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JUL 23 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2  
3 IN THE MATTER OF AMENDMENTS TO  
4 SUPREME COURT RULE 216: CLIENT  
5 INTEREST BEARING TRUST ACCOUNTS;  
6 CREATION OF FOUNDATION

ADKT 0479

7 RESPONSE AND REQUEST  
8 TO MODIFY THE TIMING  
9 AND PROCEDURAL RELIEF  
10 REQUESTED IN  
11 EMERGENCY PETITION

12 The Nevada Law Foundation, doing business as the Justice League of  
13 Nevada, a Nevada Non-profit corporation ("JLN"), by and through its counsel of  
14 record, Michaelle D. Rafferty, Esq. of the law firm of Maupin, Cox and LeGoy,  
15 hereby submits this response and request to modify the timing and procedural  
16 relief requested in to the Nevada State Bar's Emergency Petition Under NRAP  
17 27(e) in ADKT 0479, (the "Emergency Petition"). This Response is based on and  
18 supported by the following:

19 1. Identity of Respondent. Respondent JLN, is a Nevada non-profit  
20 corporation designated as a public charity under Section 509(a)(2) of the Internal  
21 Revenue Code, and is a tax exempt entity under Section 501(c)(3) of the Internal  
22 Revenue Code. Under Nevada Supreme Court Rule 216, JLN is the designated  
23 tax-exempt bar foundation appointed by the State Bar of Nevada ("SBN") and  
24 approved by this Court to receive and administer the interest income generated by  
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Nevada attorney interest bearing trust accounts (referred to hereafter as the "IOLTA" funds). The IOLTA funds are retained in segregated and restricted accounts in the name of JLN and are administered and distributed by JLN in accordance with its stated mission and the provisions of SCR 216 through SCR 221, and as may be further ordered by this Court.

2. History of proposed transfer. Respondent was aware SBN was contemplating transfer of the IOLTA bar foundation duties under SCR 216 to the Nevada Bar Foundation (NBF) earlier this year. Although August 1, 2014 was proposed as a possible transfer date in early 2014, a rule change to SCR 216 was required which delayed such efforts. The rule change only became effective on July 18, 2014. Respondent was not aware SBN intended to pursue the August 1, 2014 transfers until it received the Emergency Petition on July 18, 2014 with less than ten (10) days to accomplish the requested transfer. Respondent is not aware of any urgency to warrant such emergency relief. The Emergency Petition lacks sufficient facts to support emergency relief as required under NRAP 27(e). Nevertheless, JLN does not object to this Court's consideration of the Emergency Petition.

3. Non opposition to majority of Emergency Petition. Respondent understands that SBN's Board of Governors requests this Court's approval of the

1 designation of NBF as the SCR 216 IOLTA bar foundation. JLN does not oppose  
2 the same. Further, JLN understands that SBN is seeking this Court's appointment  
3 of individuals to serve on the Board of NBF. JLN does not object.  
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5 4. Excise taxes applicable to NBF. For information, the Internal  
6 Revenue Service's website lists NBF as a "private foundation," rather than a  
7 "public charity." As a private foundation, NBF will be subject to federal excise  
8 taxes under Sections 4940 through 4945 of the Internal Revenue Code and the  
9 regulations thereunder. While most excise taxes can be avoided by NBF with  
10 proper planning, NBF will still need to implement compliance standards to avoid  
11 such taxes. Unfortunately, the excise tax on net investment income of a private  
12 foundation cannot be avoided by a private foundation. Any net investment income  
13 of NBF, including net investment income on IOLTA funds, will be subject to such  
14 excise tax. As a "public charity", JLN is not subject to such excise taxes and  
15 consideration as to conversion of NBF to public charity status may be advisable to  
16 avoid such excise taxes on the IOLTA funds to maximize potential charitable  
17 benefit.  
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23 5. Request to modify Petitioner's timing for proposed transfers. SBN  
24 requests an Order directing JLN to transfer all IOLTA assets in its possession to  
25 NBF no later than July 31, 2014, and directing all financial institutions to turn over  
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all JLN accounts holding IOLTA funds to NBF effective August 1, 2014 to which JLN requests additional time as follows:

a. Seizer of JLN accounts unnecessary. JLN is surprised by the extreme relief requested by SBN which effectively requests to seize JLN's accounts holding IOLTA funds. As JLN is an operating entity with ongoing operations, the seizure of its accounts, even as to IOLTA funds, could have an unnecessarily negative impact on JLN, its grant recipients, or its payees. The Emergency Petition makes no provision for outstanding checks, unpaid but pending grant awards, or other administrative expenses that JLN will have prior to its dissolution. Seizure will impact JLN's inability to satisfy previously awarded grants that are to be paid from such IOLTA funds next quarter. JLN is a separate legal entity that has accounting, tax reporting, and outstanding obligations that must be addressed and that cannot be finalized by August 1, 2014. There is no suggestion in the record that such IOLTA funds are at risk and JLN agrees to cooperate with the transfer in a reasonable manner that addresses these concerns. JLN requests that it be allowed to complete such transfers as approved and ordered by this Court without need for NBF to seize control.

