RULE 1.15. SAFEKEEPING PROPERTY (without comments)

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit his or her own funds reasonably sufficient to maintain a nominal balance in a client trust account.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Except as provided in paragraph (g) of this rule, a lawyer or law firm shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time so that they could not earn income for the client in excess of the costs incurred to secure such income (hereinafter sometimes referred to as an "IOLTA account") in compliance with the following provisions:

(1) Client funds shall be deposited in a lawyer's or law firm's IOLTA account unless the funds can earn income for the client in excess of the costs incurred to secure such income. A lawyer or law firm shall establish a separate interest-bearing trust account for clients' funds which are neither nominal in amount nor to be held for a short period of time and which could earn income for the client in excess of costs for a particular client or client's matter. All of the interest on such account, net of any transaction costs, shall be paid to the

client, and no earnings from such account shall be made available to a lawyer or law firm.

(2) No earnings from such an IOLTA account shall be made available to a lawyer or law firm.

(3) The IOLTA account shall include all clients' funds which are nominal in amount or to be held for a short period of time.

(4) An IOLTA account may be established with any financial institution (i) authorized by federal or state law to do business in Indiana, (ii) insured by the Federal Deposit Insurance Corporation or its equivalent, and (iii) approved as a depository for trust accounts pursuant to *Indiana Admission and Discipline Rules*, Rule 23, Section 29. Funds in each IOLTA account shall be subject to withdrawal upon request and without delay and without risk to principal by reason of said withdrawal.

(5) Participating financial institutions shall maintain IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account. All interest earned net of fees or charges shall be remitted to the Indiana Bar Foundation (the "Foundation"), which is designated in paragraph (i) of this rule to organize and administer the IOLTA program, and the depository institution submits reports thereon as set forth below.

(6) Lawyers or law firms depositing client funds in an IOLTA account established pursuant to this rule shall, on forms approved by the Foundation, direct the depository institution:

(A) to remit all interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, solely to the Foundation. The depository institution may remit the interest or dividends on all of its IOLTA accounts in a lump sum; however, the depository institution must provide, for each individual IOLTA account, the

information to the lawyer or law firm and to the Foundation required by subparagraphs (f)(6)(B) and (f)(6)(C) of this rule;

(B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and such other information as is reasonably required by the Foundation;

(C) to transmit to the depositing lawyer or law firm a periodic account statement for the IOLTA account reflecting the amount of interest paid to the Foundation, the rate of interest applied, the average account balance for the period for which the interest was earned, and such other information as is reasonably required by the Foundation; and

(D) to waive any reasonable service charge that exceeds the interest earned on any IOLTA account during a reporting period ("excess charge"), or bill the excess charge to the Foundation.

(7) Any IOLTA account which has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of time may, at the discretion of the Foundation, be exempted from and removed from the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use the Foundation's tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the property of clients and third persons separately, as required above, in a non-interest bearing account.

(8) The IOLTA program will issue refunds when interest has been remitted in error, whether the error is the bank's or the lawyer's. Requests for refunds must be submitted in writing by the bank, the lawyer, or the law firm on a timely basis, accompanied by documentation that confirms the amount of interest paid to the IOLTA program. As needed for auditing purposes, the IOLTA program may request additional documentation to support the request. The refund will be remitted to the appropriate financial institution for transmittal at the lawyer's direction after appropriate accounting and reporting. In no event will the refund exceed the amount of interest actually received by the IOLTA program.

(9) All interest transmitted to the Foundation shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by the Foundation and approved at least annually by the Supreme Court of Indiana, for the following purposes:

(A) to pay or provide for all costs, expenses and fees associated with the administration of the IOLTA program;

(B) to establish appropriate reserves;

(C) to assist or establish approved pro bono programs as provided in Rule 6.5;

(D) for such other programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.

(10) The information contained in the statements forwarded to the Foundation under subparagraph (f)(6) of this rule shall remain confidential and the provisions of Rule 1.6 (Confidentiality of Information), are not hereby abrogated; therefore, the Foundation shall not release any information contained in any such statement other than as a compilation of data from such statements, except as directed in writing by the Supreme Court.

(11) The Foundation shall have full authority to and shall, from time to time, prepare and submit to the Supreme Court for approval, forms, procedures, instructions and guidelines necessary and appropriate to implement the provisions set forth in this rule and, after approval thereof by the Court, shall promulgate same.

