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REPLY TO Minneapolis OFFICE

DIRECT DIAL 343-2971

A-5

March 15, 1983

SUPREME COURT
FILED
MAR 17 1983
WAYNE TSCHIMPERLE
CLERK

Associate Chief Counsel (Technical)
Internal Revenue Service
Room 5545
1111 Constitution Avenue N.W.
Washington, D.C. 20224

Attention: CC:IND:S

Re: Minnesota Lawyer Trust Account Board -
Interest on Lawyer Trust Accounts Program

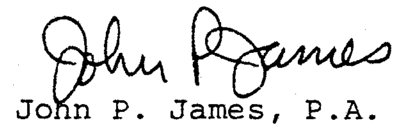
Dear Sir:

Enclosed herewith please find in duplicate, the ruling request and related documents of The Supreme Court of the State of Minnesota as to the federal income tax consequences to lawyers, clients, and the Lawyer Trust Account Board which will be produced by amendments to the Code of Professional Responsibility requiring that Minnesota lawyers establish interest-bearing client trust fund accounts effective July 1, 1983.

Expeditious handling of this ruling request is hereby requested. The intention is to implement the Minnesota interest on lawyers' trust accounts program effective July 1, 1983. Timely implementation will require that information, including the outcome of this ruling request, be

disseminated prior thereto. Delay in implementation of the program would result in delay in realizing its potential benefits, including funding for the provision of legal services to the indigent.

Very truly yours,



John P. James, P.A.

JPJ:bl

Encls.

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REPLY TO Minneapolis OFFICE

DIRECT DIAL 343-2800

March 15, 1983

Associate Chief Counsel (Technical)
Internal Revenue Service
Room 6545
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Attention: CC:IND:S

Re: Minnesota Lawyer Trust Account Board - Interest on Lawyer Trust Accounts Program

Dear Sir:

The Supreme Court of the State of Minnesota, 230 State Capitol, St. Paul, Minnesota (the "Court"), c/o Laurence C. Harmon, Supreme Court Administrator, hereby requests a ruling concerning the federal income tax consequences to lawyers, clients and the Lawyer Trust Account Board, an arm of the State of Minnesota created by the Court, which will be produced by the requirement of the Code of Professional Responsibility as recently amended by the Court that Minnesota lawyers establish interest-bearing client trust fund accounts, effective July 1, 1983.

Expeditious handling of this ruling request is hereby requested The intention is to implement the Minnesota interest on lawyers trust accounts program effective July 1, 1983. Timely implementation will require that information, including the outcome of this ruling request, be disseminated prior thereto.

Delay in implementation of the program would result in delay in realizing its potential benefits, including funding for the provision of legal services to the indigent.

FACTS

A. Present Treatment of Clients' Funds Held in Trust by Lawyers.

Under the Minnesota Code of Professional Responsibility as currently in effect, all funds of clients paid to a lawyer or law firm (other than advances for costs and expenses) must be deposited in a bank account maintained in Minnesota, to which no funds belonging to the lawyer or law firm may be deposited, except that funds reasonably sufficient to pay bank charges may be deposited therein and that funds belonging in part to a client and in part, presently or potentially, to the lawyer or law firm, must be deposited therein, with the portion belonging to the lawyer or law firm withdrawable when due unless the right of the lawyer or law firm to receive it is disputed by the client.

The lawyer is required by Disciplinary Rule (hereinafter "DR") 9-102 to maintain complete records of all funds of clients coming into his or her possession, to render appropriate accounts to the clients regarding such funds and to promptly pay to the client on demand all funds in the lawyer's possession which the client is entitled to receive. The lawyer acts as a fiduciary with respect to such funds. The funds are commonly referred to as trust funds and the accounts in which they are deposited are commonly referred to as lawyers' trust accounts. Lawyers and law firms are prohibited by law from profiting from the client trust funds held in trust by them for their clients.

It is permissible under the current rules for a lawyer to deposit client funds in an interest-bearing account with the interest payable and taxable to the client. In practice, such deposits have been the exception rather than the rule because most deposits of client funds are so small or held for such a short period of time that it would not be economical to invest them in a separate interest-bearing account with the interest payable to the client. Further, historically there were impediments to withdrawal of funds from interest-bearing accounts which made the use of non-interest bearing checking accounts for lawyers' trust accounts mandatory as a practical matter in light of the frequent need for withdrawal of such funds on demand to accomplish the purpose for which they were deposited with the lawyer. Accordingly, most client trust funds have been held in a checking account or accounts of the lawyer which are set aside solely for use as trust accounts and which contain funds relating to many different clients.

