

RULES OF PROFESSIONAL CONDUCT (RPC)

RULE 1.15A. SAFEGUARDING PROPERTY

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2 (a) This Rule applies to (1) property of clients or third persons in a lawyer's possession in
3 connection with a representation and (2) escrow and other funds held by a lawyer incidental to the
4 closing of any real estate or personal property transaction. Additionally, for all transactions in
5 which a lawyer has selected, prepared, or completed legal documents for use in the closing of
6 any real estate or personal property transaction, the lawyer must ensure that all funds received or
7 held by the Closing Firm incidental to the closing of the transaction, including advances for costs
8 and expenses, are held and maintained as set forth in this rule or LPORPC 1.12A. The lawyer's
9 duty to ensure that all funds received or held by the Closing Firm incidental to the closing of the
10 transaction are held and maintained as set forth in this rule or LPORPC 1.12A shall not apply to
11 a lawyer when that lawyer's participation in the matter is incidental to the closing and (i) the
12 lawyer or lawyer's law firm has a preexisting client-lawyer relationship with a buyer or seller in
13 the transaction, and (ii) neither the lawyer nor the lawyer's law firm has an existing client-lawyer
14 relationship with the Closing Firm or an LPO participating in the closing.

15 (b) A lawyer must not use, convert, borrow or pledge client or third person property for
16 the lawyer's own use.

17 (c) A lawyer must hold property of clients and third persons separate from the lawyer's
18 own property.

19 (1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant
20 to paragraph (h) of this Rule.

21 (2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of
22 this Rule, a lawyer shall deposit into a trust account legal fees and expenses that have been paid
23 in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

24 (3) A lawyer must identify, label and appropriately safeguard any property of clients or
25 third persons other than funds. The lawyer must keep records of such property that identify the
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2 property, the client or third person, the date of receipt and the location of safekeeping. The
3 lawyer must preserve the records for seven years after return of the property.

4 (d) A lawyer must promptly notify a client or third person of receipt of the client or third
5 person's property.

6 (e) A lawyer must promptly provide a written accounting to a client or third person after
7 distribution of property or upon request. A lawyer must provide at least annually a written
8 accounting to a client or third person for whom the lawyer is holding funds.

9 (f) Except as stated in this Rule, a lawyer must promptly pay or deliver to the client or
10 third person the property which the client or third person is entitled to receive.

11 (g) If a lawyer possesses property in which two or more persons (one of which may be
12 the lawyer) claim interests, the lawyer must maintain the property in trust until the dispute is
13 resolved. The lawyer must promptly distribute all undisputed portions of the property. The
14 lawyer must take reasonable action to resolve the dispute, including, when appropriate,
15 interpleading the disputed funds.

16 (h) A lawyer must comply with the following for all trust accounts:

17 (1) No funds belonging to the lawyer may be deposited or retained in a trust account
18 except as follows:

19 (i) funds to pay bank charges, but only in an amount reasonably sufficient for that
20 purpose;

21 (ii) funds belonging in part to a client or third person and in part presently or
22 potentially to the lawyer must be deposited and retained in a trust account, but any portion
23 belonging to the lawyer must be withdrawn at the earliest reasonable time; or

24 (iii) funds necessary to restore appropriate balances.

25 (2) A lawyer must keep complete records as required by Rule 1.15B.
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2 (3) A lawyer may withdraw funds when necessary to pay client costs. The lawyer may
3 withdraw earned fees only after giving reasonable notice to the client of the intent to do so,
4 through a billing statement or other document.

5 (4) Receipts must be deposited intact.

6 (5) All withdrawals must be made only to a named payee and not to cash. Withdrawals
7 must be made by check or by bank transfer.

8 (6) Trust account records must be reconciled as often as bank statements are generated or
9 at least quarterly. The lawyer must reconcile the check register balance to the bank statement
10 balance and reconcile the check register balance to the combined total of all client ledger records
11 required by Rule 1.15B(a)(2).

12 (7) A lawyer must not disburse funds from a trust account until deposits have cleared the
13 banking process and been collected, unless the lawyer and the bank have a written agreement by
14 which the lawyer personally guarantees all disbursements from the account without recourse to
15 the trust account.

16 (8) Disbursements on behalf of a client or third person may not exceed the funds of that
17 person on deposit. The funds of a client or third person must not be used on behalf of anyone
18 else.

19 (9) Only a lawyer admitted to practice law may be an authorized signatory on the
20 account.

