

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 In the matter of Amendments to SCR
3 217(2) regarding creation and
4 maintenance of interest-bearing trust
5 accounts interest minimum standards.
6

ADKT NO.: 537

FILED

JUL 23 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

7
8 **PETITION**

9 The Nevada Supreme Court Access to Justice Commission (“Commission”)
10 hereby petitions this court to amend SCR 217(2) regarding creation and
11 maintenance of interest-bearing trust accounts interest minimum standards.

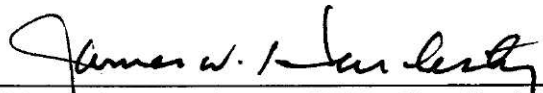
12 Since 2008, Nevada’s legal aid organizations have benefited from stable
13 interest on lawyer trust account (IOLTA) rates, which have traditionally been set
14 at 0.70 percent. Nevada has received strong support from its banking community,
15 with more than 30 financial institutions participating in the IOLTA program.
16 Annually, more than \$500,000,000 is maintained on deposit in Nevada banks.
17 Substantially, all interest generated from these accounts is distributed to statewide
18 legal service organizations by the designated tax-exempt bar foundation as
19 outlined in SCR 216 through annual grants. In 2019, \$3.4 million in IOLTA grant
20 dollars were awarded.

21 The Commission seeks to amend the interest minimum standards by setting the
22 current rate as its minimum or “floor” and to provide flexibility to raise the rate
23 consistent with the changing financial market, based in part, on the Federal Funds
24 Target Rate. The proposed amendments would also allow for tiered rates for
25 various account sizes.

1 The proposed rule, as amended, is attached hereto in its entirety as Exhibit A.

2
3 Respectfully submitted this 18 ^{July} day of ~~June~~ 2019.

4 ACCESS TO JUSTICE COMMISSION
5 CO-CHAIRS

6 

7 JAMES W. HARDESTY, Co-Chair

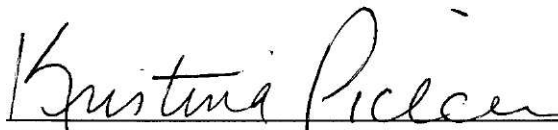
8 Nevada Bar No. 1110

9 Supreme Court of Nevada

201 S Carson St

10 Carson City, NV 89148

775-684-1590

11 

12 KRISTINA PICKERING, Co-Chair

13 Nevada Bar No. 992

14 Supreme Court of Nevada

15 408 E Clark Ave

16 Las Vegas, NV 89101

702-486-9370

EXHIBIT A

Rule 217. Creation and maintenance of interest-bearing trust accounts. A member of the state bar or the member's law firm shall create or maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in any banking, credit union, or savings and loan association which is in compliance with the following provisions:

1. An interest-bearing trust account established pursuant to this rule may be established with any state bar approved bank, credit union, or savings and loan association authorized by federal or state law to do business in Nevada, located in Nevada and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or other financial institution approved by the state bar pursuant to Rule 78.5 of these rules. Funds in each interest-bearing account shall be subject to withdrawal upon request and without delay.

2. Interest minimum standards. The Nevada Supreme Court Access to Justice Commission shall review and set twice annually the rate(s) of interest payable upon any interest-bearing trust account and make the rate(s) public at least 30 days prior to the effective date. ~~[The rate of interest payable upon any interest-bearing trust account shall meet any one of the following minimum standards:]~~

(a) The minimum rate shall be 0.70 percent.

(b) Higher rates offered by the institution ~~[to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit,]~~ are permissible so long as there is no impairment of the right to withdraw or transfer principal immediately without penalty.

