

§ 4705.09. Depositing client funds.

Ohio Statutes

Title 47. OCCUPATIONS - PROFESSIONS

Chapter 4705. ATTORNEYS

Current with acts signed by the Governor as of August 1, 2018

§ 4705.09. Depositing client funds

- (A) (1) (a) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing client funds held by the attorney, firm, or association that are nominal in amount or are to be held by the attorney, firm, or association for a short period of time, with any bank, savings bank, or savings and loan association that is authorized to do business in this state and is insured by the federal deposit insurance corporation or the successor to that corporation, or any credit union insured by the national credit union administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751, or insured by a credit union share guaranty corporation established under Chapter 1761. of the Revised Code. Each account established under this division shall be in the name of the attorney, firm, or association that established and is maintaining it and shall be identified as an IOLTA or an interest on lawyer's trust account. The name of the account may contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, firm, or association.
- (b) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing funds received by a client, in the client's name as fiduciary of a trust or estate, with any bank, savings bank, or savings and loan association that is authorized to do business in this state and is insured by the federal deposit insurance corporation or the successor to that corporation, or any credit union insured by the national credit union administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751, or insured by a credit union share guaranty corporation established under Chapter 1761. of

the Revised Code. Each account established under this division shall be in the name of the attorney, firm, or association that established and is maintaining it and shall be identified as an IOLTA or an interest on lawyer's trust account. The name of the account shall contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, firm, or association and to distinguish it from an IOLTA established and maintained under division (A)(1)(a) of this section. No funds received by a client, in the client's name as fiduciary of a trust or estate, shall be deposited into an IOLTA established under division (A)(1)(b) of this section unless the deposit has been approved by the probate court under section 2109.41 of the Revised Code.

Notwithstanding any contrary provision in Chapter 2109. of the Revised Code, a probate court examining a trust or estate may only access the account information of an IOLTA created under this section for purposes of obtaining information related to that particular trust or estate and shall not access records of the IOLTA that pertain to assets of any other estate or trust held in the IOLTA.

- (2) Each attorney who receives funds belonging to a client shall do one of the following:
 - (a) Establish and maintain one or more interest-bearing trust accounts in accordance with division (A)(1) of this section or maintain one or more interest-bearing trust accounts previously established in accordance with that division, and deposit all client funds held that are nominal in amount or are to be held by the attorney for a short period of time in the account or accounts;
 - (b) If the attorney is affiliated with a law firm or legal professional association, comply with division (A)(2)(a) of this section or deposit all client funds held that are nominal in amount or are to be held by the attorney for a short period of time in one or more interest-bearing trust accounts established and maintained by the firm or association in accordance with division (A)(1) of this section.
- (3) No funds belonging to any attorney, firm, or legal professional association shall be deposited in any interest-bearing trust account established under division (A)(1) or (2) of this section, except that funds sufficient to pay or enable a waiver of depository institution service charges on the account shall be deposited in the account and other funds belonging to the attorney, firm, or association may be deposited as authorized by the Code of Professional Responsibility adopted by the supreme court. The determinations of whether funds held are nominal or more

than nominal in amount and of whether funds are to be held for a short period or longer than a short period of time rests in the sound judgment of the particular attorney. No imputation of professional misconduct shall arise from the attorney's exercise of judgment in these matters.

- (B) All interest earned on funds deposited in an interest-bearing trust account established under division (A)(1) or (2) of this section shall be transmitted to the treasurer of state for deposit in the legal aid fund established under section 120.52 of the Revised Code. No part of the interest earned on funds deposited in an interest-bearing trust account established under division (A)(1) or (2) of this section shall be paid to, or inure to the benefit of, the attorney, the attorney's law firm or legal professional association, the client or other person who owns or has a beneficial ownership of the funds deposited, or any other person other than in accordance with this section, section 4705.10, and sections 120.51 to 120.55 of the Revised Code.
- (C) No liability arising out of any act or omission by any attorney, law firm, or legal professional association with respect to any interest-bearing trust account established under division (A)(1) or (2) of this section shall be imputed to the depository institution.
- (D) The supreme court may adopt and enforce rules of professional conduct that pertain to the use, by attorneys, law firms, or legal professional associations, of interest-bearing trust accounts established under division (A)(1) or (2) of this section, and that pertain to the enforcement of division (A)(2) of this section. Any rules adopted by the supreme court under this authority shall conform to the provisions of this section, section 4705.10, and sections 120.51 to 120.55 of the Revised Code.

Cite as R.C. § 4705.09

History. Amended by 132nd General Assembly File No. TBD, HB 223, §1, eff. 3/23/2018.

Effective Date: 09-29-1995; 10-01-2005; 04-14-2005 .

§ 4705.10. Requirements for accounts.

Ohio Statutes

Title 47. OCCUPATIONS - PROFESSIONS

Chapter 4705. ATTORNEYS

Current through the 131st General Assembly

§ 4705.10. Requirements for accounts

- (A) All of the following apply to an interest-bearing trust account established under authority of section 4705.09 of the Revised Code :
- (1) All funds in the account shall be subject to withdrawal upon request and without delay, or as soon as is permitted by federal law;
 - (2) The rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by a person or law firm establishing the account if there is no impairment of the right to withdraw or transfer principal immediately.
 - (3) The depository institution shall be directed, by the person or law firm establishing the account, to do all of the following:
 - (a) Remit interest or dividends, whichever is applicable, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice, less reasonable service charges, to the treasurer of state at least quarterly for deposit in the legal aid fund established under section 120.52 of the Revised Code;
 - (b) Transmit to the treasurer of state, upon its request, to the Ohio Legal Assistance Foundation, and the depositing attorney, law firm, or legal professional association upon the attorney's, firm's, or association's request, at the time of each remittance required by division (A)(3)(a) of this section, a statement showing the name of the attorney for whom or the law firm or legal professional association for which the remittance is sent, the rate of interest applied, the accounting period, the net amount remitted to the treasurer of state for each account, the total remitted, the average account balance for each month of the period for which the report is made, and the amount deducted for service charges;

- (4) The depository institution shall notify the office of disciplinary counsel or other entity designated by the supreme court on each occasion when a properly payable instrument is presented for payment from the account, and the account contains insufficient funds. The depository institution shall provide this notice without regard to whether the instrument is honored by the depository institution. The depository institution shall provide the notice described in division (A)(4) of this section by electronic or other means within five banking days of the date that the instrument was honored or returned as dishonored. The notice shall contain all of the following:
 - (a) The name and address of the depository institution;
 - (b) The name and address of the lawyer, law firm, or legal professional association that maintains the account;
 - (c) The account number and either the amount of the overdraft and the date issued or the amount of the dishonored instrument and the date returned.
- (B)
- (1) The statements and reports of individual depositor information made under divisions (A)(3) and (4) of this section are confidential and shall be used only for purposes of administering the legal aid fund and for enforcement of the rules of professional conduct adopted by the supreme court.
 - (2) A depository institution may charge the lawyer, law firm, or legal professional association that maintains the account with fees associated with producing and mailing a notice required by division (A)(4) of this section but shall not deduct such fees from the interest earned on the account.

Cite as R.C. § 4705.10

History. Effective Date: 09-29-1995; 10-21-2005 .