21 (i) Trust accounts must be interest-bearing and allow withdrawals or transfers without
22 any delay other than notice periods that are required by law or regulation and meet the
23 requirements of ELC 15.7(d) and ELC 15.7(e). In the exercise of ordinary prudence, a lawyer
24 may select any financial institution authorized by the Legal Foundation of Washington (Legal
25 Foundation) under ELC 15.7(c)~~bank, savings bank, credit union or savings and loan association~~
26 ~~that is insured by the Federal Deposit Insurance Corporation or~~

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2 ~~National Credit Union Administration, is authorized by law to do business in Washington and~~
3 ~~has filed the agreement required by ELC 15.4. Trust account funds must not be placed in mutual~~
4 ~~funds, stocks, bonds, or similar investments. In selecting the type of trust account for the purpose~~
5 ~~of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:~~

6 (1) When client or third-person funds will not produce a positive net return to the client
7 or third person because the funds are nominal in amount or expected to be held for a short period
8 of time the funds must be placed in a pooled interest-bearing trust account known as an Interest
9 on Lawyer's Trust Account or IOLTA. ~~The interest accruing on the IOLTA account, net of~~
10 ~~reasonable check and deposit processing charges which may only include items deposited~~
11 ~~charge, monthly maintenance fee, per item check charge, and per deposit charge, must be paid to~~
12 ~~the Legal Foundation of Washington. Any other fees and transaction costs must be paid by the~~
13 ~~lawyer. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be~~
14 ~~administered by, the Legal Foundation of Washington in accordance with ELC 15.4 and ELC~~
15 ~~15.7(e).~~

16 (2) Client or third-person funds that will produce a positive net return to the client or third
17 person must be placed in one of the following two types of non-IOLTA trust accounts, ~~one of the~~
18 ~~following~~ unless the client or third person requests that the funds be deposited in an IOLTA
19 account:

20 (i) a separate interest-bearing trust account for the particular client or third person
21 with earned interest paid to the client or third person; or

22 (ii) a pooled interest-bearing trust account with sub-accounting that allows for
23 computation of interest earned by each client or third person's funds with the interest paid to the
24 appropriate client or third person.

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2 (3) In determining whether to use the account specified in paragraph (i)(1) or an account
3 specified in paragraph (i)(2), a lawyer must consider only whether the funds will produce a
4 positive net return to the client or third person, as determined by the following factors:

5 (i) the amount of interest the funds would earn based on the current rate of interest
6 and the expected period of deposit;

7 (ii) the cost of establishing and administering the account, including the cost of
8 the lawyer's services and the cost of preparing any tax reports required for interest accruing to a
9 client or third person's benefit; and

10 (iii) the capability of financial institutions to calculate and pay interest to
11 individual clients or third persons if the account in paragraph (i)(2)(ii) is used.

12 (4) ~~As to IOLTA accounts created under paragraph (i)(1), lawyers or law firms must~~
13 ~~direct the depository institution:~~

14 ~~(i) to remit interest or dividends, net of charges authorized by paragraph (i)(1), on~~
15 ~~the average monthly balance in the account, or as otherwise computed in accordance with an~~
16 ~~institution's standard accounting practice, monthly, to the Legal Foundation of Washington;~~

17 ~~(ii) to transmit with each remittance to the Foundation a statement, on a form~~
18 ~~authorized by the Washington State Bar Association, showing details about the account,~~
19 ~~including but not limited to the name of the lawyer or law firm for whom the remittance is sent,~~
20 ~~the rate of interest applied, and the amount of service charges deducted, if any, and the balance~~
21 ~~used to compute the interest, with a copy of such statement to be transmitted to the depositing~~
22 ~~lawyer or law firm; and~~

23 ~~(iii) to bill fees and transaction costs not authorized by paragraph (i)(1) to the~~
24 ~~lawyer or law firm.~~

25 (5) The provisions of paragraph (i) do not relieve a lawyer or law firm from any
26 obligation imposed by these Rules or the Rules for Enforcement of Lawyer Conduct.

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2 ~~(j) The Legal Foundation of Washington must prepare an annual report to the Supreme~~
3 ~~Court of Washington that summarizes the Foundation's income, grants and operating expenses,~~
4 ~~implementation of its corporate purposes, and any problems arising in the administration of the~~
5 ~~program established by paragraph (i) of this Rule.~~

Washington Comments

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7 [1] A lawyer must also comply with the recordkeeping rule for trust accounts, Rule
8 1.15B.

9 [2] Client funds include, but are not limited to, the following: legal fees and costs that
10 have been paid in advance other than retainers and flat fees complying with the requirements of
11 Rule 1.5(f), funds received on behalf of a client, funds to be paid by a client to a third party
12 through the lawyer, other funds subject to attorney and other liens, and payments received in
13 excess of amounts billed for fees.

