new section (4) Withdrawal from the association; negotiated sanctions

The amendments to sections (1), (2), (3) and new section (4) of SCR 3.480 shall read:

(1) Any member who desires to withdraw from membership and is not under investigation pursuant to Rule 3.160(2), and does not have a complaint or charge pending against him/her in any jurisdiction, shall file a written motion to that effect with the Court and serve a copy on the Registrar and the Inquiry Commission. The motion shall be docketed by the Clerk. The Registrar shall, after consultation with the Inquiry Commission, within ten (10) days after the filing of the motion, certify in writing to the Court whether the movant is an active member in good standing of the Association and whether movant is under a disciplinary investigation by the Inquiry Commission or has a complaint or charge pending against him/her in this or any jurisdiction. Said motion may be granted if movant is an active member in good standing and has no pending disciplinary investigation, complaints, or charges.

(2) The Court may consider negotiated sanctions of disciplinary investigations, complaints or charges if the parties agree. Any member who is under investigation pursuant to SCR 3.160(2) or who has a complaint or charge pending in this jurisdiction, and who desires to terminate such investigation or disciplinary proceedings at any stage of it may request Bar Counsel to consider a negotiated sanction. If the member and Bar Counsel agree upon the specifics of the facts, the rules violated, and the appropriate sanction, the member shall file a motion with the Court which states such agreement, and serve a copy upon Bar Counsel, who shall, within ten (10) days of the Clerk's notice that the motion has been docketed, respond to its merits and confirm its agreement. The Disciplinary Clerk shall submit to the Court within the ten (10) day period the active disciplinary files to which the motion applies. The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand.

(3) Any member who has been engaged in unethical or unprofessional conduct and desires to withdraw his membership under terms of permanent disbarment shall file a verified motion with the Court stating as follows:

(a) He/she has violated the Rules of Professional Conduct, or his/her conduct fails to comply with those rules, the specifics of which shall be detailed in the motion.

(b) He/she will not seek reinstatement and understands the provisions of SCR 3.510 and SCR 3.520 do not apply.

(c) He/she will not practice law in the Commonwealth of Kentucky subsequent to the permanent disbarment order.

The motion shall be served on Bar Counsel and docketed by the Clerk. Bar Counsel may file a response within 10 days after the filing of the motion to resign under terms of permanent disbarment. Simultaneously with service of the motion on Bar Counsel, the member

will immediately cancel all advertising for which the member has contracted and shall direct the publisher of such advertising to immediately cease publication of such advertising insofar as the medium of that advertising makes such action practicable and whether or not the member has paid for the advertising in advance. The Disciplinary Clerk shall, within ten (10) days after the filing of such a motion, submit to the Court any active disciplinary files maintained by the Inquiry Commission relating to movant. The Court will then enter an appropriate order, stating the conditions, if any, under which the motion is granted, or deny the motion and direct the completion of disciplinary proceedings under these rules.

(4) Any member suspended or disbarred by order of this Court shall:

(a) Take all steps necessary and practicable to cease all forms of advertisement of the member's practice immediately upon entry of an order of suspension or disbarment and shall report the fact and effect of those steps to the Director in writing within twenty (20) days after the order of suspension or disbarment is entered.

(b) Pay all costs of the disciplinary investigation and proceedings in accordance with Rule 3.450, and

(c) Comply with the provisions of Rule 3.390 regarding notice to clients of suspension or disbarment.

XIII. SCR 3.500 (1), (2) and (5) Restoration to membership

The amendments to sections (1), (2) and (5) of SCR 3.500 shall read:

(1) No former member who has withdrawn under Rule 3.480, or who has been suspended for failure to pay dues as provided by Rule 3.050, or who has failed to pay dues for such period of time as to warrant suspension under that Rule, or who has been suspended for failure to comply with the continuing legal education requirements as provided by Rule 3.661, and such status has prevailed for less than a period of five (5) years can be restored to membership unless the former member, applies for restoration by completing forms provided by the Director, to include a certification from the KBA that there is no pending disciplinary matter, tendering a fee of \$250.00, and payment of dues for the current year and all back years, unless he/she has been in withdrawal status by order of the Court. In cases where a suspension or withdrawal has prevailed for five (5) years or less and the restoration application is referred to the Character and Fitness Committee, a fee of \$250.00 shall be made payable to the Kentucky Office of Bar Admissions.

Upon receipt of such application and payments, the Director shall refer the application to the Continuing Legal Education Commission for certification under Rule 3.675 within thirty (30) days of the referral. The Continuing Legal Education Commission shall make its certification which shall be added to the record in the restoration proceeding. The Director shall in turn advise each member of the Board and furnish them all pertinent information available.

