

MARYLAND RULES OF PROCEDURE

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Rule 19-401. APPLICABILITY

The Rules in this Chapter apply to all trust accounts required by law to be maintained by attorneys for the deposit of funds that belong to others, except that these Rules do not apply to a fiduciary account maintained by an attorney as personal representative, trustee, guardian, custodian, receiver, or committee, or as a fiduciary under a written instrument or order of court.

Cross reference: Code, Business Occupations and Professions Article, §10-301 et seq. and Rule 19-317 (1.15) of the Maryland Lawyers' Rules of Professional Conduct.

Source: This Rule is former Rule ~~BU1~~ 16-601 (2011).

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Rule 19-402. DEFINITIONS

In this Chapter, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(a) Approved Financial Institution

"Approved financial institution" means a financial institution approved by the Commission in accordance with these Rules.

(b) Attorney

"Attorney" means any person admitted by the Court of Appeals to practice law.

(c) Attorney Trust Account

"Attorney trust account" means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client or third person.

(d) Bar Counsel

"Bar Counsel" means the person appointed by the Commission as the principal executive officer of the disciplinary system affecting attorneys. All duties of Bar

Counsel prescribed by these Rules shall be subject to the supervision and procedural guidelines of the Commission.

(e) Client

"Client" includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.

(f) Commission

"Commission" means the Attorney Grievance Commission of Maryland, as authorized and created by Rule ~~16-711~~ 19-702 (Attorney Grievance Commission).

(g) Financial Institution

"Financial institution" means a bank, trust company, savings bank, or savings and loan association authorized by law to do business in this State, in the District of Columbia, or in a state contiguous to this State, the accounts of which are insured by an agency or instrumentality of the United States.

(h) IOLTA

"IOLTA" (Interest on Lawyer Trust Accounts) means interest on attorney trust accounts payable to the Maryland Legal Services Corporation Fund under Code, Business Occupations and Professions Article, §10-303.

(i) Law Firm

"Law firm" includes a partnership of attorneys, a professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, the Rules in this Chapter apply only to the offices in this State.

Source: This Rule is derived from former Rule ~~BU2~~ 16-602 (2011).

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Rule 19-403. DUTY TO MAINTAIN ACCOUNT

An attorney or the attorney's law firm shall maintain one or more attorney trust accounts for the deposit of funds received from any source for the intended benefit of clients or third persons. The account or accounts shall be maintained in this State, in the District of Columbia, or in a state contiguous to this State, and shall be with an approved financial institution. Unless an attorney maintains such an account, or is a member of or employed by a law firm that maintains such an account, an attorney may not receive and accept funds as an attorney from any source intended in whole or in part for the benefit of a client or third person.

Source: This Rule is former Rule ~~BU3~~ 16-603 (2011).

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Rule 19-404. TRUST ACCOUNT - REQUIRED DEPOSITS

Except as otherwise permitted by rule or other law, all funds, including cash, received and accepted by an attorney or law firm in this State from a client or third person to be delivered in whole or in part to a client or third person, unless received as payment of fees owed the attorney by the client or in reimbursement for expenses properly advanced on behalf of the client, shall be deposited in an attorney trust account in an approved financial institution. This Rule does not apply to an instrument received by an attorney or law firm that is made payable solely to a client or third person and is transmitted directly to the client or third person.

Source: This Rule is former Rule ~~BU4~~ 16-604 (2011).

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Rule 19-405. DUTY OF ATTORNEY TO NOTIFY INSTITUTION

An attorney may not exercise any authority to sign checks or disburse or withdraw funds from an attorney trust account until the attorney in writing:

(a) Requests the financial institution to designate the account on its records as an attorney trust account, and

(b) Authorizes the financial institution to report to Bar Counsel any dishonored instruments or overdrafts in the account as required by the agreement under Rule ~~16-610~~ 19-411 between the institution and the Commission.

Source: This Rule is former Rule ~~BU5~~ 16-605 (2011).

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Rule 19-406. NAME AND DESIGNATION OF ACCOUNT

An attorney or law firm shall maintain each attorney trust account with a title that includes the name of the attorney or law firm and that clearly designates the account as "Attorney Trust Account", "Attorney Escrow Account", or "Clients' Funds Account" on all checks and deposit slips. The title shall distinguish the account from any other fiduciary account that the attorney or law firm may maintain and from any personal or business account of the attorney or law firm.

Source: This Rule is former Rule ~~BU6~~ 16-606 (2011).

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Rule 19-407. ATTORNEY TRUST ACCOUNT RECORD-KEEPING

(a) Creation of Records

The following records shall be created and maintained for the receipt and disbursement of funds of clients or of third persons:

(1) Attorney Trust Account Identification

An identification of all attorney trust accounts maintained, including the name of the financial institution, account number, account name, date the account was opened, date the account was closed, and an agreement with the financial institution establishing each account and its interest-bearing nature.