B. <u>Treatment of Clients' Funds Held in Trust by Lawyers Effective July 1, 1983</u>.

On December 27, 1982, the Court filed its Order Amending Code of Professional Responsiblity Relating to Client Trust Funds, And Establishing Lawyer Trust Account Board, in the Matter of the Petition of the Minnesota State Bar Association relating to those subjects (hereinafter the "Order"), a copy of which is attached hereto as Exhibit A and an accompanying Memorandum Opinion (hereinafter the "Opinion"), a copy of which is attached hereto as Exhibit B. The Order amended DR 9-102, 9-103 and 9-104 of the Minnesota Code of Professional Responsibilty, created the Lawyer Trust Account Board (hereinafter the "Board") to operate under the supervision and control of the Court effective July 1, 1983, and promulgated the initial set of rules applicable to the Board (hereinafter the "Board Rules").

Effective July 1, 1983, all funds of clients paid to Minnesota lawyers and law firms must be deposited in one or more identifiable interest-bearing trust accounts, as set forth in DR 9-103, as amended by the Order. This rule will be mandatory on all lawyers practicing law in Minnesota. Thus, <u>all</u> funds deposited by clients with Minnesota lawyers will be <u>required</u> to be placed in interest-bearing accounts, effective July 1, 1983.

As under the present rules, the lawyer will act as a fiduciary with respect to such funds; will not be allowed to profit from the trust funds; will have no right to any of the interest earned on them; and will be required to promptly pay to the client on demand all funds in the lawyer's possession to which the client is entitled.

Clients' funds will be deposited either in an account the interest on which will be paid to the Board or in an account the interest on which will be paid to the client. The decision between accounts will be made by the lawyer in accordance with the standards set forth in DR 9-103, which deals with the practicality under the circumstances of calculating and paying interest to the client. The process by which funds are deposited in a pooled account paying interest to the Board, and such interest is paid to and funds disbursed by the Board is sometimes hereinafter referred to as the interest on lawyers' trust accounts (or "IOLTA") program.

Each lawyer will be required to maintain a pooled interest-bearing trust account for deposit of all funds received from clients that are nominal in amount or expected to be held for a

short period of time. All interest accruing on such accounts of each lawyer, net of any transaction costs, shall be paid from time to time by the institutions maintaining such accounts directly to the Board. No party, including the financial institution, the lawyer, the clients and the Board, will ever know how much of the interest on such accounts might be said to be attributable to particular deposits or particular clients, for no attempt will ever be made to allocate the interest earned on these pooled accounts among the various deposits or clients. The reason that no attempt will be made is that such allocation is, by definition, economically impractical. If the lawyer determines that, under the circumstances, interest can economically be calculated and paid to the client, the funds in question will not be deposited in the account providing for payment of interest to the Board, but rather will be deposited in another account, the interest on which will be paid to the client. The deposits to be made to the pooled account with interest payable to the Board could not, as a matter of economic practicality, be made so as to generate interest payable to clients on an individual client basis, so such deposits would otherwise have to be made to a noninterest bearing checking account (since the lawyers themselves are prohibited from profiting from their clients' funds) and would not generate any interest income. Each client's funds alone therefore would earn nothing, but all of the funds pooled together can earn interest which can easily be calculated on the total amount in the pool and paid, though that interest cannot practically be allocated among the various clients whose funds are on deposit at various times. This is the essence of the IOLTA program.

All clients' funds received by lawyers which are not deposited in the pooled interest-bearing trust account with interest payable to the Board as described above must be deposited in either a separate interest-bearing trust account for the particular client or client's matter on which the interest, net of any transaction costs, will be paid to the client; or a pooled interest-bearing trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to the client.