(g) Every lawyer admitted to practice in this State shall annually certify to this Court, pursuant to Ind.Admis.Disc.R. 23(21), that all client funds which are nominal in amount or to be held for a short period of time by the lawyer or the lawyer's law firm so that they could not earn income for the client in excess of the costs incurred to secure such income are held in an IOLTA account, or that the lawyer is exempt because:

(1) the lawyer or law firm's client trust account has been exempted and removed from the IOLTA program by the Foundation pursuant to subparagraph (f)(7) of this rule; or

(2) the lawyer:

(A) is not engaged in the private practice of law;

(B) does not have an office within the State of Indiana;

(C) is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;

ATTACHMENT A

(D) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(E) has been exempted by an order of general or special application of this Court which is cited in the certification; or

(F) compliance with paragraph (f) would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographic distance between the lawyer's principal office and the closest depository institution which is participating in the IOLTA program, or on other compelling and necessitous factors.

(h) In the exercise of a lawyer's good faith judgment in determining whether funds of a client can earn income in excess of costs a lawyer shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;

(3) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients;

(4) any other circumstances that affect the ability of the client's funds to earn a net return for the client; and

(3) the nature of the transaction(s) involved.

The determination of whether a client's funds are nominal or short-term so that they could not earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

(i) The Foundation is hereby designated as the entity to organize and administer the IOLTA program established by paragraph (f) of this rule in accordance with the following provisions:

(1) The Board of Directors of the Foundation (the "Board") shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court.

ATTACHMENT A

(2) The Board shall receive the net earnings from IOLTA accounts established in accordance with paragraph (f) of this rule and shall make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.

(3) The Board shall, by grants, appropriations and other appropriate measures, make disbursements from the IOLTA program funds, including current and accumulated net earnings, in accordance with the plan of distribution approved by the Supreme Court from time to time referenced in subparagraph (f)(8) of this rule.

(4) The Board shall 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 a summary thereof shall be published in the next available issue of one or more state-wide publications for attorneys, such as *Res Gestae* and *The Indiana Lawyer*.

(5) The president and other 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 Foundation against any liability or expense arising directly or indirectly out of the good faith performance of their duties.

(6) The 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 1.15.

(7) In the event the IOLTA program or its administration by the Foundation is terminated, 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 terminating the IOLTA program or its administration by the Foundation; provided, such transfer shall be to an entity which will not violate the requirements the Foundation 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.

Amended Oct. 22, 1997, effective Feb. 1, 1998. Amended and effective Sept. 30, 1998. Amended and effective Oct. 29, 1999; amended Sep. 30, 2004, effective Jan. 1, 2005; amended February 9, 2005, effective July 1, 2005.

ATTACHMENT A

ADMISSION AND DISCIPLINE RULE 23

DISCIPLINARY COMMISSION AND PROCEEDINGS

Section 29. Maintenance Of Trust Funds In Approved Financial Institutions; Overdraft Notification.

(a) Clearly Identified Trust Accounts In Approved Financial Institutions And Related Recordkeeping Requirements.

(1) Attorneys shall deposit all funds held in trust in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts" and shall inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Commission.

(2) Every attorney shall maintain and preserve for a period of at least five (5) years, after final disposition of the underlying matter, the records of trust accounts, including checkbooks, canceled checks, check stubs, written withdrawal authorizations, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property held in trust.

(3) The "ledger" required by this rule shall set forth a separate record of each trust, client or beneficiary, the source of all funds deposited in that account, the names of all persons for whom the funds are, or were, held, the amount of such funds, the description and the amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed.

(4) All receipts shall be deposited intact, funds shall not be commingled with other funds of the attorney or firm, and records or deposits shall be sufficiently detailed to identify each item.

(5) Withdrawals shall be based upon a written withdrawal authorization stating the amount of the withdrawal, the purpose of the withdrawal, and the payee. The authorization shall contain the signed approval of an attorney. Withdrawals shall be made only by check payable to a named payee and not to "cash", or by wire transfer. Wire transfers shall be authorized by written withdrawal authorization and evidenced by a document from the financial institution indicating the date of the transfer, the payee and the amount.

(6) Only an attorney admitted to practice law in this jurisdiction or his or her designee shall be an authorized signatory on the account.

(7) Records required by this rule may be maintained by electronic, photographic, computer or other media provided they otherwise comply with this rule and provided further that printed copies can be produced.

(8) Upon dissolution of any partnership of attorneys or of any professional corporation of attorneys, the partners or shareholders shall make appropriate written arrangements for the maintenance of the records specified under this rule.

(9) Upon the disposition of a law practice, appropriate written arrangements for the maintenance of the records specified in this rule shall be made.