(2) Deposits and Disbursements

A record for each account that chronologically shows all deposits and disbursements, as follows:

(A) for each deposit, a record made at or near the time of the deposit that shows (i) the date of the deposit, (ii) the amount, (iii) the identity of the client or third person for whom the funds were deposited, and (iv) the purpose of the deposit;

(B) for each disbursement, including a disbursement made by electronic transfer, a record made at or near the time of disbursement that shows (i) the date of the disbursement, (ii) the amount, (iii) the payee, (iv) the identity of the client or third person for whom the disbursement was made (if not the payee), and (v) the purpose of the disbursement;

(C) for each disbursement made by electronic transfer, a written memorandum authorizing the transaction and identifying the attorney responsible for the transaction.

Cross reference: See Rule ~~16-609~~ 19-410 (c), which provides that a disbursement that would create a negative balance with respect to any individual client matter or with respect to all client matters in the aggregate is prohibited.

### (3) Client Matter Records

A record for each client matter in which the attorney receives funds in trust, as follows:

(A) for each attorney trust account transaction, a record that shows (i) the date of the deposit or disbursement; (ii) the amount of the deposit or disbursement; (iii) the purpose for which the funds are intended; (iv) for a disbursement, the payee and the check number or other payment identification; and (v) the balance of funds remaining in the account in connection with the matter; and

(B) an identification of the person to whom the unused portion of a fee or expense deposit is to be returned whenever

it is to be returned to a person other than the client.

(4) Record of Funds of the Attorney

A record that identifies the funds of the attorney held in each attorney trust account as permitted by Rule ~~16-607~~ 19-408 (b).

(b) Monthly Reconciliation

An attorney shall cause to be created a monthly reconciliation of all attorney trust account records, client matter records, records of funds of the attorney held in an attorney trust account as permitted by Rule ~~16-607~~ 19-408 (b), and the adjusted month-end financial institution statement balance. The adjusted month-end financial institution statement balance is computed by adding subsequent deposits to and subtracting subsequent disbursements from the financial institution's month-end statement balance.

(c) Electronic Records

Whenever the records required by this Rule are created or maintained using electronic means, there must be an ability to print a paper copy of the records upon a reasonable request to do so.

Committee note: Electronic records should be backed up regularly by an appropriate storage device.

(d) Records to be Maintained

Financial institution month-end statements, any canceled

checks or copies of canceled checks provided with a financial institution month-end statement, duplicate deposit slips or deposit receipts generated by the financial institution, and records created in accordance with section (a) of this Rule shall be maintained for a period of at least five years after the date the record was created.

Committee note: An attorney or law firm may satisfy the requirements of section (d) of this Rule by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, electronic records, or any other medium that preserves the required data for the required period of time and from which a paper copy can be printed.

Cross reference: Rule 19-317 (1.15) (Safekeeping Property) of the Maryland Lawyers' Rules of Professional Conduct.

Source: This Rule is ~~new~~ former Rule 16-606.1 (2011).

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Rule 19-408. COMMINGLING OF FUNDS

(a) General Prohibition

An attorney or law firm may deposit in an attorney trust account only those funds required to be deposited in that account by Rule ~~16-604~~ 19-404 or permitted to be so deposited by section (b) of this Rule.

(b) Exceptions

(1) An attorney or law firm shall either (A) deposit into an attorney trust account funds to pay any fees, service charges, or minimum balance required by the financial institution to open or maintain the account, including those fees that cannot be charged against interest due to the Maryland Legal Services Corporation Fund pursuant to Rule ~~16-610 b 1 (D)~~ 19-411 (b)(1)(D), or (B) enter into an agreement with the financial institution to have any fees or charges deducted from an operating account maintained by the attorney or law firm. The attorney or law firm may deposit into an attorney trust account any funds expected to be advanced on behalf of a client and expected to be reimbursed to the attorney by the client.

(2) An attorney or law firm may deposit into an attorney

trust account funds belonging in part to a client and in part presently or potentially to the attorney or law firm. The portion belonging to the attorney or law firm shall be withdrawn promptly when the attorney or law firm becomes entitled to the funds, but any portion disputed by the client shall remain in the account until the dispute is resolved.

(3) Funds of a client or beneficial owner may be pooled and commingled in an attorney trust account with the funds held for other clients or beneficial owners.

Cross reference: See Code, BOP Business Occupations and Professions Article, §§10-301 et seq.

Source: This Rule is former Rule BU7 16-607 (2011).

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Rule 19-409. INTEREST ON FUNDS

(a) Generally

Any interest paid on funds deposited in an attorney trust account, after deducting service charges and fees of the financial institution, shall be credited and belong to the client or third person whose funds are on deposit during the period the interest is earned, except to the extent that interest is paid to the Maryland Legal Services Corporation Fund as authorized by law. The attorney or law firm shall have no right or claim to the interest.