14 [3] This Rule applies to property held in any fiduciary capacity in connection with a
15 representation, whether as trustee, agent, escrow agent, guardian, personal representative,
16 executor, or otherwise.

17 [4] The inclusion of ethical obligations to third persons in the handling of trust funds and
18 property is not intended to expand or otherwise affect existing law regarding a Washington
19 lawyer's liability to third parties other than clients. See, e.g., *Trask v. Butler*, 123 Wn.2d 835, 872
20 P.2d 1080 (1994); *Hetzel v. Parks*, 93 Wn. App. 929, 971 P.2d 115 (1999).

21 [5] Property covered by this Rule includes original documents affecting legal rights such
22 as wills or deeds.

23 [6] A lawyer has a duty to take reasonable steps to locate a client or third person for
24 whom the lawyer is holding funds or property. If after taking reasonable steps, the lawyer is still
25 unable to locate the client or third person, the lawyer should treat the funds as unclaimed
26 property under the Uniform Unclaimed Property Act, RCW 63.29.

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2 [7] A lawyer may not use as a trust account an account in which funds are periodically
3 transferred by the ~~bank~~financial institution between a trust account and an uninsured account or
4 other account that would not qualify as a trust account under this Rule or ELC 15.7.

5 [8] If a lawyer accepts payment of an advanced fee deposit by credit card, the payment
6 must be deposited directly into the trust account. It cannot be deposited into a general account
7 and then transferred to the trust account. Similarly, credit card payments of earned fees, of
8 retainers meeting the requirements of Rule 1.5(f)(1), and of flat fees meetings the requirements
9 of Rule 1.5(f)(2) cannot be deposited into the trust account and then transferred to another
10 account.

11 [9] Under paragraph (g), the extent of the efforts that a lawyer is obligated to take to
12 resolve a dispute depend on the amount in dispute, the availability of methods for alternative
13 dispute resolution, and the likelihood of informal resolution.

14 [10] The requirement in paragraph (h)(4) that receipts must be deposited intact means
15 that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the
16 same time, commonly known as a split deposit.

17 [11] Paragraph (h)(7) permits Washington lawyers to enter into written agreements with
18 the trust account financial institution to provide for disbursement of trust deposits prior to formal
19 notice of dishonor or collection. In essence the trust account bank is agreeing to or has
20 guaranteed a loan to the lawyer and the client for the amount of the trust deposit pending
21 collection of that deposit from the institution upon which the instrument was written. A
22 Washington lawyer may only enter into such an arrangement if 1) there is a formal written
23 agreement between the attorney and the trust account institution, and 2) the trust account
24 financial institution provides the lawyer with written assurance that in the event of dishonor of
25 the deposited instrument or other difficulty in collecting the deposited funds, the financial
26 institution will not have recourse to the trust account to obtain the funds to reimburse the

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2 financial institution. A lawyer must never use one client's money to pay for withdrawals from the
3 trust account on behalf of another client who is paid subject to the lawyer's guarantee. The trust
4 account financial institution must agree that the institution will not seek to fund the guaranteed
5 withdrawal from the trust account, but will instead look to the lawyer for payment of
6 uncollectible funds. Any such agreement must ensure that the trust account funds or deposits of
7 any other client's or third person's money into the trust account would not be affected by the
8 guarantee.

9 [12] The Legal Foundation of Washington was established by Order of the Supreme
10 Court of Washington.

11 [13] A lawyer may, but is not required to, notify the client of the intended use of funds
12 paid to the Foundation.

13 [14] If the client or third person requests that funds that would be deposited in ~~a separate~~
14 ~~interest-bearing account~~ a non-IOLTA trust account under paragraph (i)(2) instead be held in the
15 IOLTA account, the lawyer should document this request in the lawyer's trust account records
16 and preferably should confirm the request in writing to the client or third person.

17 [15] A lawyer may not receive from financial institutions earnings credits or any other
18 benefit from the financial institution based on the balance maintained in a trust account.

19 [16] The term "Closing Firm" as used in this rule has the same definition as in ELPOC
20 1.3(g).

21 [17] The lawyer may satisfy the requirement of paragraph (a), that the lawyer must
22 ensure that all funds received or held by the Closing Firm incidental to the closing of the
23 transaction including advances for costs and expenses, are held and maintained as set forth in this
24 rule or LPORPC 1.12A, by obtaining a certification or other reasonable assurance from the
25 Closing Firm that the funds are being held in accordance with RPC 1.15A and/or LPORPC
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1
2 1.12A. The lawyer is not required to personally inspect the books and records of the Closing
3 Firm.