* * *

ATTACHMENT B

ADMISSION AND DISCIPLINE RULE 23.

DISCIPLINARY COMMISSION AND PROCEEDINGS

Section 29. Maintenance Of Trust Funds In Approved Financial Institutions; Overdraft Notification.

* * *

(b) *Overdraft Notification Agreement Required.* A financial institution shall be approved as a depository for trust accounts if it files with the Commission an agreement, in a form provided by the Commission, to report to the Commission whenever any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Commission shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree so to report. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Commission.

(c) *Overdraft Reports.* The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(d) *Timing of Reports.* Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(e) *Consent By Attorneys.* Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(f) *Costs.* Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

(g) *Definitions.* For purposes of this rule:

(1) "Financial institution" means a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.

ATTACHMENT C

(2) "Properly payable" means an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.
(3) "Notice of dishonor" means the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.
(4) "Trust account" means any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.

ATTACHMENT C

ADMISSION AND DISCIPLINE RULE 23.

DISCIPLINARY COMMISSION AND PROCEEDINGS

Section 30. Audit of Trust Accounts

(a) *Generally.* Whenever the Executive Secretary has probable cause to believe that a trust account of an attorney contains, should contain, or has contained funds belonging to a client that have not been properly maintained or properly handled pursuant to Section 28, the Executive Secretary shall request the approval of the Commission to audit the accuracy and integrity of all trust accounts maintained by the attorney. In the event that the Commission approves, the Executive Secretary shall proceed to audit the accounts.

(b) *Confidentiality.* Investigations, examinations, and audits shall be conducted so as to preserve the private and confidential nature of the attorney's records insofar as is consistent with these rules.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION
RULES GOVERNING
ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING

INTRODUCTION

The following rules and procedures, issued pursuant to the authority granted to the Indiana Supreme Court Disciplinary Commission by the Supreme Court of the State of Indiana in Admission and Discipline Rule 23, Sections 24 and 29(b), govern the administration of an attorney trust account overdraft reporting program in the State of Indiana.

Rule 1. Definitions

As used herein:

A. "Financial institution" means a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.
B. "Trust account" means any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.
C. "IOLTA (Interest on Lawyer Trust Account)" means an attorney trust account in a financial institution pursuant to Professional Conduct Rule 1.15(f).
D. "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.

Adopted Dec. 23, 1996, effective July 1, 1997; amended effective Apr. 20, 2005.

Rule 2. Approval of Financial Institutions

A. Indiana Admission and Discipline Rule 23, Section 29(a)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached hereto as Exhibit A, whereby it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust account containing insufficient funds, irrespective of whether or not the instrument is honored.
B. The written agreement of any financial institution is binding upon all branches of the financial institution.

C. The Disciplinary Commission will maintain a public listing of all approved financial institutions and will publish the same each year in the December issue of Res Gestae, the monthly journal of the Indiana State Bar Association. The names of approved financial institutions will be available at other times by written or telephone inquiry to the Disciplinary Commission.
D. The written agreement of any financial institution will continue in full force and effect and be binding upon the financial institution until such time as the financial institution gives thirty (30) days notice of cancellation in writing to the Disciplinary Commission, or until such time as its approval is revoked by the Disciplinary Commission.

Adopted Dec. 23, 1996, effective July 1, 1997.

Rule 3. Disapproval and Revocation of Approval of Financial Institutions

A. A financial institution shall not be approved in the first instance as a depository for trust accounts unless it submits to the Disciplinary Commission an agreement in the form attached hereto as Exhibit A that is binding upon all of its branches and signed by an officer with authority to act on behalf of the institution. The refusal of the Disciplinary Commission to approve a financial institution due to its failure or refusal to submit an executed written agreement in the form attached as **Exhibit A** is not appealable or otherwise subject to challenge.
B. The approval of a financial institution shall be revoked and the institution shall be removed by the Disciplinary Commission from the list of approved financial institutions if it engages in a pattern of neglect or acts in bad faith in not complying with its obligations under the written agreement.
C. The Executive Secretary shall communicate any decision to revoke the approval of a financial institution in writing by certified mail to the institution in care of the officer who signed the written agreement. The notice of revocation shall include a specific statement of facts setting forth the reasons in support of the revocation decision. Thereafter, the financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to file a written request with the Executive Secretary seeking reconsideration of the revocation decision. In the event an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Secretary or designee shall act to defend the revocation decision. The hearing officer, after taking evidence, shall report findings and conclusions for review by the full Disciplinary Commission, whose decision in the matter shall be final. The approved status of a financial institution shall continue until such time as the reconsideration process is final.
D. Once the approval of a financial institution has been revoked, the institution shall not thereafter be approved as a depository for trust accounts until such time as the institution petitions the Disciplinary Commission for approval and includes within the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

Adopted Dec. 23, 1996, effective July 1, 1997.

