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SCRU-11-0000068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

ORDER AMENDING RULE 11 OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rule 11 of the Rules of the Supreme Court of the State of Hawai'i is amended, effective January 1, 2016, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 11. INTEREST-BEARING TRUST ACCOUNTS PROGRAM.

(a) Purpose. The purpose of the Interest-Bearing Trust Accounts Program (the Program) is to provide for funds for Hawai'i Justice Foundation programs designed to improve the education of the public and the practicing bar on matters of legal significance, to provide legal aid to ~~[the poor]~~ persons of limited means, to enhance delivery of competent legal services, to make student loans, and to implement other programs aimed at improving the administration of justice in Hawai'i.

(b) Required participation. Participation in the Program for attorneys shall be mandatory. Unless exempted under Rule 11(e) of this Rule, every attorney admitted to practice law in the State of Hawai'i or every law firm composed in whole or in part of such attorneys that receives client funds shall establish and maintain an interest- or dividend-bearing trust account for pooled clients' funds (IOLTA Trust Account or IOLTA account) that complies with the

provisions of Rule 11(c)(1) and (2) of this Rule. In addition, lawyers and law firms shall establish additional interest-bearing trust accounts (Client Trust Account) for individual clients, as provided by Rule 11(c)(1) and (3) of this Rule.

(c) Administration.

(1) DEPOSITS OF CLIENTS' FUNDS.

* * *

(C) Every IOLTA Trust Account shall be established with an eligible financial institution. To qualify as eligible, the financial institution must:

(i) be certified by the Hawai'i Justice Foundation to be in compliance with Rule 11(c) of this Rule;

(ii) be a federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in Hawai'i, or an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in Hawai'i; and

(iii) allow funds in each Trust Account to be subject to withdrawal upon request and without delay.

(D) Participation by ~~banks, savings and loan associations, and investment companies~~ eligible financial institutions in the IOLTA program is voluntary. An eligible financial institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(i) The eligible financial institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts. For this purpose, an eligibility qualification shall be disregarded if it is inconsistent with Rule 11(c)(1)(D)(iv) of this Rule or if it otherwise unreasonably discriminates against IOLTA accounts. Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible 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 non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. For example, if a bank's sweep account qualifies for IOLTA investment under Rule 11(c)(1)(D)(iii) of this Rule and carries the highest rate of interest or dividends available to an IOLTA customer under the foregoing rules, the bank must pay at least that rate (discounted for allowable reasonable fees under Rule 11(c)(1)(D)(iv)) of this Rule on that customer's IOLTA account, whether or not it is in fact established as a sweep account. Nothing in this ~~[r]~~Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account.

(ii) An eligible institution may choose to pay the highest interest or dividend rate in Rule 11(c)(1)(D)(i) of this Rule, less allowable reasonable fees as set forth in Rule 11(c)(1)(D)(iv) of this Rule, if any, on an IOLTA account in lieu of establishing it as a higher rate product.

* * *

(v) As an alternative to the rates required under Rule 11(c)(1)(D)(i) of this Rule, an eligible institution may choose to pay on IOLTA accounts a safe harbor net yield rate that is initially set to be equal to 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month. This initial safe harbor rate of 70% of the Federal Funds Target Rate may be adjusted once a year by the Foundation, upon 90 days' written notice to financial institutions participating in the IOLTA program. The safe harbor rate amount is net of all allowable reasonable fees under Rule 11(c)(1)(D)(iv) of this Rule.

(E) Every Trust Account shall stand in the name of the lawyer or law firm and shall be clearly labeled and designated as either an IOLTA Trust Account or a Client's Trust Account established under this [r]Rule.

(F) The financial institution shall notify the Office of Disciplinary Counsel directly of any overdraft on a Trust Account or of any check drawn on a Trust Account that is declined for non-sufficient funds.