4 The last sentence of Paragraph (a) is intended to relieve a lawyer from the duties of
5 paragraph (a) only if the lawyer or the lawyer's law firm has a previous client-lawyer
6 relationship with one of the parties to the transaction and that party is a buyer or seller. Lawyers
7 may be called on by clients to review deeds prepared during the escrow process, or may be asked
8 to prepare special deeds such as personal representative's deeds for use in the closing. A lawyer
9 may also be asked by a client to review documents such as settlement statements or tax affidavits
10 that have been prepared for the closing. Such activities are limited in scope and are only
11 incidental to the closing. The exception stated in the last sentence of paragraph (a) does not
12 apply if the lawyer or the lawyer's law firm has an existing client-lawyer relationship with the
13 Closing Firm or with a limited practice officer who is participating in the closing.

14 [18] When selecting a financial institution for purposes of depositing and holding funds
15 in a trust account, a lawyer is obligated to exercise ordinary prudence under paragraph (i). All
16 trust accounts must be insured by the Federal Deposit Insurance Corporation or the National
17 Credit Union Administration up to the limit established by law for those types of accounts or be
18 backed by United States Government Securities. Trust account funds must not be placed in
19 stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. See
20 ELC 15.7(d).

21 [19] Only those financial institutions authorized by the Legal Foundation of Washington
22 (Legal Foundation) are eligible to offer trust accounts to Washington lawyers. To become
23 authorized, the financial institution must satisfy the Legal Foundation that it qualifies as an
24 authorized financial institution under ELC 15.7(c) and must have on file with the Legal
25 Foundation a current Overdraft Notification Agreement under ELC 15.4. A list of all authorized
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financial institutions is maintained and published by the Legal Foundation and is available to any person on request.

[20] Upon receipt of a notification of a trust account overdraft, a lawyer must comply with the duties set forth in ELC 15.4(d) (lawyer must promptly notify the Office of Disciplinary Counsel of the Washington State Bar Association and include a full explanation of the cause of the overdraft).

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

RULE 15.7. TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

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3 **(a) Legal Foundation of Washington.** The Legal Foundation of Washington (Legal
4 Foundation) was established by Order of the Supreme Court of Washington to administer
5 distribution of Interest on Lawyer’s Trust Account (IOLTA) funds to civil legal aid programs.

6 (1) *Administrative Responsibilities.* The Legal Foundation is responsible for assessing the
7 products and services offered by financial institutions operating in the state of Washington and
8 determining whether such institutions meet the requirements of this rule, ELC 15.4, and ELPOC
9 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish
10 client trust accounts and publish the list on a website maintained by the Legal Foundation for
11 public information. The Legal Foundation must provide a copy of the list to any person upon
12 request.

13 (2) *Annual Report.* The Legal Foundation must prepare an annual report to the Supreme
14 Court of Washington that summarizes the Foundation’s income, grants and operating expenses,
15 implementation of its corporate purposes, and any problems arising in the administration of the
16 IOLTA program.

17 **(b) Definitions.** The following definitions apply to this rule:

18 (1) *United States Government Securities.* United States Government Securities are defined
19 as direct obligations of the United States Government, or obligations issued or guaranteed as to
20 principal and interest by the United States or any agency or instrumentality thereof, including
21 United States Government-Sponsored Enterprises.

22 (2) *Daily Financial Institution Repurchase Agreement.* A daily financial institution
23 repurchase agreement must be fully collateralized by United States Government Securities and
24 may be established only with an authorized financial institution that is deemed to be “well
25 capitalized” under applicable regulations of the Federal Deposit Insurance Corporation and the
26 National Credit Union Association.

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

RULE 15.7. TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

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3 (3) *Money Market Funds*. A money market fund is an investment company registered under
4 the Investment Company Act of 1940, as amended, that is regulated as a money market funder
5 under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to
6 said Act, and at the time of the investment, has total assets of at least five hundred million dollars
7 (\$500,000,000). A money market fund must be comprised solely of United States Government
8 Securities or investments fully collateralized by United States Government Securities.

9 (c) **Authorized Financial Institutions**. Any bank, savings bank, credit union, savings and
10 loan association, or other financial institution that meets the following criteria is eligible to
11 become an authorized financial institution under this rule:

12 (1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit
13 Union Administration;

14 (2) is authorized by law to do business in Washington;

15 (3) complies with all requirements set forth in section (d) of this rule and in ELC 15.4; and

16 (4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this
17 rule.

