



SUPREME COURT OF VIRGINIA

MURIEL-THERESA PITNEY, CLERK

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Supreme Court of Virginia

Call for Comments

Contact: Muriel-Theresa Pitney, Clerk

Release Date: December 10, 2021

THE SUPREME COURT OF VIRGINIA REQUESTS
PUBLIC COMMENT ON PROPOSED AMENDMENTS TO
PART SIX, SECTION IV, PARAGRAPH 20 OF
THE RULES OF COURT

RICHMOND – The Supreme Court of Virginia is considering proposed amendments to the Rules of Court, Part Six, Section IV, Paragraph 20. Comments on the proposed amended paragraph must be **received** by February 8, 2022, and must be addressed to:

Muriel-Theresa Pitney, Clerk
Supreme Court of Virginia
Via email (scvclerk@vacourts.gov) with the subject line “Comment on Paragraph 20”

In the alternative, comments may be mailed to the Clerk’s office at:

Clerk, Supreme Court of Virginia
100 N 9th Street
5th Floor
Richmond, VA 23219

PART SIX

INTEGRATION OF THE STATE BAR

SECTION IV. ORGANIZATION AND GOVERNMENT

20. Maintenance of Trust Accounts; Notice of Election Requirements.

Every trust account maintained by an active member of the VSB under Rules of Professional Conduct 1.15 ~~shall~~ **must** also be maintained at a “financial institution approved by the Virginia State Bar” and maintained in accordance with this paragraph and Rule 1.15. A “financial institution approved by the Virginia State Bar” includes regulated state or federal chartered banks, savings institutions, and credit unions that are properly licensed and authorized to do business, have federal insurance on deposits, and have entered into and agreed to abide by a Virginia State Bar Approved Financial Institution Agreement. The Virginia State Bar ~~shall~~ **will** maintain and publish from time to time a list of approved financial institutions.

(A) *Interest-bearing Trust Accounts.* — ~~A~~ **Every** lawyer engaged in the private practice of law in Virginia ~~may~~ **must** maintain funds of clients in one or more interest-bearing accounts in one or more financial institutions, whenever the lawyer has established and follows record-keeping, accounting, clerical, and administrative procedures to compute and credit or pay periodically, but at least quarterly, pro rata to each client the interest on such client’s funds less fees, costs, or expenses charged by the lawyer for the record-keeping, accounting, clerical, and administrative procedures associated with computing and crediting or paying such amounts.

(B) *IOLTA Accounts.* — A lawyer ~~may~~ **must** deposit funds of a client in an identifiable interest-bearing trust (IOLTA) account for which the lawyer has not established procedures to compute and credit or pay pro rata net earnings to such client whenever:

(1) At the time of such deposit the lawyer reasonably expects that the fees, costs, or expenses which the lawyer would be entitled to charge under Paragraph 20(A) would equal or exceed the pro rata interest on such client’s funds (The determination of whether the funds of a client or third person can earn income in excess of fees, costs or expenses the lawyer would be entitled to charge under Paragraph 20(A) ~~shall~~ **rests** in the sound judgment of the lawyer or law firm, and no lawyer ~~shall~~ **will** be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment); and

(2) The financial institution has agreed to:

a. Periodically, but at least quarterly, remit to the Legal Services Corporation of Virginia (LSCV) interest or dividends on the average monthly balance of each such account or as otherwise computed in accordance with such bank's standard accounting practice, provided that such rate of interest ~~shall~~ must not be less than the rate paid by such bank to regular, non-attorney depositors;

b. Transmit with each remittance to LSCV a statement identifying the name of the lawyer or law firm from whose account the remittance is sent, the rate of interest applied, the period for which the remittance is made, the total amount of interest earned, the service charges or other fees assessed against the account, if any, and the net amount of interest remitted;

c. Transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to LSCV from such interest-bearing account, the rate of interest applied, the fees assessed, if any, and the average account balance for the period for which the report is made;

