Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

As promulgated by the Board of Commissioners of the Idaho State Bar and adopted by Order of the Supreme Court of the State of Idaho.

SECTION XIII
Trust Accounts

RULE 1301. Definitions.

As used in these Rules, the following terms have the meanings set forth below:

(a) **Allowable reasonable service charges or fees.** Per check charges, per deposit charges, a fee in lieu of minimum balance, sweep fees, federal deposit insurance fees and a reasonable IOLTA trust account administrative fee.
(b) **Bar.** The Idaho State Bar.
(c) **Bar Counsel**. Legal counsel for the Board.
(d) **Board**. The Idaho State Bar Board of Commissioners, the duly elected governing body of the Bar.
(e) **Executive Director**. The chief administrative officer of the Bar.
(f) **Financial institution**. A bank, savings and loan association, credit union, savings bank or other entity that is authorized by federal or state law to do business in Idaho and accepts for deposit funds in trust accounts.
(g) **Foundation.** The Idaho Law Foundation.
(h) **I.B.C.R.** Idaho Bar Commission Rules.
(i) **Interest on Lawyer Trust Account or IOLTA account.** An interest or dividend-bearing trust account for client and third party funds as set forth in Rule 1304.
(j) **I.R.P.C.** Idaho Rules of Professional Conduct.
(k) **Lawyer.** A lawyer who is currently an Active, Inactive, Emeritus, Judicial, Senior or House Counsel Member of the Bar.
(l) **Notice of dishonor**. The notice that Idaho law requires a financial institution to give upon presentation of an instrument that the institution dishonors.
(m) **Rules**. Section XIII of the I.B.C.R.
(n) **State**. State of Idaho.
(o) **Supreme Court**. The Supreme Court of the State of Idaho.
(p) **Trust account**. An account established by a lawyer to hold the property of clients and third persons for safekeeping.

RULE 1302. Consent and Information.

(a) As a condition of licensing, lawyers shall be deemed to have consented to the trust account requirements mandated by these Rules.
(b) Each licensing year, lawyers shall submit, on a form provided by the Bar, information required by these Rules specifying trust accounts information or certifying that the lawyer is exempt from trust account requirements under Rule 1303 and, if applicable, IOLTA account requirements under Rule 1304.
(c) Lawyers shall, on a form provided by the Bar, provide written notification of any changes regarding the lawyer's trust accounts information, including the opening or closing of any trust account, within thirty (30) days of such change.

RULE 1303. Establishment of Trust Accounts.

(a) Except as otherwise provided in subsection (b), lawyers shall, in accordance with these Rules and I.R.P.C. 1.15, establish and maintain a trust account in a financial institution approved by the Bar under Rule 1306.
(b) A lawyer is exempt from the requirement of establishing and maintaining a trust account under this Rule if the lawyer certifies, on a form provided by the Bar, that the lawyer:
  (1) does not handle any funds or property of clients or third persons; or
  (2) does not have an office within Idaho.
(c) Trust accounts shall be clearly identified as "trust" or "escrow" accounts.
(d) Funds deposited in trust accounts must be insured by an agency of the federal government.

RULE 1304. Establishment of IOLTA Accounts.

(a) Except as otherwise provided in subsections (b) and (d), a lawyer required to maintain a trust account under Rule 1303 shall create and maintain an IOLTA account for deposit of all client and third person funds.
(b) When client or third person funds can earn net income for the client or third person in excess of the costs to secure such income, a lawyer may establish a non-IOLTA account subject to Rule 1303 and I.R.P.C. 1.15.
(c) In determining whether a client or third person's funds can earn net income in excess of the costs of securing that income for the benefit of the client or third person, the lawyer shall consider the following factors:
  (1) the amount of funds to be deposited;
  (2) the expected duration of the deposit, including the likelihood of delay in the matter for which funds are held;
  (3) the rates of interest or yield at financial institutions where the funds are to be deposited;
  (4) the costs of establishing and administering non-IOLTA accounts for the benefit of the client or third person, including service charges and fees, the related costs of the lawyer's services and the costs of preparing any tax reports required for income accruing to the client's or third person's benefit;
  (5) the capability of the lawyer or financial institution to calculate and pay income to individual clients or third persons; and
  (6) any other circumstances that may affect the ability of the client's or third person's funds to earn net income.
(d) A lawyer who is otherwise required to maintain a trust account under Rule 1303 may be exempt from the requirement to maintain an IOLTA account if the lawyer:
  (1) has been exempted by an order of general or special application of the Bar; or
  (2) obtains a written exemption from the Bar upon filing a petition, on a form provided by the Bar, stating that compliance with this Rule would create an undue hardship on the lawyer and would be extremely impractical, based on geographic distance between the lawyer's principal office and the closest financial institution participating in the IOLTA program.

RULE 1305. Maintenance of IOLTA Accounts.

