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## RHODE ISLAND BAR FOUNDATION

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### MEMORANDUM

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**FROM:** Armando E. Batastini, President  
Rhode Island Bar Foundation

**RE:** Helpful Amendments to Rule 1.15 for  
Interest on Lawyers Trust Accounts (IOLTAs)

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As you may be aware, the Rhode Island Bar Foundation Interest on Lawyers' Trust Accounts program was first instituted by the Rhode Island Supreme Court in the mid-1980s, more than 35 years ago. As a result, many of the lawyers who were first required to open IOLTA accounts are reaching the end of their careers.

The foundation has recently been consulted about a number of IOLTA accounts in the names of deceased attorneys. We have also discovered some still-existing accounts in the names of disbarred or suspended attorneys. Finally, some of the lawyers with IOLTA accounts are finding that they are unable to identify the source or locate the owner of certain funds in their existing IOLTA accounts.

While the foundation has been addressing these matters on an ad hoc basis, the foundation also petitioned the supreme court to adopt a rule amendment to provide specific guidelines to address these problems.

I am pleased to report to you that the supreme court adopted the rule the foundation proposed as an amendment to Rule 1.15 of the Rules of Professional Conduct, the same rule in which the IOLTA requirements are set forth. I am attaching a copy of the amendment with this communication.

There are some specific points about this new rule and how it works that we would like to bring to your attention:

1. This rule provides the *only* manner in which an IOLTA account can be closed, outside of actions taken by the named owner of the account.
2. By this rule, moribund or inactive IOLTA accounts are *not to be escheated* to the general treasury but are to be addressed through this rule and the funds are to be remitted to the foundation as IOLTA funds.

3. If your bank has a moribund or inactive IOLTA account, even if no party has approached you to resolve or close the account, we ask that you contact the foundation so we can initiate the necessary steps to invoke this rule.
4. If a party who is not the named owner of an IOLTA account at your bank comes to you to deal with one of these accounts, please be careful to confirm that the party has authority under the terms of the rule to seek your bank's assistance in resolving the account. If you have any doubts, please refer that person to the foundation.
5. In no event should you remit the funds directly to any party who seeks to take control of an IOLTA account. All IOLTA funds, whether monthly interest or funds remitted pursuant to Rule 1.15 as amended, are to be remitted by your bank directly to the foundation.

We hope that this rule clarifies what is to happen when an IOLTA account becomes moribund or the owner of an IOLTA account is no longer able to manage the account for one reason or another. Should you have any questions, please reach out to the foundation and we will respond and advise.

As always, we appreciate your commitment to the IOLTA program and your cooperation with the foundation.

**Supreme Court**

In re Amendments to Article V, Rule 1.15 :  
of the Supreme Court Rules on Interest on :  
Lawyers' Trust Accounts (IOLTA) :

**O R D E R**

On April 14, 2023, the Court invited comment on amendments to Article V, Rule 1.15 of the Supreme Court Rules of Professional Conduct as proposed by the Rhode Island Bar Foundation to address the Interest on Lawyers' Trust Accounts (IOLTA) of deceased, disciplined, disbarred, or disappeared lawyers. After reviewing the comments submitted, the Court hereby amends Article V as follows:

**Rule 1.15. Safekeeping property. (a) \* \* \***

(g)(l) If, after the exercise of reasonable diligence, a lawyer is unable to identify or locate the owner(s) of funds deposited in that lawyer's IOLTA account, the lawyer shall remit those funds to the Foundation to be used consistent with the purposes listed in Rule 1.15(h). Provided the lawyer has exercised reasonable diligence, the lawyer's act of remitting IOLTA account funds that have remained unclaimed or the owner(s) unidentified shall not be deemed a violation of the Rules of Professional Conduct. Upon remission of such funds, the lawyer shall provide to the Foundation a statement of the last known address of the owner(s) of the funds, if known to the lawyer; the amount remitted; a description of the efforts taken by the lawyer to find the owner(s) of the remitted funds; and, if the lawyer is unable to determine and identify the owner of the funds, a description of the efforts taken by the lawyer to identify the owner of the remitted funds.

(2) In the event an attorney is suspended, disbarred, or deceased and another attorney or Disciplinary Counsel is appointed pursuant to Supreme Court Rules, Art. III, Rule 18, as substitute counsel or other similar designation to inventory the files and accounts of the suspended or disbarred attorney, and such substitute counsel discovers an existing IOLTA account in the name of the suspended or disbarred attorney, the substitute counsel shall exercise reasonable diligence to identify or locate the owner(s) of funds deposited in the suspended or disbarred attorney's IOLTA account. If, after the exercise of reasonable diligence, the substitute counsel is unable to identify or locate the owner(s) of funds deposited in the suspended or disbarred lawyer's IOLTA account, the substitute counsel shall remit those funds to the Foundation to be used consistent with the purposes listed in

Rule 1.15(h). With the remission of the funds to the Foundation, the substitute counsel shall provide the information set forth in (g)(1), to the extent such information is known to the substitute counsel.