(a) The Board shall, within thirty (30) days of review of the information, make its recommendation to the Court for approval of an entry of an order restoring the Applicant or

(b) Refer the matter to the Committee for proceedings under Rule 2.040 and SCR 2.011. The Committee's recommendation shall be made to the Board for its action and recommendation to the Court.

(c) As to any Applicants, including those who have been suspended for failure to pay dues or failure to meet continuing legal education requirements, the mere submission of the application for restoration and tendering the required fee shall not automatically restore the privilege of practicing law, and such suspension or withdrawal shall remain in force pending entry of the order of the Court restoring the Applicant.

(2) No former member who has withdrawn or has been suspended for failure to pay dues or has been suspended for failure to meet continuing legal education requirements, and such status has prevailed for five (5) or more years, can be restored to membership unless the former member applies, for restoration by completing forms provided by the Director, which shall include a certification from the KBA that there is no pending disciplinary matter, and tendering payment of \$500.00. If the former member has been suspended for nonpayment of bar dues or CLE non-compliance he/she shall also tender payment for current dues and all back dues. The application shall then be referred to the Committee for proceedings under Rule 2.040 and SCR 2.100 and to the Continuing Legal Education Commission for certification under Rule 3.675. An additional fee of \$500.00 shall be made payable to the Kentucky Office of Bar Admissions.

The Committee shall make its recommendation to the Board.

(5) All costs incurred in excess of the filing fee shall be paid by the Applicant. A cash or corporate surety bond in the amount of \$2500.00 to secure costs to be incurred shall be posted with the Office of Bar Admissions upon the filing of the application.

XIV. SCR 3.510 (1) Reinstatement in case of disciplinary suspension

The amendments to section (1) of SCR 3.510 shall read:

(1) No former member of the Association who has been suspended for a disciplinary case for more than one hundred eighty (180) days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Director, and shall be accompanied by a filing fee of \$250.00 which shall be made payable to the Kentucky Bar Association. An additional filing fee of \$1250.00 shall be made payable to the Kentucky Office of Bar Admissions. The Director shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, the Office of Bar Counsel has certified to the Applicant that there is no pending disciplinary file, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Kentucky Office of Bar Admissions) have been secured by the posting of a cash or corporate surety bond of \$2500.00. Any additional costs will be paid by Applicant. The Director shall refer the application to the Continuing Legal Education Commission within ten (10) days of receipt for certification under Rule 3.675. The Continuing Legal Education Commission shall make its certification within twenty (20) days of the referral which shall be added to the record in the reinstatement proceedings.

XV. SCR 3.830 Kentucky IOLTA Fund

SCR 3.830 shall read:

The Kentucky Bar Foundation, Inc., a nonprofit corporation, shall maintain a special fund for the purpose of depositing interest from Kentucky Bar Association members' trust accounts, as hereinafter provided, and the name of the fund shall be the Kentucky IOLTA Fund ("IOLTA").

Except as set forth in paragraph (14) of this rule, a lawyer or law firm shall create and maintain in a participating financial institution, as defined in paragraph (4) below, an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time so that they could not earn interest income for the client in excess of the costs incurred to secure such income (hereinafter sometimes referred to as an "IOLTA account") in compliance with the following provisions:

- (1) No funds may be deposited in any IOLTA account when either the amount or the period of time that the funds are held would earn for the client interest above the costs that would otherwise be incurred to generate such interest.
- (2) No earnings from an IOLTA account shall be made available to a lawyer or law firm.

- (3) An IOLTA account shall be established with a participating financial institution (i) authorized by federal or state law to do business in Kentucky, and (ii) insured by the Federal Deposit Insurance Corporation or its equivalent. Funds in each IOLTA account shall be subject to withdrawal upon request and without delay and without risk to principal by reason of said withdrawal.
- (4) Participating financial institutions that maintain IOLTA accounts shall pay on the accounts the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications. In determining the highest interest rate or dividend generally available from the institution, participating financial institutions may consider factors, in addition to the IOLTA account balance, that are customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers. Such factors should not discriminate between IOLTA accounts and accounts of non-IOLTA customers. All interest earned net of fees or charges shall be remitted to IOLTA, which is designated in paragraph (16) of this rule to organize and administer the IOLTA program, and the depository participating institution shall submit reports thereon as set forth below.
- (5) A participating financial institution may satisfy the comparability requirements set forth in paragraph (4) above by electing one of the following options: (i) Pay an amount on funds that would otherwise qualify for the investment options equal to 70% of the federal funds targeted rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable reasonable service charges or fees. The foregoing option of paying 70% of the federal funds targeted rate shall only apply when such rate is established in the range of 1.0% to 4.0% unless otherwise agreed to by IOLTA and the participating financial institution. (ii) Pay a yield rate specified by IOLTA, if IOLTA so chooses, which is agreed to by the participating financial institution. The rate would be deemed to be already net of allowable reasonable fees and would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between the financial institution and IOLTA.
- (6) IOLTA accounts may be established as: (i) An interest-bearing checking account such as a negotiable order of withdrawal account; (ii) a checking account with an automated investment feature, such as an overnight and investment in repurchase agreements or money market funds invested solely in or fully collateralized by U.S. Government Securities, including U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrument

thereof; (iii) a checking account paying preferred interest rates, such as money market or indexed rates; (iv) any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers.

