

# STATE BAR OF TEXAS RULES

## Article XI Interest Earned on Client Funds Held by Attorneys

### Section 1. Short Title

This Article may be referred to as the Texas Equal Access to Justice Program.

### Section 2. Findings; Purpose

The Supreme Court of Texas finds that:

- (A) On certain client funds held by attorneys, interest income cannot reasonable be earned to benefit individual clients for whom the funds are held;
- (B) income can be earned on those client funds pursuant to the program provided for in this Article and that income should be used to provide additional legal services to the indigent in civil matters;
- (C) this Court is the proper and appropriate body, through the adoption of rules as set forth in this Article, to create and administer, or cause to be created and administered, a program to carry out the purposes of this Article; and
- (D) this Article is adopted in furtherance of the inherent powers of this Court to regulate the practice of law in the State of Texas.

### Section 3. Rules

This Court shall hereafter promulgate rules, consistent with the provisions of this Article, that are necessary and appropriate to carry out the purposes of this Article and conform the program created as provided by this Article to applicable statues, regulations, and ruling. The rules, which may be amended or revoked by this Court from time to time as it deems necessary to carry out this Article, shall provide for:

- (A) The formation of a corporation incorporated without members under the Texas Non-Profit Corporation Act (TEX.REV.CIV.ANN.art. 1396-1.01 et seq.), to be the recipient of and disbursing agent for interest earned on client funds as provided by this Article;
- (B) the operation of the nonprofit corporation and the program created as provided by this Article, including the provisions to be contained in the articles of incorporation and bylaws of the corporation;
- (C) the designation of persons to serve as directors of the corporation and their terms of office;
- (D) definitions of the client funds subject to Section 5 of this Article;
- (E) exemptions from Section 5 of this Article when deemed by the Court to be appropriate;
- (F) provisions specifying the types of financial institutions eligible for the deposit of the funds, the types of organizations and programs eligible to receive funds from the nonprofit corporation, and the persons and types of matters and cases eligible to receive legal services funded by grants from the nonprofit corporation; and
- (G) provisions relating to recordkeeping, reporting, and audits of the nonprofit corporation and the organizations and programs receiving funds from the nonprofit corporation.

#### **Section 4. Provisions Relating to the Nonprofit Corporation.**

- (A) The nonprofit corporation provided for in this Article shall be organized in such a manner as to be exempt from federal income taxation under the Internal Revenue Code of 1954 or any subsequent United States internal revenue law.
- (B) The exclusive purpose of the nonprofit corporation provided for in this Article shall be to grant funds received by it, as provided in this article, to organizations that will use the funds exclusively to provide legal services to the indigent in civil matters.
- (C) The nonprofit corporation provided for in this Article shall be governed by a board of directors consisting of a chairman and twelve members. The chairman and six directors shall be persons appointed by this Court and the other six directors shall be persons appointed by the president of the State Bar of Texas, with the approval of the board of directors of the State Bar of Texas. At least two of each group of appointees to the board of directors, other than the chairman, shall not be attorneys, and shall not have, other than as consumers, a financial interest in the practice of law.
- (D) Funds granted by the nonprofit corporation provided for in this Article to organizations to provide legal services to the indigent in civil matters may not be used for any case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, might reasonably be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. This subsection does not apply if it is determined, pursuant to rules adopted by this Court, that adequate legal services would otherwise be unavailable to the indigent person in the case or matter.
- (E) Neither the nonprofit corporation provided for in this Article nor any organization or program to which it grants funds may take an action or require an attorney to take an action in violation of the Code of Professional Responsibility (Article X, Section 9, State Bar Rules) or in violation by any other code of professional responsibility adopted by this state for attorneys.
- (F) No funds shall be granted by the nonprofit corporation to directly or indirectly fund class action suits, lawsuits against governmental entities, or lobbying for or against any candidate or issue. Provided, however, that funds may be granted to finance suits against governmental entities on behalf of individuals in order to secure entitlement to benefits such as, but not limited to, Social Security, Aid to Families with Dependent Children, and the like.
- (G) The nonprofit corporation provided for in this Article shall require, as a condition the granting of funds to any organization or program, that adequate provision be made, in accordance with rules adopted by this Court, for reports as to the actual use of funds and for audit of the reports. The violation of any prohibition contained in Subsection 4(F) of this Article shall render the offending organization or program ineligible to receive funds from the nonprofit cooperation.
- (H) The records of the nonprofit corporation provided for in this Article, including applications for funds, whether or not granted, shall be open for public inspection, in accordance with rules this Court may promulgate.
- (I) The nonprofit corporation provided for in this Article may expend funds for administrative costs of the program, including any costs incurred after the adoption of this Article, and may provide a reasonable reserve for administrative costs.

