

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 99- 9016

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**Order of the Court Approving Amendments to the Rules Governing the Operation of the Texas Equal Access to Justice Foundation and Comment 1 to Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct**

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**Whereas**, by amendment effective May 22, 1991, the Court adopted the current Rules Governing the Operation of the Texas Equal Access to Justice Foundation (Rules), relating to the proper administration of the Texas IOLTA Program; and

**Whereas**, the Supreme Court of Texas promulgates the Texas Disciplinary Rules of Professional Conduct; and

**Whereas**, the Supreme Court has the authority to amend the aforementioned Rules and Texas Disciplinary Rules;

Now, therefore, pursuant to that authority, the Court amends Rules 4 and 6, and Comment 1 to Rule 1.14 of the Texas Disciplinary Rules as follows:

**4. Deposit of Certain Client Funds.**

An attorney licensed by the Supreme Court of Texas, 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, must establish and

maintain a separate interest-bearing insured depository account at a financial institution and deposit in the account such funds. All client funds may be deposited in a single unsegregated account. Attorneys who practice in a law firm or for a professional corporation may utilize the interest-bearing trust account of such firm or corporation to comply with the Rule 4. The interest earned on the account shall be paid in accordance with and used for the purposes set forth in these Rules. The Foundation shall hold the entire beneficial interest in the interest earned. Funds to be deposited under these Rules shall 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. The term "draft" as herein used is defined in Section 3.104 (b) (1) of the Texas Business and Commerce Code. A draft or similar instrument need not be treated as a collected item unless it is the type of instrument which the financial institution generally treats as a collected item. Nothing in this or any other of these Rules prohibits the deposit of client funds into a general account or changes the legal relationship between the depositor and financial institution from that established by contract or by applicable state and federal law.

**6. Funds Eligible for the Program.**

The funds of a particular client are nominal in amount or held for a short period of time, and thus eligible for use in the Program, if such funds could not reasonably be expected to earn interest for the client or if the interest which might be earned on such funds is not likely to be sufficient to offset the cost of establishing and maintaining the account, service charges, accounting costs and tax reporting costs

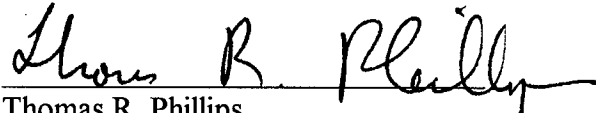
which would be incurred in attempting to obtain interest on such funds for the client. Also to be considered are the nature of the proceeding or transaction involved and the likelihood of delay in the need for such funds in such proceeding or transaction. The attorney, law firm or professional corporation should exercise good faith judgment in determining initially whether client funds should be included in the Program and should review at reasonable intervals whether changed circumstances require further action with respect to such funds.

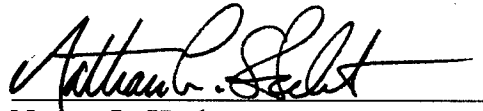
**Rule 1.14 Safekeeping Property (Comment 1)**

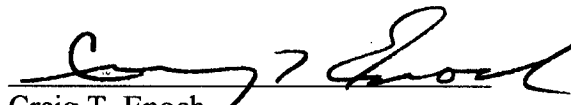
A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. Paragraph (a) requires that complete records of the funds and other property be maintained. Nothing in Paragraph (a) prohibits the deposit of client funds into a general account or changes the legal relationship between depositor and financial institution from that established by contract or by applicable state and federal law.

It is further ORDERED that the Rules 4 and 6, and Comment 1 to Rule 1.14 of the Disciplinary Rules are adopted effective immediately.

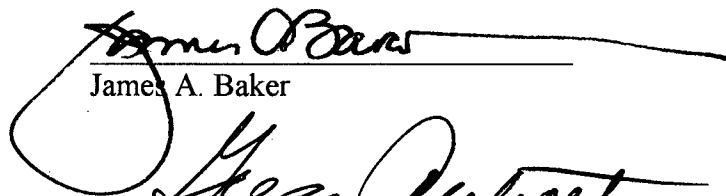
By the court this 25<sup>th</sup> day of January, 1999.


  
Thomas R. Phillips

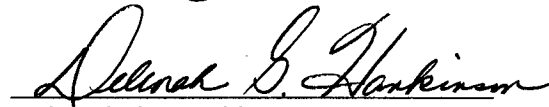
  
Nathan L. Hecht

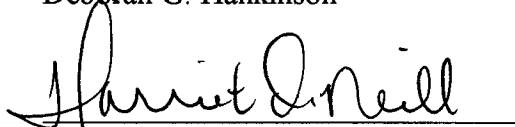
  
Craig T. Enoch

  
Priscilla R. Owen

  
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Alberto R. Gonzales