ATTACHMENT E

Rule 4. Duty to Notify Financial Institutions of Trust Accounts

A. Every attorney shall notify each financial institution in which he or she maintains any trust account, as defined above, that the account is subject to the provisions of overdraft reporting. For each trust account, a lawyer or law firm shall maintain a copy of each such notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.
   1) For IOLTA accounts as required by Professional Conduct Rule 1.15(f), notice by the attorney to the financial institution that the account is an IOLTA account shall constitute notice to the financial institution that the account is subject to overdraft reporting to the Disciplinary Commission.
   2) For non-IOLTA trust accounts as permitted by Professional Conduct Rule 1.15(h), every attorney shall notify each financial institution that the account is subject to overdraft reporting to the Disciplinary Commission by submitting a notice in the form attached as **Exhibit B** for each such account to the financial institution in which the account is maintained.

B. In the case of a law firm that maintains one or more trust accounts in the name of the firm, only one notice from a member of the firm need be provided for each such trust account. However, every member of the firm is responsible for insuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.

Adopted Dec. 23, 1996, effective July 1, 1997; amended effective Apr. 20, 2005.

Rule 5. Duty of Financial Institutions

A. Each financial institution shall report to the Indiana Supreme Court Disciplinary Commission any properly payable attorney IOLTA or non-IOLTA trust account instrument presented against insufficient funds as set forth in Indiana Admission and Discipline Rule 23, Section 29(b) through (g) and these rules irrespective of whether the instrument is honored.

B. No financial institution shall be responsible for forwarding a report of any overdraft on an account about which it has not received notice pursuant to Rule 4(A)(1) or (2), above, from the depositor attorney that it is a trust account subject to overdraft reporting.

Adopted effective Apr. 4, 2005.

Rule 6. Processing of Overdraft Reports by the Commission

A. Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the Executive Secretary shall send a letter to the depositor attorney seeking a documented explanation of the overdraft within ten (10) business days. This letter is a demand for information, noncompliance with which is a violation of Professional Conduct Rule 8.1(b). If bank error is claimed by the attorney, a written statement from a bank officer must be submitted with the explanation. If office error is claimed by the attorney, affidavits from the appropriate office personnel must be submitted with the explanation.

B. If the depositor attorney does not provide a timely explanation or if the explanation provided does not document the existence of bank error or isolated office inadvertence, the Executive Secretary shall present the matter to the full Disciplinary Commission to consider the issuance of a grievance pursuant to Indiana Admission and Discipline Rule 23, Section 10(a). Thereafter, the procedures of Admission and Discipline Rule 23 for the processing of grievances shall apply.

Adopted Dec. 23, 1996, effective July 1, 1997; amended effective Apr. 4, 2005.

Rule 7. Miscellaneous Matters

A. Any attorney who is admitted to practice law in another jurisdiction having attorney trust account overdraft notification rules that are substantially similar to the Indiana rules governing attorney trust account overdraft notification may apply to the Disciplinary Commission for exemption from compliance with these rules to the extent that the attorney maintains trust funds belonging to Indiana clients in a trust account in a foreign jurisdiction that is subject to overdraft reporting under the rules of that jurisdiction. Any such application for exemption shall be in writing and shall include:
   1) a copy of the rules from the other jurisdiction governing attorney trust account overdraft notification;
   2) a copy of the agreement between the applicable financial institution and the agency in the foreign jurisdiction that administers the overdraft notification program verifying that the financial institution participates in the foreign jurisdiction's attorney trust account notification program;
   3) a list of the names of all financial institutions, account names, and account numbers of all trust accounts maintained by the attorney in the foreign jurisdiction; and
   4) a certification under oath by the attorney that each such foreign trust account has been properly identified to the foreign financial institution as an attorney trust account subject to overdraft reporting.

   Any attorney seeking exemption under the terms of this provision is under a continuing obligation to immediately report any changes in the information provided to the Disciplinary Commission.

B. Admission and Discipline Rule 23, Section 29(a)(6) contemplates that a designee who is not admitted to practice law in Indiana may be an authorized signatory on a trust account. In the event an attorney or law firm delegates trust account signature authority to any person who is not admitted to practice law in Indiana, such delegation shall be accompanied by specific safeguards, including at a minimum the following:
   1) All periodic account activity statements from the financial institution shall be delivered unopened to and reviewed by an attorney having supervisory authority over the non-attorney signatory; and
   2) Responsibility for conducting periodic reconciliations between internal trust account records and periodic trust account activity statements from the financial institution shall be vested in a person who has no signature authority over the trust account.