Cross reference: See Rule ~~16-610 b 1 (D)~~ 19-411 (b)(1)(D) providing that certain fees may not be deducted from interest that otherwise would be payable to the Maryland Legal Services Corporation Fund.

(b) Duty to Report IOLTA Participation

(1) Required as a Condition of Practice

As a condition precedent to the practice of law, each lawyer admitted to practice in Maryland shall report annually in accordance with this Rule information concerning all IOLTA accounts, including name, address, location, and account number, on a form approved by the Court of Appeals.

(2) Oversight of the Reporting Process

The Court of Appeals shall designate an employee of the Administrative Office of the Courts to oversee the reporting process set forth in this Rule.

(3) Mailing by the Administrative Office of the Courts

On or before January 10 of each year, the Administrative Office of the Courts shall mail an IOLTA Compliance Report form to each lawyer on the list maintained by the Client Protection Fund of the Bar of Maryland. The addresses on that list shall be used for all notices and correspondence pertaining to the reports.

(4) Due Date

IOLTA Compliance Reports for each year shall be filed with the Administrative Office of the Courts on or before February 15 of that year.

(5) Enforcement

(A) Notice of Default

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall notify each defaulting lawyer of the lawyer's failure to file a report. The notice shall (i) state that the lawyer has not filed the IOLTA Compliance Report for that year, (ii) state that continued failure to file the Report may result in the entry of an order by the Court of Appeals prohibiting the lawyer from practicing

law in the State, and (iii) be sent by first-class mail. The mailing of the notice of default shall constitute service.

(B) Additional Discretionary Notice of Default

In addition to the mailed notice, the Administrative Office of the Courts may give additional notice to defaulting lawyers by any of the means enumerated in Rule ~~16-811-f-3~~ 19-606.

(C) List of Defaulting Lawyers

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts shall prepare, certify, and file with the Court of Appeals a list that includes the name and address of each lawyer engaged in the practice of law who has failed to file the IOLTA Compliance Report for that year.

(D) Certification of Default; Order of Decertification

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those lawyers who have failed to file their IOLTA Compliance Report. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting lawyers. If satisfied that the Administrative Office of the Courts has given the required notice to each lawyer named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order

prohibiting each of them from practicing law in the State.

(E) Mailing of Decertification Order

The Administrative Office of the Courts shall mail by first-class mail a copy of the Decertification Order to each lawyer named in the Order. The mailing of the copy of the Decertification Order shall constitute service.

(F) Recertification; Restoration to Good Standing

If a lawyer thereafter files the outstanding IOLTA Compliance Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order that recertifies the lawyer and restores the lawyer to good standing. Upon entry of that order, the Administrative Office of the Courts promptly shall furnish confirmation to the lawyer. After a lawyer is recertified, the fact that the lawyer had been decertified need not be disclosed by the lawyer in response to a request for information as to whether the lawyer has been the subject of a disciplinary or remedial proceeding.

(G) Notices to Clerks and Maryland Legal Services Corporation

The Clerk of the Court of Appeals shall send a copy of each Decertification Order and each order that recertifies a lawyer and restores the lawyer to good standing entered pursuant to this Rule to the Clerk of the Court of Special Appeals, the Clerk of each circuit court, the Chief Clerk of the District

Court, and the Register of Wills for each county, and the Maryland Legal Services Corporation.

(H) Certain Information Furnished to the Maryland Legal Services Corporation

The Administrative Office of the Courts promptly shall submit to the Maryland Legal Services Corporation the data from electronically submitted IOLTA Compliance Reports and, upon request, shall forward the paper Compliance Reports.

(I) Confidentiality

Except as provided in subsection (b)(5)(H) of this Rule, IOLTA Compliance Reports, whether in paper or electronic form, are confidential and are not subject to inspection or disclosure under Code, State Government Article, §10-615

(2)(iii). The Administrative Office of the Courts shall not release the Reports to any person or agency, except as provided in this Rule or upon order of the Court of Appeals.

Nonidentifying information and data contained in a lawyer's IOLTA Compliance Report are not confidential.

Cross reference: See Code, Business Occupations and Professions Article, §10-303.

Source: ~~Section (a) of This Rule is former Rule BU8 16-608 (2011). Section (b) is new.~~

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Rule 19-410. PROHIBITED TRANSACTIONS

(a) Generally

An attorney or law firm may not borrow or pledge any funds required by the Rules in this Chapter to be deposited in an attorney trust account, obtain any remuneration from the financial institution for depositing any funds in the account, or use any funds for any unauthorized purpose.