Each time a lawyer receives funds from a client, the lawyer is required to determine which of the three types of accounts (pooled account with interest payable to the Board, separate account with interest payable to client, or pooled account with interest payable to each of the clients) to use. The lawyer is required by DR 9-103 to take into consideration the following factors in determining which type of interest-bearing account to use for a particular deposit of client funds:

(1) The amount of interest which the funds would earn during the period they are expected to be deposited;

(2) The cost of establishing and administering the account, including the cost of the lawyer's services; and

(3) The capability of financial institutions in which accounts may be maintained to calculate and pay interest to individual clients.

The decision in each instance is to be that of the lawyer.

The foregoing standard requires that the lawyer exercise judgment at the time the funds are received as to whether they should be deposited in the pooled account for the benefit of the Board by reason of being nominal in amount or to be held for a short period of time. The Court's Opinion provides, at page 6, that this determination "should rest exclusively in the sound judgment of each attorney or law firm, and that no charge of ethical impropriety or other breach of professional conduct should attend an attorney's good faith exercise of judgment in that regard. . . . [T]he test must be the good faith judgment made by the attorney at the time the funds are received and deposited, and not as a result of hindsight reexamination based on how long the funds did, in fact, actually remain on deposit." Thus, the lawyer, and not the client, will determine which deposits are placed in the trust accounts providing for the payment of interest to the Board.

C. Minnesota Supreme Court.

Article III, Section 1 of the Minnesota Constitution provides:

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Article VI, Section 1 of the Minnesota Constitution provides:

> The judicial power of the state is vested in a supreme court, a district court and such

> other courts, judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish.

Minnesota Statutes Section 480.05 provides:

> The supreme court shall have all the authority necessary for carrying into execution its judgments and determinations, and for the exercise of its jurisdiction as the supreme judicial tribunal of the state, agreeable to the usages and principles of law. Such court shall prescribe, and from time to time may amend and modify, rules of practice therein and also rules governing the examination and admission to practice of attorneys at law and rules governing their conduct in the practice their profession, and rules concerning the presentation, hearing, and determination of accusations against attorneys at law not inconsistent with law, and may provide for the publication thereof at the cost of the state.

Thus, the Minnesota Supreme Court is part of the judicial department of the government of the State of Minnesota, with authority under the Minnesota Constitution and Statutes to govern the practice of law and the conduct of lawyers in the State of Minnesota. See In re Petition for Integration of Bar of Minnesota, 216 Minn. 195, 12 N.W.2d 515 (1943).

The Court acts in a number of ways to regulate the practice of law in Minnesota. It has promulgated, and amends from time to time, the Code of Professional Responsibility, which sets forth the principal ethical standards applicable to the practice of law in Minnesota. The Code of Professional Responsibility is similar to the model code promulgated by the American Bar Association, but the Court establishes the provisions of the Code of Professional Responsibility for Minnesota. The Court also has established three boards and supervises a fourth established by statute, in addition to the Lawyer Trust Account Board, to assist it in regulating the practice of law in Minnesota:

(1) The Lawyer's Professional Responsibility Board, which is responsible for receiving, investigating, hearing and recommending

disposition of complaints regarding allegations of unethical conduct by Minnesota lawyers;

(2) The Continuing Legal Education Board, which is responsible for administering the continuing legal education requirement of 45 hours of accredited education within a three year period which the Court has promulgated for Minnesota lawyers.

(3) The Board of Bar Examiners, which examines the backgrounds and professional competence of candidates for admission to the Bar; and

(4) The Legal Services Surcharge Advisory Board, which was created by statute, but to which the Court appoints the members, which monitors the collection and disbursement of the surcharge on civil case filings which has been imposed to provide funding for legal services for the indigent.

The Court also supervises several committees on court rules and establishes other committees or commissions from time to time in response to particular concerns.

The IOLTA program was established by the Court through its issuance of its Order, which both amended the Code of Professional Responsibility and created the Board.

D. Lawyer Trust Account Board.

The Lawyer Trust Account Board is part of the government of the State of Minnesota created by the Order of the Minnesota Supreme Court filed on December 27, 1982, which will begin operating effective July 1, 1983. The initial Board Rules, as promulgated by the Court, are as set forth at pages 5-6 of the Order.