b. Future receipts. As to any future IOLTA source funds paid to JLN on or after the date of this Court's Order, JLN agrees to transfer such IOLTA

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receipts to NBF, along with related financial records and reports to identify the paying source and amounts received. However, JLN requests that to the extent such future receipts total less than a combined \$50,000 in the hands of JLN, JLN be permitted to complete such transfers in bi-monthly lump sum transfers rather than being required to instantaneously transfer each individual receipt.

c. IOLTA funds currently in JLN's possession. As to the IOLTA funds that are already in JLN's possession, JLN requests until August 31, 2014 to complete such transfers and that such obligation be modified by the following:

i. Unavailability of JLN officers. JLN's accounts are subject to a two signature requirement. However, the two currently authorized signatories will be out of the country over staggered periods in the next two weeks and therefore will not both be available until after August 10, 2014. Accordingly, JLN requests additional time to allow its Board Members to coordinate the anticipated transfers.

ii. Time insufficient for JLN to address expenses and outstanding obligations. JLN is an operating entity that has financial and legal obligations, issued and outstanding checks, a remaining 2013 partial grant requiring funding, and other outstanding administrative expenses that will need to be identified and arrangements made to satisfy. Funds will need to be set aside to

1 address such obligations if the same are to be paid from IOLTA funds in the  
 2 possession of JLN. JLN anticipates that most, if not all, of these obligations can be  
 3 identified, and satisfied by August 31, 2014 by which time JLN can reconcile and  
 4 confirm clearance of such outstanding matters. Such additional time will permit  
 5 JLN to confirm the amount necessary to set aside in reserve to satisfy unpaid  
 6 obligations and expenses, and including reserves to cover the recently completed  
 7 2013 audit just received, tax and accounting work, as well as to plan for the 2014  
 8 audit, tax, accounting and dissolution work. Such work cannot reasonably be  
 9 completed by July 31, 2014. Therefore, JLN respectfully requests that a more  
 10 reasonable transfer schedule be established to effectuate such transfers and to  
 11 establish such reserves. Therefore, Respondent proposes to complete such transfers  
 12 by August 31, 2014 rather than July 31, 2014, subject to a right to establish a  
 13 reasonable reserve. Alternatively, Respondent requests NBF be obligated to  
 14 assume, release and indemnify JLN as to all obligations without limitation, from  
 15 and against any and all damages incurred by JLN or members of its board which  
 16 would be payable from IOLTA funds or that JLN or members of its board incur  
 17 due to the loss of JLN's access to the transferred IOLTA funds.

24           iii.       JLN's financial records needed for accounting, audit and  
 25 taxes. JLN will need its records and financial information, including those related  
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1 to IOLTA funds, to address the above well beyond the end of August. Therefore,  
 2 JLN suggests that the request that it turn over all of its IOLTA related books and  
 3 records to before August 1, 2014 is unreasonable. Notwithstanding the foregoing,  
 4 JLN has been and will continue to provide monthly reports to NBF of all IOLTA  
 5 activity and accordingly, the records which SBN is requesting are already in the  
 6 possession of NBF or if not, copies can made available if further information is  
 7 needed by NBF. JLN does not oppose the delivery of such original to UBF upon  
 8 completion of the 2014 or final year audit and will need to be granted ongoing  
 9 access to such records for at least six (6) years following the filing of its final  
 10 income tax return.  
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14 iv. Limitation of SCR 216 is designed to respect JLN's  
 15 independent authority as a tax exempt entity. JLN respectfully requests and  
 16 consents to this Court's issuance of an order in accordance with SCR 216  
 17 authorizing the proposed transfers, subject to (1) provisions for reasonable  
 18 reserves, (2) timing adjustments referenced above, and (3) subject to JLN's receipt  
 19 of documentation confirming NBF's tax exempt status its mission conform with  
 20 the requirements of SCR 216. JLN respectfully requests that such order does not  
 21 "direct" the transfer as proposed in the Emergency Petition. While this request  
 22 may appear without distinction on careful review of SCR 216, JLN respectfully  
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1 submits that SCR 216 purposefully does not extend unending control to this Court  
 2 over the IOLTA source funds once those funds have been placed in a bar  
 3 foundation. To interpret SCR 216 otherwise would risk a finding that this Court  
 4 retained control over the assets of a public charity as to JLN (and in NBF's case,  
 5 over a private foundation which is subject to excise taxes as cited above). The  
 6 drafters of SCR 216 wisely recognized that the power to direct disbursement of the  
 7 IOLTA source funds should rest in the discretionary authority of the tax exempt  
 8 bar foundation to whom such funds are placed. There is no question that this Court  
 9 has the authority to approve appointment of the foundation to receive the incoming  
 10 IOLTA source funds, and to further determine the identity of the individuals that  
 11 will serve on the board of such designated foundation. However, JLN submits that  
 12 once that designation has been made and the contribution of specific receipts has  
 13 been effectuated, such designation is irrevocable as to those specific receipts and  
 14 further discretionary authority to transfer the assets therefrom is granted to the tax  
 15 exempt bar foundation holding such funds under SCR 216.<sup>1</sup> Respondent  
 16 respectfully submits that to hold otherwise would be to nullify the ability of the  
 17 designated bar foundation to bind and direct the use of such IOLTA source funds  
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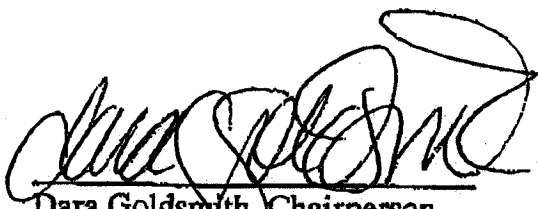
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 25 <sup>1</sup> Respondent notes that SCR 216 specifically uses the discretionary word  
 26 "may" in relation to the bar foundation's authority to direct disbursement; and the  
 reference to further orders of the Court are utilized in conjunction with the word  
 "and" rather than "or as otherwise directed."