18 The Legal Foundation determines whether a financial institution is an authorized financial
19 institution under this section. Upon a determination of compliance with all requirements of this
20 rule and ELC 15.4, the Legal Foundation must list a financial institution as an authorized
21 financial institution under section (a)(1). At any time, the Legal Foundation may request that a
22 listed financial institution establish or certify compliance with the requirements of this rule or
23 ELC 15.4. The Legal Foundation may remove a financial institution from the list of authorized
24 financial institutions upon a determination that the financial institution is not in compliance.

25 (d) **Requirements of All Trust Accounts**. All trust accounts established pursuant to RPC
26 1.15A(i) or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

RULE 15.7. TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

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4 or the National Credit Union Administration up to the limit established by law for those types of
5 accounts or be backed by United States Government Securities. Trust account funds must not be
6 placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured
7 investments.

8 **(e) IOLTA Accounts.** To qualify for Legal Foundation approval as an authorized financial
9 institution offering IOLTA accounts, in addition to meeting all other requirements set forth in
10 this Rule, a financial institution must comply with the requirements set forth in this section.

11 (1) *Interest Comparability.* For accounts established pursuant to RPC 1.15A, authorized
12 financial institutions must pay the highest interest rate generally available from the institutions to
13 its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum
14 balance or other account eligibility qualifications, if any. In determining the highest interest rate
15 generally available to its non-IOLTA customers, authorized financial institutions may consider
16 factors, in addition to the IOLTA account balance, customarily considered by the institution
17 when setting interest rates for its customers, provided that such factors do not discriminate
18 between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not
19 include that the account is an IOLTA account. An authorized financial institution may satisfy
20 these comparability requirements by selecting one of the following options:

21 (i) Establish the IOLTA account as the comparable interest-paying product; or

22 (ii) Pay the comparable interest rate on the IOLTA checking account in lieu of actually
23 establishing the comparable interest-paying product; or

24 (iii) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first
25 business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which
26 rate is deemed to be already net of allowable reasonable service charges or fees.

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

RULE 15.7. TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

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4 (2) *Remit Interest to Legal Foundation of Washington.* Authorized financial institutions must
5 remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal
6 Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the
7 report must show details about the account, including but not limited to the name of the lawyer,
8 law firm, LPO, or Closing Firm for whom the remittance is sent, the rate of interest applied, the
9 amount of service charges deducted, if any, and the balance used to compute the interest.
10 Interest must be calculated on the average monthly balance in the account, or as otherwise
11 computed in accordance with applicable state and federal regulations and the institution's
12 standard accounting practice for non-IOLTA customers. The financial institution must notify
13 each lawyer, law firm, LPO, or Closing Firm of the amount of interest remitted to the Legal
14 Foundation on a monthly basis on the account statement or other written report.

15 (3) *Reasonable account fees.* Reasonable account fees may only include per deposit
16 charges, per check charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees,
17 and a reasonable IOLTA account administration fee. No service charges or fees other than the
18 allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA
19 account. Any service charges or fees other than allowable reasonable fees must be the sole
20 responsibility of, and may be charged to, the lawyer, law firm, LPO, or Closing Firm maintaining
21 the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account
22 must not be deducted from interest or dividends earned on any other account or from the
23 principal.

24 (4) *Comparable Accounts.* Subject to the requirements set forth in sections (d) and (e),
25 an IOLTA account may be established as:
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(i) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or

(ii) A checking account paying preferred interest rates, such as a money market or indexed rates; or

(iii) A government interest-bearing checking account such as an account used for municipal deposits; or

(iv) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or

(v) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.

(5) Nothing in this rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

**RULES FOR ENFORCEMENT OF LIMITED PRACTICE
OFFICER CONDUCT (ELPOC)**

RULE 15.4. TRUST ACCOUNT OVERDRAFT NOTIFICATION

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3 **(a) Overdraft Notification Agreement Required.** To be authorized as a depository for
4 LPO trust accounts, Every a bank, credit union, savings and loan association, or qualified public
5 depository ~~referred to in LPORPC 1.12A(i)~~ will be approved as a depository for LPO trust
6 ~~accounts if it files~~ must file with the Legal Foundation of Washington (Legal
7 Foundation) ~~Association's Disciplinary Board~~ an agreement as provided for under ELC 15.4(a)
8 and (b). The Legal Foundation ~~Association's Disciplinary Board~~ annually publishes a list of
9 approved ~~maintains a list of~~ financial institutions authorized to establish LPO trust accounts and
10 publishes the list on a website maintained by the Legal Foundation for public information.

11 **(b)-(c)** [Unchanged.]
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