The Board is being created by the Court pursuant to its power and responsibility to govern the practice of law and the conduct of lawyers in the State of Minnesota. The Board exists to assist the Court in carrying out these responsibilities, just as do the Lawyers Professional Responsibility Board and the Continuing Legal Education Board, the Board of Bar Examiners and the Legal Services Surcharge Advisory Board.

The Board has been created and its operating rules promulgated by order of the Court. The rules for the Board may be amended or the Board may be abolished by further order of the Court. Board Rule 6, Disposition of Funds Upon Dissolution, provides as follows:

> If the Lawyer Trust Account Board is discontinued, any funds then on hand shall be transferred to its successor state agency or organization qualifying under Internal Revenue Code section 501(c)(3), if any, for distribution for the purposes specified under Rule 2 or, if there is no successor, to the general fund of the State of Minnesota.

The Board will receive income in the form of interest paid to it by financial institutions with respect to the amounts on deposit from time to time in the pooled interest bearing trust accounts accounts established by Minnesota lawyers and law firms for the handling, on a pooled basis without any identification of interest earned on a particular client's funds, of deposits by clients that are so nominal in amount or expected to be held for such a short period of time that the lawyer determines it to be uneconomical to deposit the funds in an account which would earn interest identifiable to the particular client's funds and payable to that client. The Court held at page 9 of its Opinion that the Board will "hold the entire beneficial interest in the funds earned under the IOLTA program."

The interest thus received by the Board from financial institutions will be deposited by it with the Minnesota State Treasurer and kept in a special fund. The investment of such funds will be by the Minnesota State Treasurer and such investment will yield additional income which will be credited to the special fund maintained for the Board by the Minnesota State Treasurer.

The Board itself will have the exclusive right to determine the disposition of the funds generated by the Minnesota IOLTA program. Board Rule 2(c) provides as follows:

> The Board shall, by grants and appropriations it deems appropriate, disburse funds for the tax exempt public purposes which the Board may prescribe from time to time consistent with Internal Revenue Code Regulations and rulings, including those under Section 501(c)(3).

The Court stated, at page 9 of its Opinion, that:

> the purposes for which the funds generated by the program would be used will, as recommended by the MSBA, initially be limited to that of legal aid to the poor, law-related education, and projects to improve the administration of justice, to the extent the same are consistent with the Internal Revenue Code and regulations promulgated thereunder.

RULINGS REQUESTED

Based on the foregoing facts, the following rulings are respectfully requested:

(1) The interest earned on the pooled trust accounts which is payable to the Board under the IOLTA program will not be included in the gross income of the clients whose funds are deposited by lawyers in such accounts.

(2) The interest earned on the pooled trust accounts which is payable to the Board under the IOLTA program will not be included in the gross income of the lawyers or law firms who maintain the accounts in which their clients' funds are deposited.

(3) The Board will not be subject to the federal income tax on the interest income paid to it from pooled trust accounts under the IOLTA program.

(4) The Board will not be subject to the federal income tax on income from the investment of its funds through the Minnesota State Treasurer.

GROUNDS FOR REQUESTED RULINGS

A. Clients Whose Funds are Deposited in Pooled Trust Account Paying Interest to the Board.

The lawyer alone will decide, in accordance with DR 9-103, whether a client's funds deposited with the lawyer will be placed in the lawyer's pooled trust account paying interest to the

Board. The client will play no role in that decision. The purpose for which the funds are deposited by the client with the lawyer will have nothing whatsoever to do with the income to be earned and paid to the Board, but rather will be related to accomplishment of the purposes for which the client has engaged the lawyer. Nobody will ever determine how much interest earned by the pooled account might theoretically be allocable to any particular client because all of the interest on the pooled account will be payable to the Board and there will be no need ever to allocate such interest among the various deposits or clients.

The Service concluded that interest earned in an IOLTA program is not taxable to the clients in Revenue Ruling 81-209, 1981-2 C.B. 16 (the "IOLTA Ruling"), which dealt with an IOLTA program nearly identical to the Minnesota IOLTA program described herein. None of the fact differences between the situation in the IOLTA Ruling and the Minnesota IOLTA program is material, so the IOLTA Ruling governs here and it should be concluded that clients whose funds are deposited in pooled lawyers' trust accounts paying interest to the Board will not include that interest in their gross income.

