

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on May 23, 2025, the following order was made and entered:

RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO RULES 3.02, 4.04, 10.02, 10.09, AND 13.10 OF THE WEST VIRGINIA STATE BAR ADMINISTRATIVE RULES, No. 25-161

The Court has considered proposed amendments to Rules 3.02, 4.04, 10.02, 10.09, and 13.10 of the West Virginia State Bar Administrative Rules. The Court has jurisdiction to consider these amendments under Bylaw 11.01 and Article VIII, §§ 1 and 3 of the West Virginia Constitution.

Upon consideration and review, the Court is of the opinion that the following amendments be published for a period of public comment for thirty days. Comments may be filed in writing with the Office of the Clerk on or before June 23, 2025. Additions are indicated by underscoring, and deletions are indicated by strike-through.

WEST VIRGINIA STATE BAR ADMINISTRATIVE RULES

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Rule 3 Payment of Fees; Suspension; Reinstatement

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Rule 3.02 Penalty for nonpayment of membership fees

(a) *Active and active non-practicing members.* After the first day of September of each year, a penalty in an amount set by the Board, not less than \$200, shall be assessed to any active or active non-practicing member who is delinquent in their membership fees. The Executive Director shall notify all members in default in the payment of membership fees of their delinquency, that the penalty has attached, and that the member will be automatically suspended if the membership fee and penalty are not paid within sixty days of the mailing date of the notice. Such notice shall be given by ~~certified or registered mail~~ U.S. mail, addressed to such member at their mailing address of record.

(b) *Inactive members.* The State Bar is not required to send annual membership fee notices to inactive members who have failed to pay inactive membership fees for a period of three years. After the first day of September of the third year, the Executive Director shall notify each such

member of the delinquency in the payment of the membership fees, and that the member will be automatically suspended if the membership fees are not paid within sixty days.

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Rule 4 Financial Responsibility Disclosure; Suspension

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Rule 4.04 Penalty for nondisclosure

After the first day of September of each year, a penalty in an amount set by the Board, not less than \$200, shall be assessed to any active member who has not complied with the financial responsibility disclosure requirement. The Executive Director shall notify all noncompliant members that the penalty has attached because of their delinquency, and that the member will be automatically suspended if the disclosure requirement is not met and the penalty paid within sixty days after the mailing date of the notice. Such notice shall be given by ~~certified or registered mail, U.S. mail,~~ addressed to such member at their mailing address of record.

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Rule 10 Client Trust Accounts; IOLTA Program

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10.02 Obligation to maintain separate IOLTA trust account, reporting

(a) In accordance with Rule 1.15(f) of the Rules of Professional Conduct, a lawyer or law firm that receives client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds, at an eligible financial institution. The separate IOLTA trust account must comply with this rule and participate in the Interest on Lawyers Trust Accounts (IOLTA) Program administered by the West Virginia State Bar. On a yearly basis, each lawyer must provide an IOLTA report to the West Virginia State Bar, disclosing: (1) whether the lawyer is exempt under Rule 10.07; (2) whether the lawyer is a member of a law firm that maintains an IOLTA trust account; and, if applicable (3) the name of the financial institution, the routing number and the account number of the IOLTA trust account. ~~The West Virginia State Bar is authorized to assess an administrative penalty of two hundred dollars (\$200) to any lawyer who does not comply with the yearly reporting requirement.~~

(b) It is the duty of every active member – personally or through a registered firm administrator – to report within 10 days any changes to the IOLTA trust account that occur between the times at which annual reporting is required as set forth herein.

(c) After the first day of September of each year, an administrative penalty in an amount of \$200 shall be assessed to any active member who has not complied with the annual IOLTA disclosure requirement. The Executive Director shall notify all noncompliant members that the penalty has attached because of their delinquency, and that the member will be automatically suspended if the disclosure requirement is not met and the penalty paid within sixty days after the

mailing date of the notice. Such notice shall be given by U.S. mail, addressed to such member at their mailing address of record.