~~[(a) The 30-day LIBOR minus .50 percent, or, the Federal Discount Rate plus .50 percent, whichever is greater; or~~

~~(b) Equal to the Federal Fund Target Rate, or, the Federal Discount Rate plus .50 percent, whichever is greater; or~~

~~—(c) Equal to or greater than an flat interest rate, which rate shall be reviewed and approved by the Access to Justice Commission twice annually and made public at least 30 days prior to the effective date.~~

~~—(d) Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, are permissible so long as there is no impairment of the right to withdraw or transfer principal immediately without penalty.]~~

3. Fees prohibited. Accounts under this rule shall be exempt from service charges and fees.

4. Reporting. A member of the state bar or the member's law firm establishing such account shall:

(a) Direct the depository institution to:

1 (i) remit interest or dividends, as the case may be, on the average monthly
2 balance in the account or as otherwise computed in accordance with an
3 institution's standard accounting practice at least monthly, to the designated tax-
4 exempt foundation pursuant to Rule 216;

5 (ii) transmit with each remittance in an electronic format to be specified
6 by the designated tax-exempt foundation a statement which shall include:

7 (1) the name of the member of the state bar or the member's law firm for
8 whom the remittance is sent;

9 (2) the rate of interest applied;

10 (3) the account number for each account;

11 (4) the average amount on deposit for each account;

12 (5) the rate and type of interest or dividends remitted;

13 ~~[(6) the amount and type of charges or fee deducted, if any;]~~

14 ~~[(7)6] the average account balance for the monthly period for which the report~~
15 ~~is made; and~~

16 (iii) transmit to the depositing member of the state bar or the member's
17 law firm at the same time a report showing the amount paid to the designated tax-
18 exempt foundation; and

19 (b) Establish and follow reasonably prudent procedures to verify, at least
20 annually, that each account maintained under this rule is on deposit with an
21 institution currently listed by the designated tax-exempt foundation as operating in
22 compliance with the Interest Minimum Standards set forth in subsection 2 above.
23 Member verification shall be reported to the [S]state [B]bar, by completing and
24 submitting a form provided with the annual membership fee statements.

25 5. Exceptions. If the member or the member's law firm does not maintain
an office within 20 miles of a complying financial institution pursuant to
subsection 6:

(a) The minimum interest standards set forth in subsection 2 (a)-(c) are
waived; and

(b) The reporting requirements of subsection 4(a)(ii) are partially waived such
that the member must direct the depositing institution to report at least quarterly,
electronically if possible, to include at a minimum the name of the member of the
state bar or the member's law firm for whom the remittance is sent and the rate of
interest applied.

Notice of waiver shall be reported by the member or member's law firm annually
on a form to be provided by the state bar with annual membership fee statements.

6. List of complying financial institutions. The designated tax-exempt
foundation shall maintain an accurate and up-to-date list of all financial institutions
as defined in subsection 1 above, which are in compliance with the Interest
Minimum Standards set forth in subsection 2 above. This list shall be provided to

1 the [S]state [B]bar by the designated tax-exempt foundation, posted on the [S]state
2 [B]bar's website and published in other media from time to time to facilitate
members' compliance with this rule.

3 ~~[7. Effective dates; compliance monitoring. The amendments to this rule~~
4 ~~mandated by order dated December 16, 2009, shall be effective 30 days from entry~~
5 ~~of order. The designated tax-exempt foundation pursuant to Rule 216 shall begin~~
6 ~~monitoring banking compliance within 30 days of the effective date and provide~~
7 ~~reports at least quarterly to the Access to Justice Commission and the State Bar of~~
8 ~~Nevada. The first member reporting required pursuant to subsection 5(b) shall~~
9 ~~begin in 2010, and reported in the 2011 annual membership fee statements.]~~

10 [8]7. Non-compliance; assessment/suspension. Active members who fail to
11 meet the requirements of this rule shall be notified of their non-compliance, in
12 writing, by the [S]state [B]bar. Upon the expiration of 30 days from the date the
13 [S]state [B]bar sends the member notice of non-compliance, said non-compliant
14 member shall be:

15 (a) Assessed \$200, payable within 30 days to the designated tax-exempt
16 foundation pursuant to Rule 216; and

17 (b) Suspended from membership in the [S]state [B]bar, but may be reinstated
18 upon filing verification of compliance on a form to be provided by the [S]state
19 [B]bar.

20 Supplying false information in response to the requirements of this rule shall
21 subject the member to appropriate disciplinary action.
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