The differences between the two IOLTA programs are:

(1) The recipient of the funds referred to in the IOLTA Ruling was a bar foundation qualified as a charitable organization under Internal Revenue Code Section 501(c)(3), whereas the Board is an arm of the State of Minnesota.

(2) Participation by lawyers in the IOLTA program referred to in the IOLTA Ruling was voluntary, whereas lawyer participation in the Minnesota IOLTA program is mandatory.

(3) The IOLTA program referred to in the IOLTA Ruling involved "advances [that] are too small in amount and are on deposit for too short a time to permit, as a practical matter, deposit of funds" at interest for the client, whereas the Minnesota IOLTA program applies to deposits which "are nominal in amount or expected to be held for a short period of time."

The difference in recipients is insignificant. The Board is an arm of the State of Minnesota and its funds must therefore be used for public purposes. Because the income tax provisions of the Internal Revenue Code do not even apply to the States, there is no need for an exemption under Section 501. Comparison of Sections 170(c)(1) and (2) certainly suggests that the Board, as an arm of a State, should be viewed no less favorably as a recipient of IOLTA program interest than an organization qualified under Section 501(c)(3). Further, the significance of the recipient of the funds for the question of the taxability of the interest to clients lies solely in establishing that the funds are not being used to further the private interests of, or at the direction of, the client. An arm of the State meets this standard just as effectively as a charitable organization.

The fact that the Minnesota IOLTA program is mandatory while the IOLTA Ruling program was voluntary, on a lawyer by lawyer basis, has no bearing on the tax concern over the client's control over the disposition of the interest. This simply makes the Minnesota program more broadly based. Individual clients in either case are faced with a decision made by their lawyer over which they had no control. Accordingly, there is no basis upon which to suggest that this difference should warrant a change in the answer to the client taxability question.

Finally, the distinction between amounts which are nominal <u>and</u> on deposit for a short period of time, and amounts which are nominal <u>or</u> on deposit for a short period of time is one of expression, not of substance. Under DR 9-103, each Minnesota lawyer must address the practical question of whether interest can economically be calculated and paid to each client who deposits funds with the lawyer. If it can be, it must be. If it cannot be, the client's funds must be deposited in the lawyer's pooled trust account paying interest to the Board. This is in practical effect precisely the same distinction made in the IOLTA Ruling, so this difference also does not warrant taxation of the interest earned by the Board to the clients.

There being no material differences between the facts of the Minnesota IOLTA program and those set forth in the IOLTA Ruling, the IOLTA Ruling is controlling and clients whose funds are deposited under the Minnesota IOLTA program in pooled trust accounts paying interest to the Board should not have to include any of such interest in their gross income.

B. The Lawyers.

Under the Minnesota IOLTA program, each Minnesota lawyer who receives a deposit of funds from a client will decide at the time the funds are received whether they will be deposited in that lawyer's pooled trust account for the IOLTA program, the interest on which will be paid to the Board, or in a trust account, either individual or pooled, the interest on which will be paid to the client. Each such decision will be based on the criteria set forth in DR 9-103. Regardless of the decision made, the lawyer will receive none of the interest, either directly or indirectly, for the lawyer is not allowed to profit from the client's funds held in trust.

The Board will own the entire beneficial interest in the funds earned under the IOLTA program. The lawyers, having no beneficial interest in such interest, having no power of disposition over such interest, and gaining no advantage from such interest, do not receive such interest as their income. Accordingly, the interest on the pooled trust accounts in the IOLTA program cannot properly be included in the gross income of the lawyers and law firms who maintain such accounts.

C. The Board.

That the Board is part of the government of the State of Minnesota is established by the facts set forth above with respect to the Court and the Board. The Court itself is that part of the government which is responsible for the essential governmental function of regulating the practice of law. The Court has established the Board--and three other boards--to assist it in carrying out this function, and the Board accordingly will participate in this essential governmental function. The Board was created by the Court and is subject to dissolution by the Court at any time. Its funds will be turned over to and invested by the State Treasurer. The Board accordingly is part of the government of the State of Minnesota, and not an entity separable therefrom.