(7) A daily financial institution repurchase agreement shall be fully collateralized by United States 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 shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities, shall 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, the money market fund shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(A) Nothing in this rule shall preclude a participating financial institution from paying a higher interest or dividend than described above or electing to waive any service charges or fees on IOLTA accounts.

(B) Interest and dividends shall be calculated in accordance with the participating financial institution's standard practice for non-IOLTA customers.

(C) Allowable reasonable service charges or fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible 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 an IOLTA account.

(D) Any IOLTA account which has or may have the net effect of costing IOLTA more in fees than earned in interest over a period of any time, may, at the discretion of IOLTA, be exempted from and removed from the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use IOLTA's tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the property of client funds separately, as required above, in a trust account and also will not relieve the lawyer of the annual IOLTA certification.

(8) Lawyers or law firms depositing client funds in an IOLTA account established pursuant to this rule shall, on forms approved by IOLTA, direct the depository institution:

- (A) to remit all interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, solely to IOLTA. The depository institution may remit the interest or dividends on all of its IOLTA accounts in a lump sum; however, the depository institution must provide, for each individual IOLTA account, the information to the lawyer or law firm and to IOLTA required by subparagraphs (8)(B) and (8)(C) of this rule;
 - (B) to transmit with each remittance to IOLTA a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, average daily balance, service charges, if any, and such other information as is reasonably required by IOLTA;
 - (C) to transmit to the depositing lawyer or law firm a periodic account statement for the IOLTA account reflecting the amount of interest paid to IOLTA, the rate of interest applied, the average account balance for the period for which the interest was earned, and such other information as is reasonably required by IOLTA; and
 - (D) to waive any reasonable service charge that exceeds the interest earned on any IOLTA account during a reporting period ("excess charge").
- (9) The IOLTA program will issue refunds when interest has been remitted in error, whether the error is the bank's or the lawyer's. Requests for refunds must be submitted in writing by the bank, the lawyer, or the law firm on a timely basis, accompanied by documentation that confirms the amount of interest paid to the IOLTA program. As needed for auditing purposes, the IOLTA program may request additional documentation to support the request. The refund will be remitted to the appropriate financial institution for transmittal at the lawyer's direction after appropriate accounting and reporting. In no event will the refund exceed the amount of interest actually received by the IOLTA program.
- (10) All interest transmitted to IOLTA shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by IOLTA and approved at least annually by the Supreme Court of Kentucky, for the following purposes:
- (A) to pay or provide for all costs, expenses and fees associated with the administration of the IOLTA program;
 - (B) to establish appropriate reserves;

- (C) to assist or help establish approved legal services and pro bono programs;
 - (D) for such other law-related programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.
- (11) The information contained in the statements forwarded to IOLTA under paragraph (8)(B) of this rule shall remain confidential, and the provisions of any other Supreme Court Rules providing for confidentiality are not hereby abrogated; therefore, IOLTA shall not release any information contained in any such statement other than as a compilation of data from such statements, except as directed in writing by the Supreme Court.
- (12) IOLTA shall have full authority to and shall, from time to time, prepare and submit to the Supreme Court for approval, forms, procedures, instructions and guidelines necessary and appropriate to implement the provisions set forth in this rule and, after approval thereof by the Court, shall promulgate same.
- (13) On or before September 1 of each year, every lawyer admitted to practice in Kentucky shall certify to IOLTA, in such form as IOLTA shall provide ("IOLTA Certification Form"), that the member is in compliance with, or is exempt from, the provisions of this rule. The IOLTA Certification Form shall include the participating financial institution, account numbers, name of law firm or lawyer accounts and such other information as IOLTA shall require. If the lawyer is exempt from the IOLTA program, the lawyer must still submit an IOLTA Certification Form annually to certify to IOLTA that the lawyer is exempt from the provisions in this rule. Each lawyer shall keep and maintain records supporting the information submitted in the IOLTA Certification Form. The lawyer shall maintain these records for a period of three years from the end of the period for which the IOLTA Certification Form is filed, and these records shall be submitted to IOLTA upon written request.
- (14) The lawyer is exempt from this rule if:
- (A) not engaged in the private practice of law;
 - (B) does not have a trust account in a financial institution within the Commonwealth of Kentucky;
 - (C) serving full time as a judge, attorney general, public defender, U.S. attorney, commonwealth attorney, county 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;