(b) No Cash Disbursements

An instrument drawn on an attorney trust account may not be drawn payable to cash or to bearer, and no cash withdrawal may be made from an automated teller machine or by any other method. All disbursements from an attorney trust account shall be made by check or electronic transfer.

(c) Negative Balance Prohibited

No funds from an attorney trust account shall be disbursed if the disbursement would create a negative balance with regard to an individual client matter or all client matters in the aggregate.

Source: This Rule is ~~derived in part from~~ former Rule BU9 ~~and is in part new~~ 16-609 (2011).

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Rule 19-411. APPROVAL OF FINANCIAL INSTITUTIONS

(a) Written Agreement to be Filed with Commission

The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution that are subject to this Rule. The Commission may extend its approval of a previously approved financial institution for a reasonable period to allow the financial institution and the MLSC the opportunity to enter into a revised agreement that complies with this Rule.

(b) Contents of Agreement

(1) Duties to be Performed

The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

(A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds

of any instrument drawn on the account.

(B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection (b)(1)(C) of this Rule.

(C) Use the following procedure for reports to Bar Counsel required under subsection (b)(1)(B) of this Rule:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.

(ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the name and address of the attorney or law firm maintaining the account, the account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

(D) Pay interest on its IOLTA accounts at a rate no less than the highest non-promotional interest rate generally

available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.

(i) An approved institution may satisfy the requirement described in subsection (b)(1)(D) of this Rule by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account Allowable Reasonable Fees as defined in subsection (b)(1)(D)(iii). This account may be any one of the following product option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the particular IOLTA account qualifies to be established as this type of account at the particular branch:

(a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including securities of government-sponsored entities;

(b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;

(c) any other suitable interest-bearing checking account offered by the approved institution to its non-IOLTA customers.

(ii) In lieu of the options provided in subsection (b)(1)(D)(i), an approved financial institution may: (a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a "safe harbor" rate that is equal to 55% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection (b)(1)(D), but no fees may be deducted from the interest on a "safe harbor" rate account; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain

unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this "specified rate" account as agreed between MLSC and the financial institution.

(iii) "Allowable Reasonable Fees" means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep fees, plus a reasonable IOLTA account administrative fee.

Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney's or law firm's clients, including fees for wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.

(iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described

herein or electing to waive any fees and service charges on an IOLTA account.

(v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

Cross reference: Rule ~~16-607-b-1~~ 19-408 (b)(1).

(E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule ~~16-722~~ 19-731 (Audit of Attorney Accounts and Records).

(2) Service Charges for Performing Duties Under Agreement

Nothing in the agreement shall preclude an approved financial institution from charging the attorney or law firm maintaining an attorney trust account ~~(1)~~ (A) a reasonable fee for providing any notice or record pursuant to the agreement or ~~(2)~~ (B) fees and service charges other than the "Allowable Reasonable Fees" listed in subsection (b)(1)(D)(iii) of this Rule.

(c) Termination of Agreement

The agreement shall terminate only if:

(1) the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or

(2) the financial institution gives thirty days' notice in writing to the MLSC and to Bar Counsel that the institution

intends to terminate the agreement and its status as an approved financial institution on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or

(3) after a complaint is filed by the MLSC or on its own initiative, the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement and the Commission's approval of the institution are terminated.

(d) Exceptions

Within 15 days after service of the notice of termination pursuant to subsection (c)(3) of this Rule, the institution may file with the Court of Appeals exceptions to the decision of the Commission. The institution shall file eight copies of the exceptions which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by an order of the Court.

Source: This Rule is ~~derived from~~ former Rule ~~BU10~~ 16-610

(2011).

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Rule 19-412. NOTICE OF APPROVED INSTITUTIONS

The Commission shall cause to be published in the Maryland Register, at six-month intervals, a list that identifies:

- ~~1.~~ (a) all currently approved financial institutions; and
- ~~2.~~ (b) any financial institution whose agreement has terminated since the previous list was published.

Source: This Rule is former Rule ~~BU11~~ 16-611 (2011).

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Rule 19-413. ENFORCEMENT

Upon receipt of a report of overdraft on or dishonored instrument drawn on an attorney trust account, Bar Counsel shall contact the attorney or law firm maintaining the account and request an informal explanation for the overdraft or dishonored instrument. The attorney or law firm shall provide any records of the account necessary to support the explanation. If Bar Counsel has requested but has failed to receive a satisfactory explanation for any overdraft or dishonored check, or if good cause exists to believe that an attorney or law firm has failed to perform any duty under these Rules, Bar Counsel may secure compliance with these Rules by appropriate means approved by the Commission, including application for an audit pursuant to Rule ~~16-722~~ 19-731 (Audit of Attorney Accounts and Records).

Source: This Rule is former Rule ~~BU12~~ 16-612 (2011).