The activities and income of the Board may be compared to those of state liquor control boards which operate stores for the retail sale of liquor. The income from such activities has been held nontaxable on the ground that it is income of the state itself not within the purview of the federal income tax statutes, under both the Internal Revenue Code of 1954 and a predecessor statute. See Rev. Rul. 71-131, 1971-1 C.B. 28; G.C.M. 14407, XIV-1 C.B. 103 (1935). Although G.C.M. 14407 was superseded by Revenue Ruling 71-131, the analysis there remains valid, as indicated by the reference to it in Revenue Ruling 77-261, 1977-2 C.B. 45.

Based upon the reasoning in G.C.M. 14407, it should be held that the income tax provisions of the Internal Revenue Code do not apply to the Board, and that its income from both the lawyers' trust accounts and from the investment of funds on its behalf by the Minnesota State Treasurer is not subject to the federal income tax. Indeed, the case for this result is stronger with respect to the Board than it was with respect to state-owned liquor stores, for the Board's activities will be of a more purely governmental nature than is the operation of retail stores selling to the general public.

PROCEDURAL STATEMENTS

The St. Paul District Office of the Internal Revenue Service, 316 North Robert Street, St. Paul, Minnesota 55101, would have jurisdiction over any income tax returns which would be filed for the Court or the Board, but it is not contemplated that returns would be filed for either.

To the best of the knowledge of the Court and its representative, John P. James:

(1) Neither the Court nor the Board has ever filed a federal income tax return, neither is related to any taxpayer within the meaning of Section 267, neither is a member of an affiliated group within the meaning of Section 1504 and the identical issues involved in this ruling request are not in any returns heretofore filed.

(2) Neither the identical issues involved in this ruling request, nor any issue similar thereto, has been ruled on by the Service for the Court or the Board, and neither has any predecessor to which such a ruling could have been issued.

Taxpayer's representative is not aware of any regulations, court decisions, revenue rulings, revenue procedures, legislation or tax treaties contrary to the positions advanced herein on behalf of the Court.

A Power of Attorney (Form 2848) and declarations relating to deletions and the facts set forth herein executed by the Administrator of the Supreme Court of the State of Minnesota are enclosed herewith. Please, pursuant to said Power of Attorney, direct all correspondence, including the ruling, to the undersigned. If any question arises with respect to this ruling request, or if additional information is required, please call the undersigned. In addition, in the event a question arises as to the issuance of any of the rulings requested herein, the undersigned respectfully requests a conference at your earliest convenience prior to the issuance of such a ruling.

John P. James

Statement Attached to Request to Internal Revenue Service for Ruling as to Federal Income Tax Consequences of Interest-Bearing Lawyers' Trust Fund Accounts

I hereby advise that no deletions need be made under the provisions of Section 6110(c) of the Internal Revenue Code, except the name and address of the taxpayer in regard to the ruling request made on behalf of the taxpayer.

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct and complete.

Dated: March ___, 1983

The Supreme Court of the State
of Minnesota

By Laurence C. Harmon
Laurence C. Harmon
Supreme Court Administrator

Name of taxpayer for whom request for ruling is made:

The Supreme Court of the State of Minnesota

Form **2848** (Rev. October 1982) Department of the Treasury Internal Revenue Service

Power of Attorney and Declaration of Representative

▶ See separate instructions

OMB No. 1545-0150

Expires 9-30-85

Part I Power of Attorney

Taxpayer(s) name, identifying number, and address including ZIP code (Please type or print)

The Supreme Court of The State of Minnesota
230 State Capitol
St. Paul, Minnesota 55155

For IRS Use Only	
File So.	
Level	
Receipt	
Powers	
Blind T.	
Action	
Ret. Ind.	

hereby appoints (name(s), CAF number(s), address(es), including ZIP code(s), and telephone number(s) of individual(s))*

John P. James
300 Roanoke Building
Minneapolis, Minnesota 55402
(612)343-2800

as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Internal Revenue Service for the following tax matter(s) (specify the type(s) of tax and year(s) or period(s) (date of death if estate tax)):

Type of tax (Individual, corporate, etc.)	Federal tax form number (1040, 1120, etc.)	Year(s) or period(s) (Date of death if estate tax) March 1983
Individual and Corporate Income	-	Ruling Request re interest-bearing trust accounts

The attorney(s)-in-fact (or either of them) are authorized, subject to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters (excluding the power to receive refund checks, and the power to sign the return (see regulations section 1.6012-1(a)(5), Returns made by agents), unless specifically granted below).