(a) A lawyer required to create and maintain an IOLTA account under Rule 1304 shall:
  (1) place in the IOLTA account all client or third party funds which cannot earn net income for the client or third person in excess of the costs of securing that income;
  (2) direct the financial institution where the IOLTA account is maintained to:
    (A) remit all interest or dividends, net of any allowable reasonable service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the financial institution's standard practice, at least quarterly, solely to the Foundation. When feasible, the financial institution shall remit the interest or dividends on all of its IOLTA accounts in a lump sum, however, the financial institution must provide, for each individual IOLTA account, information to the Foundation as required by subsections (B) and (C);
    (B) report in a form and through any manner of transmission approved by the Foundation showing the name of the lawyer and the amount of the remittance attributable to each, the account number for each account, the rate and type of interest or dividend applied, the amount and type of allowable reasonable service charges or fees deducted, the average account balance for the reporting period and such other information as is reasonably required by the Foundation;
    (C) report to the lawyer in accordance with the financial institution's normal procedures for reporting to depositors; and
    (D) ensure that allowable reasonable service charges or fees in excess of the interest earned on the account for any period are not taken from interest earned on other IOLTA accounts or any principal balance of the accounts;
  (3) ensure that earnings from an IOLTA account are not made available to the lawyer; and
  (4) review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of clients or third persons.

RULE 1306. Eligible IOLTA Financial Institutions.

(a) Lawyers may maintain IOLTA accounts only in eligible financial institutions approved by the Bar.
(b) Eligible financial institutions are those that voluntarily offer IOLTA accounts and meet the requirements of this Rule, including maintaining IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when the IOLTA account meets or exceeds the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided those factors do not include that the account is an IOLTA account.
(c) An eligible financial institution may satisfy the comparability requirements of subsection (b) by electing one of the following options:
  (1) establish the IOLTA account as the comparable rate product;
  (2) pay the comparable rate on the IOLTA account in lieu of actually establishing the comparable rate or dividend product; or
  (3) pay a rate equal to the greater of 70%, or such other rate as may be recommended by the Foundation, of the Federal Fund Target Rate as of the first business day of the IOLTA account earnings period, which rate is deemed to be net of allowable reasonable service charges or fees, on an IOLTA account.
(d) IOLTA accounts may be established as:
  (1) a business checking account with an automated investment feature, such as an overnight investment in repurchase agreements or money market funds invested solely in or fully collateralized by United States government securities, including United States Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrument thereof;
  (2) a checking account paying preferred interest rates, such as money market or indexed rates;
  (3) a government interest-bearing checking account such as accounts used for municipal deposits;
  (4) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or
  (5) any other suitable interest-bearing deposit account offered by the financial institution to its non-IOLTA account customers, provided:
    (A) 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, shall have total assets of at least two hundred fifty million dollars ($250,000,000).
(e) Nothing in these Rules precludes a financial institution from paying a higher interest rate or dividend than described above or electing to waive any service charges or fees on IOLTA accounts.
(f) Interest and dividends shall be calculated in accordance with the financial institution's standard practice for non-IOLTA account customers.
(g) 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 account customers. No fees or service charges other than allowable reasonable service charges or fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable service charges or fees shall be the sole responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

RULE 1307. Bar Approval of Financial Institutions - Notification.

(a) Financial institutions, to be eligible to act as depositories for trust accounts, must be approved by the Bar. Lawyers shall not maintain a trust account in a financial institution that is not approved by the Bar pursuant to these Rules.
(b) To obtain Bar approval as a depository for trust accounts, a financial institution shall file with the Bar a notification agreement in a form provided by the Bar that requires the financial institution

to report to Bar Counsel if any properly payable instrument is presented against a trust account containing funds insufficient to honor the instrument in full, irrespective of whether the instrument is honored. For purposes of this subsection, "properly payable" refers to an instrument that would require payment under Idaho law if presented in the normal course of business.

(c) Notification to Bar Counsel by the financial institution shall be provided in the following form:
   (1) For a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; or
   (2) For instruments that are presented against insufficient funds but which are honored, the report shall identify the financial institution, the lawyer, the account number, the date of presentation for payment, the date of payment and the overdraft amount.

(d) Reports by financial institutions to Bar Counsel 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, the report shall be made within five (5) banking days of the date of presentation for payment.

(e) The notification agreement of a financial institution shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' written notice to the Bar.

(f) The Supreme Court may establish additional rules governing approval and termination of approved status for financial institutions.

(g) The Bar shall publish a list of approved financial institutions on its website and provide a copy of that list upon request.

(h) Nothing in this Rule precludes a financial institution from charging a lawyer for the reasonable cost of producing reports or other records required by this Rule.

(i) Disclosures made pursuant to these Rules shall be confidential except as may otherwise be provided in formal charge proceedings under I.B.C.R. 521.

RULE 1308. Bar Counsel Review of Overdraft Notifications.

(a) Upon receipt of notification of insufficient funds from a financial institution under Rule 1307, Bar Counsel shall send the lawyer a written request for the following information:
   (1) A written explanation of the circumstances that resulted in the insufficient funds notification; and
   (2) Copies of bank statements on all trust accounts for the preceding six (6) months, including the month the overdraft occurred.

(b) Bar Counsel shall review the information provided by the lawyer under subsection (a) and:
   (1) Close the matter if the explanation satisfactorily explains the overdraft; or
   (2) Investigate the matter as a disciplinary complaint if the explanation is not satisfactory.

RULE 1309. Administration of IOLTA Funds.

(a) The Foundation is the only entity authorized to receive and administer IOLTA funds in Idaho.

(b) Interest transmitted to the Foundation shall, after deduction for the necessary and reasonable expenses of the Foundation for administration of the IOLTA program, be distributed by the Foundation in proportions it deems appropriate, for the following purposes:
   (1) legal aid to the poor;
   (2) law-related education programs for the public;
   (3) scholarships and student loans;
   (4) improvement of the administration of justice; and
   (5) such other programs for the benefit of the public as are specifically approved by the Supreme Court.