Rule 211.1.15-3. Client Trust Account Requirements

(a) Every lawyer in private practice in the Virgin Islands shall comply with Rule 211.1.15 by maintaining in the lawyer's own name, or in the name of the lawyer's law firm:

(1) A trust account or accounts, separate from any business and personal accounts and from any other fiduciary accounts that the lawyer or the law firm may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which the lawyer shall deposit, or shall cause the law firm to deposit, all funds entrusted to the lawyer's care and any advance payment of fees that have not been earned or advance payment of expenses that have not been incurred. A lawyer shall not be required to maintain a trust account when the lawyer is not holding such funds or payments.

(2) A business account or accounts into which the lawyer shall deposit, or cause the law firm to deposit, all funds received for legal services. Each business account, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a "business account," an "office account," an "operating account," or a "professional account," or with a similarly descriptive term that distinguishes the account from a trust account and a personal account.

(b) One or more of the trust accounts may be a Virgin Islands Interest on Lawyer Trust Account ("IOLTA") account. A "IOLTA account" is a pooled trust account for funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time, and as such would not be expected to earn interest or pay dividends for such clients or third persons in excess of the reasonably estimated cost of establishing, maintaining, and accounting for trust accounts for the benefit of such clients or third persons. Interest or dividends paid on an IOLTA account shall be paid to the Virgin Islands Interest On Lawyers Trust Account Board ("IOLTA Board") and the lawyer and the law firm shall have no right or claim to such interest or dividends.

(c) Each trust account, as well as all deposits slips and checks drawn thereon, shall be prominently designated as a "trust account," provided that each IOLTA account shall be designated as an "IOLTA Trust Account." A trust account may bear any additional descriptive designation that is not misleading.

(d) Except as provided in this paragraph (d), each trust account, including each IOLTA account, shall be maintained in a financial institution that is approved by the Office of Disciplinary Counsel pursuant to Rule 211.1.15-5. If each client and third person whose funds are in the account is informed in writing by the lawyer that Disciplinary Counsel will not be notified of any overdraft on the account, and with the informed consent of each such client and third person, a

trust account in which interest or dividends are paid to the clients or third persons need not be in an approved institution.

(e) Each trust account, including each IOLTA account, shall be an interest-bearing, or dividend-paying, insured depository account; provided that, with the informed consent of each client or third person whose funds are in the account, an account in which interest or dividends are paid to clients or third persons need not be an insured depository account. For the purpose of this provision, an "insured depository account" shall mean a government insured account at a regulated financial institution, on which withdrawals or transfers can be made on demand, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(f) The lawyer may deposit, or may cause the law firm to deposit, into a trust account funds reasonably sufficient to pay anticipated service charges or other fees for maintenance or operation of the account. Such funds shall be clearly identified in the lawyer's or law firm's records of the account.

(g) All funds entrusted to the lawyer shall be deposited in an IOLTA account unless the funds are deposited in a trust account described in paragraph (h) of this Rule. The foregoing requirement that funds be deposited in an IOLTA account does not apply in those instances where it is not feasible for the lawyer or the law firm to establish an IOLTA account for reasons beyond the control of the lawyer or law firm, such as the unavailability in the community of a financial institution that offers such an account; but in such case the funds shall be deposited in a trust account described in paragraph (h) of this Rule.

(h) If funds entrusted to the lawyer are not held in a IOLTA account, the lawyer shall deposit, or shall cause the law firm to deposit, the funds in a trust account that complies with all requirements of paragraphs (c), (d), and (e) of this Rule and for which all interest earned or dividends paid (less deductions for service charges or fees of the depository institution) shall belong to the clients or third persons whose funds have been so deposited. The lawyer and the law firm shall have no right or claim to such interest or dividends.

(i) If the lawyer or law firm discovers that funds of a client or third person have mistakenly been held in a IOLTA account in a sufficient amount or for a sufficiently long time so that interest or dividends on the funds being held in such account exceeds the reasonably estimated cost of establishing, maintaining, and accounting for a trust account for the benefit of such client or third person (including without limitation administrative costs of the lawyer or law firm, bank service charges, and costs of preparing tax reports of such income to the client or third person), the lawyer shall request, or shall cause the law firm to request, a refund from the Foundation, for the benefit of such client or third persons, of the interest or dividends in accordance with written

procedures that the Foundation shall publish and make available through its website and shall provide to any lawyer or law firm upon request.

(j) Every lawyer or law firm maintaining a trust account in the Virgin Islands shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by Rule 211.1.15-5 and shall indemnify and hold harmless the financial institution for its compliance with such reporting and production requirement.

Rule 211.1.15-4. Use of Trust Accounts

(a) A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a trust account. Cash withdrawals from trust accounts and checks drawn on trust accounts payable to "Cash" are prohibited. All trust account funds intended for deposit shall be deposited intact without deductions or "cash out" from the deposit, and the duplicate deposit slip that evidences the deposit shall be sufficiently detailed to identify each item deposited.