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within its control with any certainty, would interfere with its ability to issue binding grants, and would create uncertainty to the grant recipients who would be at risk of having their awarded grants pulled by the Court at any time. Accordingly, JLN requests an order authorizing and confirming this Court's approval of the exercise of discretion by JLN's Board under SCR 216 to transfer its IOLTA source funds to NBF. In light of the Emergency Petition, JLN's Board has voted to complete such transfers, subject to the time and procedural issues addressed above, and subject to approval and confirmation by Order of this Court. **BASED ON THE FOREGOING**, Respondent respectfully submits this response to the Emergency Petition to request that the relief requested by SBN be granted subject to the limited modifications to the effective timing and procedures for completion of such transfers as set forth herein.

Dated this 23<sup>rd</sup> day of July, 2014.

  
Dara Goldsmith, Chairperson  
Nevada Law Foundation  
dba Justice League of Nevada  
Goldsmith & Guymon, P.C.  
2055 Village Center Cir.  
Las Vegas, NV 89134

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Affirmation Pursuant to NRS 239B.030

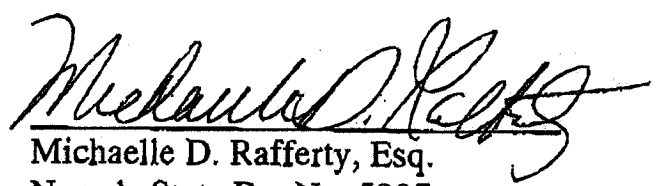
The undersigned hereby affirms that the preceding document does not contain a social security number.

Certificate of Compliance Pursuant to Rules 40 and 40A

1. I hereby certify that this Response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using, Microsoft Word version 2010, in size 14 font, using style Times New Roman.

2. I further certify that this Response complies with the page- or type-volume limitations of NRAP 40 or 40A because the body of the Response is set forth in less than 10 pages.

Dated this 23rd day of July, 2014.



Michaelle D. Rafferty, Esq.  
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4785 Caughlin Parkway  
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Certificate of Service by Mail

I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law, and in such capacity and on the date indicated below, I deposited for mailing from a point within the State of Nevada a sealed envelope which had enclosed within a true and correct copy of the within document, which envelope had postage fully prepaid thereon, and was addressed as follows:

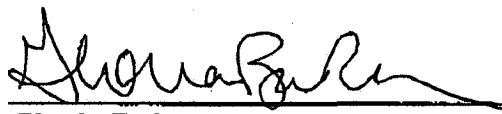
Laurence Digesti, President-Elect  
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Dated this 23<sup>rd</sup> day of July, 2014.

  
Gloria Baker

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July 23, 2014

Via Fax

Nevada Supreme Court  
Attention: Sally  
201 South Carson Street, Suite 250  
Carson City, NV 89701-4702

Re: In The Matter of Amendments to Supreme Court Rule 216: Client Interest Bearing Trust Accounts; Creation of Foundation

Nevada Supreme Court Case NO. ADKT 0479

Dear Sally:

Enclosed please find the Response and Request to Modify the Timing and Procedural Relief Requested in Emergency Petition regarding the above-referenced matter. Please file the original with the court.

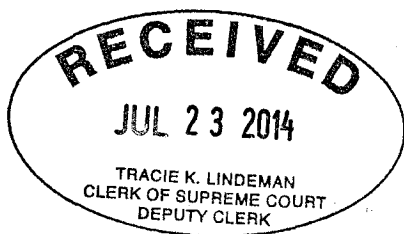
Please call our office if you have any questions regarding this request.

Respectfully,



Gloria Baker, Assistant to  
Michaëlle D. Rafferty

/gb



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## FAX

**TO:** Sally  
Nevada Supreme Court

**FROM:** Gloria Baker for  
Michaelle D. Rafferty, Esq.

**FAX NO.:** (775) 684-1601

**DATE:** July 23, 2014

**PAGES:** 3 page (including cover page)

**COMMENTS:**

Please refer to the attached.

Thank you!

**IF YOU EXPERIENCE PROBLEMS WITH THE ABOVE TRANSMISSION, PLEASE CALL (775) 827-2000 AND ASK FOR GLORIA BAKER, ASSISTANT TO MICHAELLE D. RAFFERTY, ESQ.**

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