### **Section 5. Deposit of Certain Client Funds**

- (A) An attorney, law firm, or professional corporation engaged in the practice of law, receiving in the course of the practice of law in this state, client funds that are nominal in amount or are reasonably anticipated to be held for a short period of time, shall establish and maintain a separate interest-bearing demand account at a financial institution and shall deposit in the account all those client funds. All the client funds may be deposited in a single unsegregated account. The interest earned on the account shall be paid in accordance with and used for the purposes set forth in this Article and the rules adopted by this Court. Funds to be deposited under this article do not include those funds evidenced by a financial institution instrument, such as a draft, until the instrument is fully credited to the financial institution in which the account is maintained.
- (B) This Article does not prohibit an attorney, law firm, or professional corporation engaged in the practice of law from establishing one or more interest-bearing accounts or other investments permitted by the Texas Code of Professional Responsibility (Article X, Section 9, State Bar Rules) with the interest or dividends earned on the accounts or investments payable as directed by clients for whom funds are not deposited in accordance with Subsection (A) of this section.
- (C) An attorney, law firm, or professional corporation engaged in the practice of law which maintain accounts provided for in this Section 5 must so advise the nonprofit corporation in writing within thirty (30) days of the establishment of such account or accounts.

### **Section 6. Depositories**

- (A) The interest-bearing demand account required by Section 5 of this Article shall be established with any financial institution meeting the requirements set forth in the rules adopted by this Court.
- (B) The attorney, law firm, or professional corporation establishing the interest-bearing demand account shall attempt in good faith to obtain a rate of interest payable on the account not less than the rate paid by the depository institution to other depositors with accounts of similar size. A higher rate offered by the institution on deposits meeting certain time requirements or minimum amounts, such as those offered in the form of certificates of deposit, may be obtained if there is no impairment of the right to withdraw or transfer principal immediately, other than the statutory notification requirements generally applicable to those accounts, even though interest may be lost because of the withdrawal or transfer.
- (C) The depository institution shall be directed by the attorney, law firm, or professional corporation establishing the account:
  - (1) To remit, at least quarterly, interest earned on the average daily balance in the account, less reasonable service charges, to the nonprofit corporation provided for in this Article;
  - (2) to transmit to the nonprofit corporation provided for in this Article with each remittance a statement showing the name of the attorney, law firm, or professional corporation with respect to which the remittance is sent, the rate or

rates of interest applied and the amount of service charges deducted, if any; and

- (3) to transmit to the depositing attorney, law firm, or professional corporation at the same time a report is sent to the nonprofit corporation provided for in this Article, a report showing the amount paid to the non-profit corporation for that period, the rate or rates of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

### **Section 7. Attorney Liability**

Nothing in this Article affects the obligations of attorneys, law firms, or professional corporations engaged in the practice of law with respect to client funds other than client funds reasonably determined to be “nominal in amount” or reasonably anticipated to be held for a “short period of time,” as those terms are defined by the rules adopted by this Court. An attorney, law firm, or professional corporation is not liable in determining which funds are nominal in amount or non deposit for a short period of time if the determination is made in good faith in accordance with the rules.

### **Section 8. Liability of Nonprofit Corporation**

If client funds that are neither nominal in amount nor on deposit for a short period of time are deposited under Section 5(A) of this Article, the liability of the nonprofit corporation provided in this Article may not exceed the amount of interest attributable to client funds actually paid by the depository to the nonprofit corporation.

### **Section 9. Initial Distribution of Funds**

The initial distribution of funds under this Article shall be made at a time when, in the determination of the board of directors of the nonprofit corporation provided for in this Article, there are sufficient funds to provide an adequate distribution.