(d) If an active member fails to comply with the disclosure requirement within sixty days after the mailing date of the notice provided herein, they shall be automatically suspended from active membership in the State Bar and shall not further engage in the practice of law until they have been reinstated. The Executive Director shall give notice of such suspension to the Judges of the Courts of Record in the State, the Clerk of the Supreme Court of Appeals and such other courts, clerks, tribunals, or bodies – judicial, administrative, or executive – as the Board of Governors may designate. Notice of the suspension shall be given to the noncompliant member by certified or registered mail, addressed to the members at their mailing address of record.

(e) Whenever a member suspended solely for noncompliance with this reporting requirement has paid all accrued penalties and fees and has shown that the member is in compliance with the disclosure requirements and pertinent mandatory continuing legal education requirements, the member shall be automatically reinstated and the Executive Director shall thereupon give notice thereof to the judges, courts, clerks, tribunals, and bodies to which notice has been given of the suspension of such member for the noncompliance with disclosure. In addition to the penalty authorized by this Rule, a reinstatement fee in an amount set by the Board, not less than \$200, shall be added to the fees owed by all members who are suspended for non-compliance with the IOLTA reporting requirement.

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10.09 Disposition of IOLTA funds whose owners cannot be located or cannot be identified

(a) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure holds funds in an IOLTA account for a client or third party, and cannot locate that client or third party after four or more months of reasonable efforts to do so, it shall pay the funds to the West Virginia State Bar, while at the same time notifying the Executive Director, under oath, of the efforts made to locate the owner, whether client or third party. and the amount of the funds is \$500 or less, the funds shall be remitted directly to the West Virginia State Bar. If the amount of the funds is more than \$500, the lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall petition the Supreme Court of Appeals for leave to pay the funds to the West Virginia State Bar, together with a statement, under oath, of the efforts made to locate the owner whether a client or a third party.

(b) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure cannot identify the owner or owners of funds in an IOLTA account, whether client or third party, after four or more months of reasonable efforts to do so, and the amount of the funds is \$500 or less, the funds shall be remitted directly to the West Virginia State Bar. If the amount of the funds is more than \$500, the lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall petition the Supreme Court of Appeals for leave to pay the funds to the West Virginia State Bar, together with a statement, under oath, of the efforts made to identify and locate the owner or owners.

(c) The executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall have a continuing responsibility for returning the funds to the owner or owners. If the owner of such funds remitted to the West Virginia

State Bar is identified and located within two years after the funds have been remitted to the West Virginia State Bar, then the lawyer, law firm, or trustee shall notify the West Virginia State Bar IOLTA Advisory Committee; and request, pursuant to procedures adopted by the West Virginia State Bar IOLTA Advisory Committee for that purpose, a refund of the amounts paid. The lawyer, law firm, or trustee shall be responsible for proper distribution of any funds that are refunded.

~~(d) The procedures in Rule 10.09(a) and (b) shall apply in cases where the amount of the funds is \$500 or more. In cases where the amount of the funds is \$500 or less, the executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or the lawyer, law firm or trustee appointed under the Rules of Lawyer Disciplinary Procedure, shall remit the funds directly to the West Virginia State Bar.~~

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Rule 13 Young Lawyer Section

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13.10 Young Lawyer Board vacancies

A vacancy on the Young Lawyer Board shall be filled by the Board for the unexpired term. The vacancy shall be announced by the State Bar in an email to eligible ~~members-young lawyer~~ members in the district, therein seeking nominations or applications for appointment. The nominations or applications submitted shall be distributed to the Young Lawyer Board, which shall fill the vacancy by appointment from the nominations or applications submitted. Any member so appointed to the Young Lawyer Board shall continue to serve in that capacity for the remainder of the term vacated. If no eligible young lawyer member seeks to serve the remainder of the unexpired term, the Chair shall appoint a committee from the Board and that committee shall appoint a young lawyer member to serve for the remainder of the term vacated.

A True Copy

Attest: /s/ C. Casey Forbes
Clerk of Court