C. All communications from financial institutions to the Disciplinary Commission shall be directed to: Executive Secretary, Indiana Supreme Court Disciplinary Commission, 30 South Meridian Street, Suite 850, Indianapolis, Indiana 46204.

Adopted Dec. 23, 1996, effective July 1, 1997; amended Dec. 4, 1998, effective Jan. 1, 1999; amended effective Apr. 20, 2005

ATTACHMENT E

TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT

TO: INDIANA SUPREME COURT DISCIPLINARY COMMISSION
30 south Meridian Street
Suite 850
Indianapolis, Indiana 46204

The undersigned, being a duly authorized officer of _____, a financial institution doing business in the State of Indiana, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to be approved to receive attorney trust accounts in the State of Indiana. In consideration of the Indiana Supreme Court Disciplinary Commission's approval of the named financial institution, the institution agrees to comply with the reporting requirements for such institution as set forth in Indiana Admission and Discipline Rule 23, § 29(b) through (g) and the Rules Governing Trust Account Overdraft Reporting promulgated by the Disciplinary Commission, as now in effect and as hereafter amended from time to time.

Specifically, the named financial institution agrees:

(1) To report to the Indiana Supreme Court Disciplinary Commission in the event it has actual notice that any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored. (This obligation applies to both IOLTA trust accounts under Indiana Professional Conduct Rule 1.15(f)(1) and non-IOLTA attorney trust accounts under Indiana Professional Conduct Rule 1.15(f)(1).)

(2) That all such reports shall be in substantially the following format:
   (a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and should include a copy of the dishonored instrument, if such a copy is normally provided to the depositor;
   (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the depositor attorney or law firm, the account number, the date of presentation for payment, the date paid, and the amount of the overdraft created thereby.

(3) That all such reports shall be made within the following time periods:
   (a) in the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;
   (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.

(4) To provide the Disciplinary Commission with the name and contact information of the financial institution's primary point of contact for matters pertaining to its responsibilities under this agreement, and to promptly update that contact information in the event it changes.

This agreement shall apply to all branches of the named financial institution and shall not be canceled except upon thirty (30) days notice in writing to the Executive Secretary, Indiana Supreme Court Disciplinary Commission, 30 South Meridian Street, Suite 850, Indianapolis, Indiana 46204.

Name, Address, and Telephone Number of Contact Person for Financial Institution:

_____

_____

_____

DATE:_____

_____
Signature of Authorized Official

CORPORATE

SEAL

_____
Printed or Typed Name of Authorized Official

_____
Title or Position of Authorized Official

ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____, 20___, before me, a Notary Public in and for the State of _____, personally appeared the above-named individual, known to me to be the person executing the foregoing instrument, and acknowledged and executed said instrument as his/her free and voluntary act and deed.

_____
Notary Public (signature)

_____
Notary Public (printed or typed)

My Commission Expires:_____ County of Residence:_____

ACCEPTANCE

The named financial institution is hereby approved by the Indiana Supreme Court Disciplinary Commission as a depository for trust accounts in the State of Indiana until such time as this agreement is canceled upon thirty (30) days' written notice to the Commission by the institution or is revoked by action of the Disciplinary Commission.

DATE: _____

_____
Executive Secretary, Indiana Supreme Court Disciplinary Commission

EXHIBIT A--ATTACHMENT E

ATTORNEY TRUST ACCOUNT NOTIFICATION

Name of Attorney _____ Attorney Number _____

Name of Law Firm _____

Business Address _____

City _____ State _____ Zip Code _____

Name of Financial Institution _____

Business Address _____

City _____ State _____ Zip Code _____

Name of Account _____

Account Number _____ _____ New _____ Existing

Type of Account:

_____ Trust _____ Guardian

_____ Escrow _____ Estate

_____ Other _____
(Please Describe)

The undersigned hereby certifies that he/she is an attorney licensed to practice law in the State of Indiana and that the information indicated above provided to his/her financial institution is accurate. This information is provided to permit the financial institution to report all overdraft or insufficient funds occurrences to the Indiana Supreme Court Disciplinary Commission pursuant to Indiana Admission and Discipline Rule 23, Section 29.

Date:_____

_____
Signature

EXHIBIT B--ATTACHMENT E