

IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF
AMENDMENTS TO SUPREME
COURT RULE 216: CLIENT
INTEREST BEARING TRUST
ACCOUNTS; CREATION OF
FOUNDATION

ADKT NO.: 0479

REPLY IN SUPPORT OF THE
STATE BAR'S EMERGENCY
PETITION.

JUL 28 2014

TRAQIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

FILED

The State Bar of Nevada ("State Bar") filed on July 18, 2014 an Emergency
Petition NRAP 27(e), Pursuant to Supreme Court Rule 216, for an Order: (1)
Approving the SBN's Designation of Foundation and Directing The Transfer of
all IOLTA Assets, Books and Records to Foundation; and (2) Appointing
Foundation Board Members ("Emergency Petition"). On July 23, 2014, the
Nevada Law Foundation dba the Justice League of Nevada ("JLN") filed a
Response and Request to Modify the Timing and Procedural Relief Requested in
Emergency Petition. ("JLN Response") On July 24, 2014, the court issued an
Order¹ requesting the State Bar of Nevada (State Bar) and the Nevada Bar
Foundation (NBF) to submit a reply to JLN's Response. This Reply is filed by the
State Bar and the Nevada Bar Foundation (NBF) in further support of the
Emergency Petition.

¹ While the court's July 24, 2014 Order indicates that the court has previously
approved the State Bar's designation of the NBF as the SCR 216 IOLTA
foundation, that is not the case. As part of its Emergency Petition, the SBN is
asking, among other requests, that the court issue an order approving the State
Bar's designation of NBF.

I. To Minimize Any Interruption of the IOLTA Program By The Change in Program Administrators, the State Bar Requests Expedient Implementation of the Designation of the NBF.

In its Emergency Petition the State Bar and the NBF asked the court to approve the designation of the NBF as the SCR 216 foundation and order the transfer of all IOLTA assets, books and records to the NBF, effective August 1, 2014. The State Bar requested the August 1, 2014 effective designation date because the parties had previously agreed to this date. This date was further requested to: (1) insure that the NBF has sufficient time to meet the IOLTA program obligations for the upcoming granting cycle; and (2) prevent the potential negative impact on the IOLTA program that may be caused by a long drawn out transition plan where two foundations are simultaneously performing IOLTA program functions. To comply with SCR 216(1)² and prevent confusion among the various constituencies which work with the IOLTA program and which are served by the program, the assets, records and responsibilities of the IOLTA program must be transferred to the NBF as of the effective designation date.

II. The NBF Agrees to the August 31, 2014 Designation Effective Date Proposed by the JLN.

The JLN has cited circumstances which make transfer by August 1, 2014 infeasible. The State Bar and the NBF are amenable to an extension of time until August 31, 2014 as the effective designation date upon the following terms, which take into account the issues and concerns identified by JLN in its response:

² In addition to the confusion that would be caused by two IOLTA foundations simultaneously administering the IOLTA program, SCR 216(1) indicates that the board of governors, with the approval of the court, shall designate "a tax-exempt foundation" to administer the IOLTA program not multiple foundations simultaneously performing IOLTA administrative functions.

1 1. JLN will transfer all IOLTA assets to the NBF by August 31, 2014,
2 including reserves and interest on earned IOLTA funds, with no amounts being
3 withheld except for amounts to cover any outstanding checks issued by the JLN
4 related to the IOLTA program issued by the JLN and administrative expenses of
5 the JLN related to the IOLTA program;

6 2. JLN will transfer any IOLTA funds received after August 31, 2014 on a
7 monthly lump sum basis to the extent such receipts total less than a combined
8 \$50,000 in the hands of JLN;

9 3. JLN, at the NBF's expense, will provide the NBF copies of all IOLTA
10 books and records by August 31, 2014;

11 4. To the extent possible, JLN will satisfy any outstanding obligations related
12 to the IOLTA program before August 31, 2014 and provide the NBF with a list of
13 IOLTA commitments and obligations outstanding as of August 31, 2014,
14 including any previously awarded grants to be paid from IOLTA funds, which the
15 NBF will satisfy;

16 5. JLN will cease performing any tasks related to the IOLTA program and
17 direct all inquiries to the NBF as of August 31, 2014;

18 6. After August 31, 2014, the JLN will submit any reasonable IOLTA related
19 expenses to the NBF, which the NBF will pay in its sole discretion, but the NBF
20 declines to otherwise indemnify the JLN or its Trustees.

21 7. Upon issuance of the court's designation order, the NBF will immediately
22 notify the IOLTA participating banks and direct all IOLTA monies to be paid to
23 the NBF effective August 31, 2014.