- (D) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;
 - (E) has been exempted by an order of general or special application of this Court which is cited in the certification;
 - (F) compliance with Rule 3.830 would work an undue hardship on the lawyer or would be extremely impractical, based on the geographic distance between the lawyer's principal office and the closest participating financial institution, or on other compelling and necessary factors; or
 - (G) does not manage or handle client trust funds.
- (15) The determination of whether a client's funds are nominal or short-term so that they could not earn income in excess of costs 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.
- (16) IOLTA is hereby designated as the entity to organize and administer the program established by this rule in accordance with the following provisions:
- (A) The determination of whether or not a financial institution is a participating institution as defined in paragraph (4) above, and whether it is meeting the requirements of this rule shall be made by IOLTA. IOLTA shall maintain a list of participating financial institutions, and shall provide a copy of the list to any Kentucky lawyer upon request.
 - (B) Lawyers may only maintain IOLTA accounts in participating financial institutions. Participating financial institutions are those that voluntarily offer IOLTA accounts and comply with the requirements of this rule. If a financial institution becomes non-participatory, the lawyer or law firm must move its IOLTA account to a participating financial institution as described in paragraph (4) above, upon ninety (90) days written notice by IOLTA, and recertify to IOLTA the transfer.
- (17) If the IOLTA Certification Form is timely filed, indicating compliance, there will be no acknowledgment. Should an IOLTA Certification Form not be filed by a lawyer or if filed, fail to evidence compliance, IOLTA shall contact the lawyer and attempt to resolve the non-compliance administratively.

- (18) Lawyers licensed in Kentucky must notify IOLTA in writing within thirty (30) days of any change in IOLTA status, including the opening or closing of any IOLTA accounts, except as provided in paragraph (16)(B) above.
- (19) For the purpose of administering the funds deposited in the Kentucky IOLTA Fund, the Kentucky Bar Foundation is authorized to create a separate Board of Trustees to administer this fund, which shall consist of ten (10) members of the Association. One (1) member will be from each of the seven (7) Supreme Court Districts of the Commonwealth. The remaining three (3) members will be the Chief Justice of the Supreme Court of Kentucky, the President of the Kentucky Bar Association and the Chair of the Kentucky Bar Foundation, or a member of the Association appointed by each of such persons. These three (3) persons will serve year to year at the pleasure of the appointing person.
- (A) Members of the Board of Trustees from the Supreme Court Districts shall be appointed by the Board of Governors of the Kentucky Bar Association and approved by the Supreme Court. Appointments shall be made for a three-year term. Members may be reappointed, but no member shall serve more than two (2) successive three-year terms. Each member shall serve until a successor is appointed and qualified. Vacancies occurring through death, disability, inability, or disqualification to serve, or by resignation, shall be filled for the remainder of the vacant term in the same manner as the initial appointments are made by the Court. The members of the Board of Trustees of the Kentucky IOLTA Fund shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The staff support for the Board of Trustees shall be paid by IOLTA.
- (B) The IOLTA Board of Trustees (the "Trustees") shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court.
- (C) The Trustees shall receive the net earnings from IOLTA accounts established in accordance with this rule and shall make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.
- (D) The Trustees shall, by grants, appropriations and other appropriate measures, make disbursements from the IOLTA program funds, including current and accumulated net earnings, in accordance with the plan of distribution approved by the Supreme Court on at least an annual basis.

- (E) The Trustees shall maintain proper records of all IOLTA program receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant approved by the Supreme Court.
- (F) The Trustees shall be indemnified by IOLTA against any liability or expense arising directly or indirectly out of the good faith performance of their duties.
- (G) The Trustees shall present an annual administrative budget request to the Board of Governors for their approval, after which the budget shall be forwarded to the Supreme Court for approval. Staff for the operation of IOLTA shall be under the supervision and responsible to the Executive Director of the Bar Association.
- (H) The Trustees shall monitor attorney compliance with the provisions of this rule and will report to the Supreme Court those attorneys not in compliance.
- (I) In the event the IOLTA program or its administration by IOLTA is terminated, all assets of the IOLTA program, including any program funds then on hand, shall be transferred in accordance with the Order of the Supreme Court terminating the IOLTA program or its administration by IOLTA; provided, such transfer shall be to an entity which will not violate the requirements IOLTA must observe regarding transfer of its assets in order to retain its tax-exempt status under the Internal Revenue Code of 1986, as amended, or similar future provisions of law.

All Sitting. All concur.

Entered this 10th day of September.


CHIEF JUSTICE