(b) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in the Virgin Islands or by a person supervised by such lawyer. Such withdrawals and transfers may be made only by authorized bank or wire transfer or by check payable to a named payee. Only a lawyer admitted to practice law in the Virgin Islands or a person supervised by such lawyer shall be an authorized signatory on a trust account.

(c) No less than quarterly, a lawyer admitted to practice law in the Virgin Islands or a person supervised by such a lawyer shall reconcile the trust account records both as to individual clients or other persons and in the aggregate with the bank statements issued by the bank in which the trust account is maintained.

Rule 211.1.15-5. Approved Institutions

(a) This Rule applies to each trust account that is subject to Rule 211.1.15-3, other than a trust account that is maintained in other than an approved financial institution pursuant to the second sentence of Rule 211.1.15-3(d).

(b) Each trust account shall be maintained at a financial institution that is approved by the Office of Disciplinary Counsel, pursuant to the provisions and conditions contained in this Rule. The Office of Disciplinary Counsel shall maintain a list of approved financial institutions, which it shall renew not less than annually. Offering a trust account or an IOLTA account is voluntary for financial institutions.

(c) The Office of Disciplinary Counsel shall approve a financial institution for use for lawyers' trust accounts, including IOLTA accounts, if the financial institution files with the Disciplinary Counsel an agreement, in a form provided by the Office of Disciplinary Counsel, with the following provisions and on the following conditions:

(1) The financial institution does business in the Virgin Islands;

(2) The financial institution agrees to report to the Office of Disciplinary Counsel in the event a properly payable trust account instrument is presented against insufficient funds, irrespective-of whether the instrument is honored. That agreement shall apply to all branches of the financial institution and shall not be canceled except on 30 days' notice in writing to the Disciplinary Counsel.

(3) The financial institution agrees that all reports made by the financial institution shall be in the following format: (i) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (ii) in the case of an instrument that is presented against insufficient funds but that is honored, the report shall identify the financial institution, the lawyer or law firm for whom the account is maintained, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Report of a dishonored instrument shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If no such time is provided by law for notice of dishonor, or if the financial institution has honored an instrument presented against insufficient funds, then the report shall be made within five banking days of the date of presentation of the instrument.

(4) The financial institution agrees to cooperate fully with the Office of Disciplinary Counsel and to produce any trust account records on receipt of a subpoena for the records issued by the Disciplinary Counsel in connection with any proceeding pursuant to Supreme Court Rules 207 or 212. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the IOLTA program.

(5) The financial institution agrees to cooperate with the IOLTA program and shall offer an IOLTA account to any lawyer or law firm who wishes to open one.

(6) With respect to IOLTA accounts, the financial institution agrees:

(A) To remit electronically to IOLTA monthly interest or dividends, net of

allowable reasonable IOLTA fees as defined in subparagraph (c)(10) of this Rule, if any; and

(B) To transmit electronically with each remittance to IOLTA a statement showing, as to each IOLTA account, the name of the lawyer or law firm on whose account the remittance is sent; the account number; the remittance period; the rate or rates of interest or dividends applied; the account balance or balances on which the interest or dividends are calculated; the amount of interest or dividends paid; the amount and type of fees, if any, deducted; the amount of net earnings remitted; and such other information as is reasonably requested by the Foundation.

(7) The financial institution agrees to pay on any IOLTA account not less than (i) the highest interest or dividend rate generally available from the financial institution on non-IOLTA accounts when the IOLTA account meets the same eligibility requirements, if any, as the eligibility requirement for non-IOLTA accounts; or (ii) the rate set forth in subparagraph (c)(9) below. In determining the highest interest or dividend rate generally available from the financial institution to its non-IOLTA customers, the financial institution may consider factors customarily considered by the financial institution when setting interest or dividend rates for its non-IOLTA accounts, including account balances, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts. The financial institution may choose to pay on an IOLTA account the highest interest or dividend rate generally available on its comparable non-IOLTA accounts in lieu of actually establishing and maintaining the IOLTA account in the comparable highest interest or dividend rate product.

(8) An IOLTA account may be established by a lawyer or law firm and a financial institution as: (A) A checking account paying preferred interest rates, such as market-based or indexed rates;

(B) A public funds interest-bearing checking account, such as an account used for other non-profit organizations or government agencies;

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

(D) A business checking account with an automated investment feature in overnight daily financial institution repurchase agreements or money market funds. A daily financial institution repurchase agreement shall be fully collateralized by U. S. Government Securities (meaning U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States government) and may be established only with an approved institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. A

"money market fund" is a fund maintained as a money market fund by an investment company registered under the Investment Company Act of 1940, as amended, which fund is qualified to be held out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in U.S. Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

(9) In lieu of a rate set forth in paragraph (c)(7)(i), the financial institution may elect to pay on all deposits in its IOLTA accounts, a bench mark rate, which the IOLTA Board is authorized to set periodically, but not more frequently than every six months, to reflect an overall comparable rate offered by financial institutions in the Virgin Islands net of allowable reasonable IOLTA fees. Election of the benchmark rate is optional, and financial institutions may choose to maintain their eligibility by paying the rate set forth in paragraph (c)(7)(i).