24 8. The NBF is in the process of evaluating its status with the Internal Revenue
25 Service and amending its organizational documents, including provisions to

1 comply with SCR 216, which evaluation and amendments shall be completed
2 before the effective date of the designation.

3 **III. The Supreme Court Rules Give The Court The Authority To Issue The**
4 **Orders The State Bar Is Seeking.**

5 Under NRS 2.120(1) the Nevada Supreme Court is authorized to, “. . . make
6 rules not inconsistent with the Constitution and laws of the State for . . . the
7 government of the State Bar of Nevada.” The IOLTA program rules appear
8 under, Section I of Part III of Supreme Court Rules entitled, “Government of the
9 Legal Profession” Under Section I, the “Clients’ Interest-Bearing Trust Accounts”
10 provisions are set forth in SCR 216-221 (“IOLTA Rules”). The authority for the
11 court to grant the State Bar’s Petition is set forth under SCR 216 as follows:

12 **1. The power to approve the designation by the board of governors of the**
13 **NBF as the IOLTA foundation.** Under SCR 216(1) the board of governors with
14 the approval of the supreme court, shall designate a tax-exempt foundation for
15 purposes of providing legally related services to the poor, to the victims of
16 domestic violence, and to children protected by or in need of protection of the
17 juvenile court; promoting or providing law-related educational programs for
18 members of the public; and similar programs which qualify for I.R.C. 501(c)(3)
19 tax exempt status.

20 **2. The power to order the transfer of all IOLTA program functions and**
21 **funds to NBF.** Section SCR 216(1) further provides that, “To carry out these
22 purposes, the bar foundation may utilize the income accrued from interest-bearing
23 client’s trust accounts (IOLTA funds) as authorized by Rules 216 thorough 221,
24 *and as the supreme court may otherwise order.*” (Emphasis added).

25

1 **3. The power to dictate how IOLTA designated foundation uses IOLTA**
2 **funds.** The rule also sets forth that substantially all of the IOLTA funds, after
3 adequate reserves (as approved by the Supreme Court) and reasonable expenses,
4 shall be disbursed for purposes of providing legally related services to the poor, to
5 the victims of domestic violence, and to children protected by or in need of
6 protection of the juvenile court. SCR 216(1)(a).

7 **4. The power to select the majority of the members of the NBF.** The court
8 has the authority to appoint 6 of the 11 members of the board of trustees of the
9 designated IOLTA foundation. SCR 216(2).

10 Wherefore, the State Bar and the NBF request the following:

11 1. That the court approve the State Bar's designation of the NBF as the SCR
12 216 IOLTA foundation in place an instead of the JLN effective August 31, 2014
13 and order the transfer to the NBF of all IOLTA funds, books and records by this
14 date on the terms set forth in the Emergency Petition and in this Reply; and

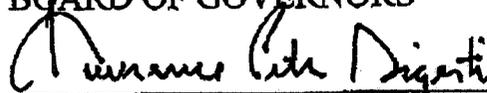
15 2. That the court appoint six (6)³ members of the Board of Trustees of the
16 NBF.

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23 ³ Under SCR 216(2), as amended, "The governing body of the designated bar
24 foundation shall be composed of 11 members; 7 of whom shall be members in
25 good standing of the state bar. The court shall appoint 6 members and the state bar
shall appoint 5 members." The State Bar appointed 5 members, all of whom are
members in good standing of the State Bar.

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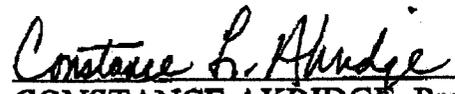
Respectfully submitted this 28th day of July 2014.

STATE BAR OF NEVADA
BOARD OF GOVERNORS



LAURENCE PETER DIGESTI, President-Elect
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NEVADA BAR FOUNDATION



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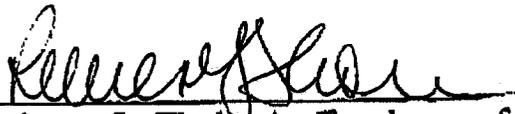
CERTIFICATE OF SERVICE BY MAIL

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I, REBECCA L. THOLE, certify that I am a citizen of the United States, over 18 years of age, a resident of Clark County, and not a party to the within action. That I am an employee of the State Bar of Nevada and my business address is 600 East Charleston Blvd., Las Vegas, Nevada 89104.

That on July 28, 2014, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE STATE BAR'S EMERGENCY PETITION**, by placing said copy in a sealed and postage fully prepaid envelope for first-class mail, and deposited in the United States mail at Las Vegas, Nevada to:

**Michaelle D. Rafferty, Esq.
Maupin, Cox & LeGoy
475 Caughlin Parkway
Reno, Nevada 89520
Facsimile (775) 827-2185**


Rebecca L. Thole, An Employee of the
Office of Bar Counsel