

**APPENDIX A**  
**FOUNDATION'S PROPOSED CHANGES TO PROPOSED**  
**ARIZ. SUP. CT. R. 43(f)**

**(f) Pooled Trust Account; Separate Client Trust Account.**

1. Each trust account shall be at a regulated financial institution on which withdrawals or transfers can be made on demand, subject only to any notice period which the institution is required to reserve by law or regulation and, at the direction of the lawyer, invested to the extent practicable in the higher earning return of either:

A. An interest-bearing account insured by an agency of the United States government; or

B. United States Treasury obligations and repurchase agreements fully collateralized by such obligations, in the form of securities of, or other interests in, any no-load, open-end, management-type investment company, the shares of which may be redeemed on demand or readily sold, that is registered under the provisions of the Investment Company Act of 1940, as amended (54 Stat. 789; 15 U.S.C. § 80a-1 through 80a-64), that is rated in either of the highest two rating categories of a nationally recognized statistical rating organization, and that operates as a money market fund pursuant to the Investment Company Regulation § 270.2a-7, as amended, through a regulated financial institution's pooled agency account if appropriate, if both of the following are true:

(1) The portfolio of the investment company is limited to United States Treasury obligations and repurchase agreements fully collateralized by United States Treasury obligations.

(2) The investment company takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

A trust account shall be invested in a money market fund as described in subsection 1.B. above only if the dividend rate, net of all reasonable fees, exceeds the interest, net of all reasonable fees, that could be earned in an account described under subsection 1.A., as above.

2. A lawyer or law firm receiving client funds shall maintain a pooled interest-bearing or dividend-earning trust account for deposit of client funds ~~where the interest or dividends reasonably expected to be earned on each client's funds are nominal in amount~~ UNLESS THE FUNDS ARE EXPECTED TO EARN NET INCOME FOR THE CLIENT IN EXCESS OF THE COSTS INCURRED TO SECURE SUCH INCOME. The interest or dividends accruing on this account, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, shall be paid by the financial institution or investment company to the Arizona Foundation for Legal Services and Education, and shall be used solely for the following purposes: to pay the actual administrative costs of this interest or earnings on lawyers' trust accounts (IOLTA) program; to fund programs designed to assist in the delivery of legal services to the poor; to support law-related education programs designed to teach young people, educators and other adults about the law, the legal process and the legal system; to fund studies or programs designed to improve the administration of justice; and to maintain a reasonable reserve therefor.

3. All client funds shall be deposited in an account as specified in subsection 2 above unless they are deposited in:

A. A separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

B. A pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer or the law firm, which will provide for computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

4. In determining whether to use an account as specified in subsection 2 or an account as specified in subsection 3, a lawyer or law firm shall take into consideration the following factors:

~~A. The amount of interest or dividends which the funds would reasonably be expected to earn during the period they are to be deposited or invested;~~

~~B. The cost of establishing and administering the account, including the cost of the lawyer's services; and~~

~~C. The capability of financial institutions or investment companies reasonably available for deposit or investment of client funds to calculate and pay interest or dividends to individual clients.~~

A. THE AMOUNT OF THE FUNDS TO BE DEPOSITED;

B. THE EXPECTED DURATION OF THE DEPOSIT, INCLUDING THE LIKELIHOOD OF DELAY IN THE MATTER FOR WHICH THE FUNDS ARE HELD;

C. THE RATES OF INTEREST OR YIELD AT FINANCIAL INSTITUTIONS WHERE THE FUNDS ARE TO BE DEPOSITED;

D. THE COST OF ESTABLISHING AND ADMINISTERING A SEPARATE NON-IOLTA ACCOUNT FOR THE CLIENT'S BENEFIT, INCLUDING SERVICE CHARGES, THE COSTS OF THE LAWYER'S SERVICES, AND THE COSTS OF PREPARING ANY TAX REPORTS REQUIRED FOR INCOME ACCRUING TO THE CLIENT'S BENEFIT;

E. THE CAPABILITY OF FINANCIAL INSTITUTIONS TO CALCULATE AND PAY INCOME TO INDIVIDUAL CLIENTS; AND

F. ANY OTHER CIRCUMSTANCES THAT AFFECT THE ABILITY OF THE CLIENT'S FUNDS TO EARN A NET RETURN FOR THE CLIENT.

No disciplinary matter shall be pursued by the state bar against any lawyer or law firm solely by reason of the making of a good faith

determination of the appropriate account in which to deposit or invest client funds.

5. Lawyers or law firms depositing client funds in accounts as specified in subsection 2 above shall direct the depository institution or investment company:

A. To remit interest or dividends, net of any reasonable service or other charges or fees imposed by the institution or company in connection with the account, as computed in accordance with the institution's or company's standard accounting practice, at least quarterly, to the Arizona Foundation for Legal Services and Education, such institution or company being permitted to remit the interest and dividends on all such accounts to the Arizona Foundation for Legal Services and Education in one payment; and

B. To transmit with each remittance to the Arizona Foundation for Legal Services and Education a statement showing the name of the lawyer or law firm on whose account the remittance is sent, the rate of interest applied or the dividends earned, and any service or other charges and fees imposed, with a copy of such statement to be transmitted to the lawyer or law firm. The manner of statement shall be determined by the Foundation.