(10) "Allowable reasonable IOLTA fees" are per-check charges, per-deposit charges, fees in lieu of minimum balances, federal deposit insurance fees, sweep fees, and reasonable IOLTA account administrative fees. The financial institution may deduct allowable reasonable IOLTA fees from interest or dividends earned on an IOLTA account, provided that such fees (other than IOLTA account administrative fees) are calculated and imposed in accordance with the approved institution's standard practice with respect to comparable non-IOLTA accounts. The financial institution agrees not to deduct allowable reasonable IOLTA fees accrued on one IOLTA account in excess of the earnings accrued on the IOLTA account for any period from the principal of any other IOLTA account or from interest or dividends accrued on any other IOLTA account. Any fee other than allowable reasonable IOLTA fees are the responsibility of, and the financial institution may charge them to, the lawyer or law firm maintaining the IOLTA account.

(11) Nothing contained in this Rule shall preclude the financial institution from paying a higher interest or dividend rate on an IOLTA account than is otherwise required by the financial institution's agreement with the Office of Disciplinary Counsel or from electing to waive any or all fees associated with IOLTA accounts.

(12) Nothing in this Rule shall be construed to require the Office of Disciplinary Counsel or any lawyer or law firm to make independent determinations about whether a financial institution's IOLTA account meets the comparability requirements set forth in paragraph (c)(7). The IOLTA Board will make such determinations and at least annually will inform the Office of Disciplinary Counsel of the financial institutions that are in compliance with the comparability provisions of this Rule.

(13) Each approved financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule. The agreement entered into by a financial institution with the Office of Disciplinary Counsel shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

Rule 211.1.15-6. IOLTA Program Administration

(a) There is hereby created the Virgin Islands Interest On Lawyers Trust Account Board ("IOLTA Board") which is hereby designated as the entity to organize and administer the IOLTA program established by Rule 211.1.15-3. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court to serve staggered three-year terms. At least three of the appointments shall be made from a list provided to the Supreme Court by the Virgin Islands Bar Association in accordance with its own rules and regulations. With respect to these appointments the Virgin Islands Bar Association shall submit at least three names to the Supreme Court for each vacancy, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three-year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme
Court.

(b) The IOLTA Board shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court. The IOLTA Board shall:

(1) receive the net earnings from IOLTA accounts established in accordance with Rule 211.1.15-3 and make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.

(2) prepare an annual audited statement of its financial affairs and submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program and the IOLTA Board's proposed annual budget, designating the uses to which IOLTA program funds are recommended.

(3) distribute and/or expend IOLTA Funds in accordance with the plan of distribution approved by the Supreme Court; provided, however, that IOLTA program funds may only be used for the following purposes:

(i) delivery of civil legal assistance to the poor and disadvantaged in the Virgin Islands by non-profit corporations described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(ii) educational legal clinical programs and internships in the Virgin Islands;

(iii) administration and development of the IOLTA program in the Virgin Islands; and

(iv) the administration of justice in the Virgin Islands.

(4) maintain proper records of all IOLTA program receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant selected by the Board. The Board shall annually cause to be presented to the Supreme Court a reviewed or audited financial statement of its IOLTA program receipts and expenditures for the prior year. The report shall not identify any clients of lawyers or law firms or reveal confidential information. The statement shall be filed with the Clerk of the Supreme Court and the Board of Governors of the Virgin Islands Bar Association and a summary thereof shall be transmitted by the Bar Association to its members no later than 30 days after the statement has been filed by the IOLTA Board.

(c) The members of the Board shall administer the IOLTA program without compensation, but may be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties, and shall be indemnified by the IOLTA Board against any liability or expense arising directly or indirectly out of the good faith performance of their duties.

(d) The IOLTA Board shall monitor attorney compliance with the provisions of this rule and periodically report to the Supreme Court those attorneys not in compliance with the provisions of Rule 211.1.15 to 211.1.15-6.

(e) In the event the IOLTA program or its administration by the IOLTA Board is terminated by order of the Supreme Court, all assets of the IOLTA program, including any program funds then on hand, shall be transferred in accordance with the order of the Supreme Court; provided, such transfer shall be to an entity which will not violate the requirements the IOLTA Board must observe regarding transfer of its assets in order to retain its tax-exempt status under the Internal Revenue Code of 1986, as amended, or similar future provisions of law.