(2) IOLTA TRUST ACCOUNTS. Every IOLTA Trust Account shall comply with the following provisions:

(A) The financial institution in which the IOLTA Trust Account is established shall be directed and required by the attorney or law firm:

(i) to remit monthly all interest or dividends, as the case may be, on the account's average daily balance in the IOLTA Trust Account, or as otherwise computed in accordance with the institution's standard accounting practice, less allowable reasonable fees as set forth in Rule 11(c)(1)(D)(iv) of this Rule, if any, charged against the account, to the Hawai'i Justice Foundation;

(ii) to transmit monthly to the Hawai'i Justice Foundation, in an electronic format to be specified by the Hawai'i Justice Foundation, a report containing the name of the lawyer or law firm for whom the remittance is sent, the account number, the amount of remittance attributable to each IOLTA account, the period for which remittance is made, the average daily balance in the IOLTA Trust Account, the rate of interest applied, the total amount of interest earned, the allowable reasonable fees as set forth in Rule 11(c)(1)(D)(iv) of this Rule, assessed against the account, if any, the net amount of interest remitted, and such other information as is reasonably required by the Hawai'i Justice Foundation; and

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

* * *

(G) The Hawai'i Justice Foundation shall make available to attorneys, at least annually, a list of all financial institutions that offer IOLTA accounts and have been certified as eligible institutions by the Hawai'i Justice Foundation

under Rule 11(c)(1)(C)(i) of this Rule as meeting the qualifying requirements under this [r]Rule as an IOLTA depository. Lawyers and/or law firms shall be entitled to rely on the most recently published list for purposes of compliance with Rule 11(c)(1)(C), (D), and (F), and Rule 11(c)(2)(A) of this Rule. Prior to its removing any financial institution from the list of certified financial institutions, the Hawai'i Justice Foundation shall first provide the institution with notice of the corrective action needed to maintain its eligibility certification and shall provide the institution with sufficient time to reach compliance. In the event any financial institution is to be removed from the list of certified financial institutions, the Hawai'i Justice Foundation shall give attorneys sufficient notice and time in order to move their IOLTA accounts to another certified financial institution.

(H) *Confidentiality*. The Hawai'i Justice Foundation shall protect the confidentiality of information regarding Trust Accounts pursuant to this [r]Rule.

(3) NON-IOLTA CLIENT TRUST ACCOUNTS. All client funds shall be deposited in an IOLTA Trust Account specified in Rule 11(c)(2) of this Rule, unless the lawyer or law firm deposits them in a separate interest-bearing account for a particular client or client's matter, on which the interest, net of any service or other charges or fees imposed by the financial institution in connection with the account, will be paid to the client. Interest so earned must be held in trust as the property of each client in the same manner as is provided in this [r]Rule for the principal funds of the client.

(d) Use of funds derived from IOLTA trust accounts. The net earnings derived from funds of a client deposited in an IOLTA Trust Account shall be used to pay for the following programs of the Hawai'i Justice Foundation:

(1) improve the administration of justice, including but not limited to means such as the following:

- (A) provide continuing legal education;
- (B) provide legal education to laypersons;
- (C) supply legal aid to ~~the poor~~ persons of limited means;
- (D) provide for competent delivery of legal services to those who are eligible therefor; and
- (E) provide aid to law reform projects.

(e) Exemptions. An attorney or the law firm with which the attorney is associated may be exempt from the requirements of this [r]Rule if:

(1) the nature of the attorney's or law firm's practice is such that the attorney or law firm never receives client funds that would require a Trust Account;

* * *

(f) Attorney filings and records.

(1) ATTORNEY FILINGS. Each attorney or law firm shall file, in conjunction with the annual Hawai'i State Bar registration process, a certificate of annual compliance with trust accounting procedures, as required by Rule 7 of the Hawai'i Rules Governing Trust Accounting, or a certification that the attorney or law firm is exempt from such a filing under Rule 11(e) of ~~these~~ this Rule[s]. The certification shall contain the name of the lawyer or law firm listed on the account, the trust account name, the trust account number, the financial

institution's name and address, and the attorney's Bar number. Failure to provide the certification within the registration period may result in administrative suspension from the practice of law in this state in the manner provided in Rule 17(d)(4)(A) of these Rules until the attorney complies with the requirements of this Rule. No other accounting or record-keeping requirements with respect to trust accounts under this Program shall be imposed on attorneys other than the minimum requirements expressed in this Rule, Rule 1.15 of the Hawai'i Rules of Professional Conduct, and the Hawai'i Rules Governing Trust Accounting. All information in the certificate of annual compliance shall be provided electronically by the Hawai'i State Bar to the Hawai'i Justice Foundation and the Office of Disciplinary Counsel, and shall be kept confidential.

* * *

DATED: Honolulu, Hawai'i, October 22, 2015.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