d. Charge no fees against an IOLTA trust account that are greater than the fees charged to non-attorney depositors, except that an IOLTA remittance fee may be charged to defray the depository institution's administrative costs attributable to calculating and remitting the interest to LSCV; other allowable fees are per check charges, per deposit charges, a fee in lieu of a minimum balance and sweep fees. Allowable, reasonable fees may be deducted from interest or dividends earned on an IOLTA account, provided that such charges or fees ~~shall~~ must be calculated in accordance with the Financial Institutions' standard practice for non-IOLTA customers. Fees or charges in excess of the interest or dividends earned on the IOLTA account, for any month or quarter, ~~shall~~ must not be taken from the interest or dividends of any other IOLTA account. Fees for wire transfers, insufficient funds, bad checks, stop payment, account reconciliation, negative collected balances, and check printing are not considered customary account maintenance charges and are not deductible from the interest or dividends earned on the IOLTA account. All other fees including those non-customary fees just listed are the responsibility of the lawyer or law firm, who in turn may absorb these specific costs or pass along those fees to the client(s) being served by the transaction in accordance with attorney/client agreements. Financial Institutions may elect to waive any or all fees on IOLTA accounts in recognition of their charitable nature;

e. Collect no fees from the principal deposited in the IOLTA trust account;

f. Pay all or part of the funds deposited in such interest-bearing trust account upon demand or order. An IOLTA account may be an interest-bearing check account, a money market account

with or tied to check-writing, a sweep account which is a government money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by United States government securities, or an open-end money market fund solely invested in or fully collateralized by the United States government securities; and

g. Agree and abide by all provisions in the Virginia State Bar Approved Financial Institution Agreement.

(3.) Interest accruing on such accounts and paid by the financial institution to LSCV ~~shall~~ must be used for funding 1) civil legal services to the poor in Virginia, 2) LSCV's administrative expenses, and 3) the creation and augmentation of a reserve fund for the same purposes.

~~C. Non-interest-bearing Trust Accounts. A lawyer may deposit funds of a client in an identifiable non-interest-bearing trust account for which the account accrues no interest or dividends so long as the attorney or law firm receives no consideration or benefit from the Financial Institution for opening a non-interest-bearing trust account or for converting from an IOLTA account to a non-interest-bearing trust account. A lawyer who elects not to participate in the maintenance of an interest-bearing trust account as described in Paragraph 20(B) must submit such an election in accordance with the procedures set forth in Paragraph 20(F) of this rule.~~

~~D. (C) Reporting to Client.~~ — A lawyer who ~~elects to~~ deposits funds of a client in an account pursuant to Paragraph 20(B) ~~or (C) shall is not be~~ required to seek permission from such client. As to funds deposited in accordance with Paragraph 20(B), a lawyer ~~shall is not be~~ required to compute or report to such client any payment to LSCV of interest or dividends by the banking institution on funds in any such account wherein the client's funds have been deposited by the lawyer.

~~E. (D) Law Firm Trust Accounts.~~ — A law firm of which any participating lawyer is a member may maintain the account(s) on behalf of any or all lawyers in the firm.

~~F. (E) Opt-Out of Establishment of IOLTA Account.~~ — A lawyer who ~~elects to~~ opens an IOLTA account or converts an existing non-interest-bearing account to IOLTA ~~shall must~~ obtain a "Request to Establish IOLTA Account" form from LSCV. ~~A lawyer who elects not to maintain an IOLTA account shall make such election on a "Request to Opt Out" form provided by LSCV.~~

~~G. (F) Exemptions.~~ — A lawyer is exempt from this rule if the lawyer: (1) is not engaged in the private practice of law; or (2) the lawyer's practice does not require the maintenance of a trust account in a financial institution within the Commonwealth of Virginia.

(G) Certification. — On a yearly basis beginning after July 1, 2023, each active member of the Virginia State Bar (VSB) must provide an IOLTA report to the VSB in such form and at such time as developed by LSCV and the VSB (“IOLTA Certification Form”), that the attorney is in compliance with, or pursuant to Paragraph F, exempt from the provisions of this Rule. The VSB and LSCV will establish a process to review compliance. If the IOLTA Certification is timely submitted, indicating compliance, there will be no acknowledgement by the VSB or LSCV. Should an IOLTA Certification Form not be submitted by a lawyer or if submitted, fail to evidence compliance, the VSB and LSCV will establish the process to resolve the non-compliance administratively. Should those efforts fail, the non-compliant attorney will be referred to the VSB for failure to comply with this Rule, which may subject the active member to the penalties set forth in Paragraph 19 herein.