MARYLAND RULES OF PROCEDURE
TITLE 16 —COURTS, JUDGES, AND ATTORNEYS
CHAPTER 600—ATTORNEY TRUST ACCOUNTS

Rule 16-610. APPROVAL OF FINANCIAL INSTITUTIONS

a. Written Agreement to be Filed with Commission.

The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution that are subject to this Rule. The Commission may extend its approval of a previously approved financial institution for a reasonable period to allow the financial institution and the MLSC the opportunity to enter into a revised agreement that complies with this Rule.

b. Contents of Agreement.

1. Duties to be Performed.

The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

(A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds of any instrument drawn on the account.

(B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection b 1 (C) of this Rule.

(C) Use the following procedure for reports to Bar Counsel required under subsection b 1 (B) of this Rule:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.

(ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the name and address of the attorney or law firm maintaining the

account, the account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

(D) Pay interest on its IOLTA accounts at a rate no less than the highest non-promotional interest rate generally available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.

(i) An approved institution may satisfy the requirement described in subsection b 1 (D) of this Rule by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account Allowable Reasonable Fees as defined in subsection b 1 (d)(iii). This account may be any one of the following product option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the particular IOLTA account qualifies to be established as this type of account at the particular branch:

(a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including securities of government-sponsored entities;

(b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;

(c) any other suitable interest-bearing checking account offered by the approved institution to its non-IOLTA customers.

(ii) In lieu of the options provided in subsection b 1 (D)(i), an approved financial institution may: (a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a “safe harbor” rate that is equal to 55% of the Federal Funds Target Rate as reported in the Wall Street Journal on

the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection b 1 (D), but no fees may be deducted from the interest on a “safe harbor” rate account; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this “specified rate” account as agreed between MLSC and the financial institution.

(iii) “Allowable Reasonable Fees” means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep fees, plus a reasonable IOLTA account administrative fee. Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney's or law firm's clients, including fees for wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.

(iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described herein or electing to waive any fees and service charges on an IOLTA account.

(v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

Cross reference: Rule 16-607 b 1.

(E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule 16-722 (Audit of Attorney Accounts and Records).

2. Service Charges for Performing Duties Under Agreement.

Nothing in the agreement shall preclude an approved financial institution from charging the attorney or law firm maintaining an attorney trust account (1) a reasonable fee for providing any notice or record pursuant to the agreement or (2) fees and service charges other than the “Allowable Reasonable Fees” listed in subsection b 1 (D)(iii) of this Rule.

c. Termination of Agreement.

The agreement shall terminate only if:

1. the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or

2. the financial institution gives thirty days' notice in writing to the MLSC and to Bar Counsel that the institution intends to terminate the agreement and its status as an approved financial institution on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or

3. after a complaint is filed by the MLSC or on its own initiative, the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement and the Commission's approval of the institution are terminated.

d. Exceptions

Within 15 days after service of the notice of termination pursuant to subsection c 3 of this Rule, the institution may file with the Court of Appeals exceptions to the decision of the Commission. The institution shall file eight copies of the exceptions which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by an order of the Court.

Source: This Rule is derived from former Rule BU10.

REPORTER'S NOTE

The Maryland Legal Services Corporation (“MLSC”) has been concerned that some financial institutions in Maryland have not been offering on IOLTA accounts a rate of interest that is comparable to the rate offered on similar non-IOLTA accounts.

The Rules Committee heard from representatives of the Maryland Bankers' Association and the MLSC, and reviewed IOLTA interest “comparability” provisions in effect in other States. The Committee recommends amendments to Rule 16-610 a and b 1 (D) to require a financial institution that wishes to be an “approved financial institution,” as defined in Rule 16-602 a, to

enter into an agreement to pay interest on IOLTA accounts computed in accordance with the provisions of this Rule.

The Committee also recommends the addition of a sentence to subsection c 3, providing for notification to a financial institution of termination of approval if the Attorney Grievance Commission finds that the institution has failed or refused to perform a duty required by the agreement.

Additionally, the Committee recommends a new section d, providing a mechanism for the financial institution to file exceptions to a decision by the Attorney Grievance Commission to terminate its approval of a financial institution.