(3) If the personal representative (executor, administrator, trustee, guardian) of the estate or trust of a deceased attorney or the attorney for the personal representative, discovers an open IOLTA trust account in the name of the deceased attorney:

(i) The personal representative of the deceased lawyer or the attorney for the personal representative shall hold the account in the personal representative's name and capacity or in the name of the attorney for the personal representative for the purposes of this rule only and only for such time as the personal representative shall reasonably take to comply with this rule. The funds in such account are not the property of the estate or trust of the deceased lawyer.

(ii) The personal representative of the deceased lawyer or the attorney for the personal representative shall exercise reasonable diligence to identify the owner(s) of the funds held in the IOLTA account. If, after the exercise of reasonable diligence, the personal representative or the attorney is unable to identify the owner(s) of the funds held in the IOLTA account, those funds shall be remitted to the Foundation by the personal representative or the attorney to be used consistent with the purposes listed in Rule 1.15(h). With the remission of the funds to the Foundation, the personal representative or the attorney shall provide the information set forth in (g)(1), to the extent such information is known to the personal representative.

(4) The Foundation shall maintain a record of each remittance received pursuant to this rule for at least three years.

(i) If, within three years of the remission of the funds to the Foundation, the lawyer who remitted the funds learns of the original owner of the funds or a claim to the funds is made to the lawyer, and the lawyer believes the claimant is the original owner of the funds, the lawyer shall notify the Foundation and shall provide to the Foundation the name of such claimant and the amount being claimed. The lawyer shall notify the claimant that the funds have been remitted to the Foundation and the claimant's right to seek repayment from the Foundation. The lawyer, on behalf of the claimant, or the claimant may make a claim for return of the amount of the remitted funds.

(ii) If, within three years of the remission of the funds to the Foundation, the personal representative of a deceased lawyer or the attorney representing the personal representative learns of the original owner of the funds or a claim to the funds is made to the personal representative or the attorney, and the personal representative or the attorney believes the claimant is the original owner of the funds, the personal representative or the attorney shall notify the Foundation and shall provide to the Foundation the name of such claimant and the amount being claimed. The personal representative shall also notify the claimant that the funds have been remitted to the Foundation and the claimant's right to seek repayment from the Foundation. The personal representative or the attorney, on behalf of the claimant, or the claimant may make a claim for return of the amount of the remitted funds.

(iii) If, within three years of the remission of the funds to the Foundation, the substitute counsel who remitted the funds learns of the original owner of the funds or a claim to the funds is made to the substitute counsel, and the substitute counsel believes the claimant is the original owner of the funds, the substitute counsel shall notify the

Foundation and shall provide to the Foundation the name of such claimant and the amount being claimed. The substitute counsel shall also notify the claimant that the funds have been remitted to the Foundation and the claimant's right to seek repayment from the Foundation. The substitute counsel, on behalf of the claimant, or the claimant may make a claim for return of the amount of the remitted funds.

(iv) Within three years of the remission of the funds to the Foundation, a putative owner may make a direct claim against the Foundation for return of the amount of the remitted funds.

(5) Upon receipt of a claim from the lawyer, substitute counsel, the personal representative or the attorney for the personal representative, or a direct-claimant:

(i) The President of the Board of Directors of the Foundation shall appoint one or more members of the Board of Directors of the Foundation to review the claim and report to the board whether the claim should be accepted or rejected, in whole or in part. Upon receiving the report, the board shall consider the report and determine whether to accept or reject the claim, in whole or in part.

(A) If the claim is accepted, the lawyer, substitute counsel, the personal representative or the personal representative's attorney, or a direct-claimant shall be notified and, unless the lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant rejects the Foundation's proposal for resolution, within a reasonable period of time not to exceed 45 days, the Foundation shall pay over to the lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant the amount so determined.

(B) If the claim is rejected or the lawyer, substitute counsel, the personal representative, or a direct-claimant disputes the amount of the claim proposed by the Foundation, the lawyer, substitute counsel, personal representative, or direct-claimant may make a request to initiate an arbitration.

(ii) If the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant requests to arbitrate the claim, the President shall appoint an arbitrator to hold a hearing, evaluate the claim, and determine whether the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant has adequately established the owner(s) of the funds. The lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant shall bear the burden of establishing entitlement to the remitted funds. If the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant establishes to the satisfaction of the arbitrator that the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant is the owner of the funds and the amount of the funds belonging to that lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant, the Foundation shall pay over to the lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant the amount of such funds, without interest or attorney fees, within a reasonable period of time not to exceed 45 days.

(6) If no claim is made to the remitted funds within three years of the funds having been remitted to the Foundation, the Foundation may treat the remission as final and shall not be obligated to arbitrate such claim or to pay over any amount to any claimant.

(h) Interest paid to the Foundation shall be used for any of the following purposes: providing legal services to the poor of Rhode Island; improving the delivery of legal services; promoting knowledge and awareness of the law; improving the administration

of justice; and for the reasonable costs of administration of IOLTA accounts under this Rule.

~~(h)~~(i) Nothing in this Rule shall preclude a lawyer or law firm from depositing any funds of a client other than those funds described in paragraph (f) of this Rule in an interest bearing account and accounting for the interest to such client.

Entered as an Order of this Court this 16<sup>th</sup> day of *June 2023*.

/s/

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Suttell, C. J.

/s/

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Goldberg, J.

/s/

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Robinson, J.

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Lynch Prata, J.

/s/

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Long, J.