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

1 ☐ the appointee first named above, or
2 ☐ (names of not more than two of the above named appointees) ____________

Initial here ▶ .... if you are granting the power to receive, but not to endorse or cash, refund checks for the above tax matters to:

3 ☐ the appointee first named above, or
4 ☐ (name of one of the above designated appointees) ▶

This power of attorney revokes all earlier powers of attorney and tax information authorizations on file with the Internal Revenue Service for the same tax matters and years or periods covered by this power of attorney, except the following:

(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of earlier powers and authorizations.)

Signature of or for taxpayer(s)
(If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.)

Laurence C. Harmon (Signature) — Supreme Court Administrator (Title, if applicable) — (Date)
Laurence C. Harmon

(Signature) — (Title, if applicable) — (Date)

*An organization, firm, or partnership may not be designated as a taxpayer's representative.

For Privacy Act and Paperwork Reduction Act Notice, see page 1 of separate instructions.

If the power of attorney is granted to a person other than an attorney, certified public accountant, enrolled agent, or enrolled actuary, the taxpayer(s) signature must be witnessed or notarized below. (The representative must complete Part II. Only representatives listed there are recognized to practice before the Internal Revenue Service.)

The person(s) signing as or for the taxpayer(s): (Check and complete one.)

☐ is/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

.... (Signature of Witness) .... (Date)

.... (Signature of Witness) .... (Date)

☐ appeared this day before a notary public and acknowledged this power of attorney as a voluntary act and deed.

Witness: .... (Signature of Notary) .... (Date)

NOTARIAL SEAL
(If required by State law)

Part II Declaration of Representative

I declare that I am not currently under suspension or disbarment from practice before the Internal Revenue Service, that I am aware of Treasury Department Circular No. 230 as amended (31 C.F.R. Part 10), Regulations governing the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others, and that I am one of the following:

1 a member in good standing of the bar of the highest court of the jurisdiction indicated below;
2 duly qualified to practice as a certified public accountant in the jurisdiction indicated below;
3 enrolled as an agent pursuant to the requirements of Treasury Department Circular No. 230;
4 a bona fide officer of the taxpayer organization;
5 a full time employee of the taxpayer;
6 a member of the taxpayer's immediate family (spouse, parent, child, brother or sister);
7 a fiduciary for the taxpayer;
8 an enrolled actuary (the authority of an enrolled actuary to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230);
9 Other (specify) ▶..;

and that I am authorized to represent the taxpayer identified in Part I for the tax matters there specified.

Designation (Insert appropriate number from above list)	Jurisdiction (State, etc.) or Enrollment Card Number	Signature	Date
1	Minnesota		

E.I. #52-1074467

EXHIBIT A

STATE OF MINNESOTA

IN SUPREME COURT

NO. A-8

SUPREME COURT
FILED
DEC 27 1982
JOHN McCARTHY
CLERK

IN THE MATTER OF THE PETITION OF THE MINNESOTA STATE BAR ASSOCIATION, a corporation, for Amendment of DR 9-102 and 9-103, and to enact a new DR 9-104 of the Code of Professional Responsibility Relating to Trust Funds, and for Establishment of a Lawyer Trust Account Board.	ORDER AMENDING CODE OF PROFESSIONAL RESPONSIBILITY RELATING TO CLIENT TRUST FUNDS, AND ESTABLISHING LAWYER TRUST ACCOUNT BOARD

WHEREAS, in the summer of 1981, the Minnesota State Bar Association ("MSBA") appointed a special Committee on Interest on Lawyers' Trust Accounts to analyze and make recommendations to the MSBA Board of Governors as to the possible use of interest to be earned on client trust account balances and the method of implementation of any such uses; and

WHEREAS, that Committee prepared a final report containing recommendations which were, except for minor revisions, approved by the Board of Governors of the MSBA on March 27, 1982; and

WHEREAS, the report and recommendations of the MSBA Committee were, after due notice to the membership, presented for consideration by the delegates and members of the MSBA at its annual convention assembled on June 19, 1982, and after debate, approved by a voice vote of the members in attendance; and

WHEREAS, pursuant to the approval obtained at the MSBA annual convention, the MSBA filed a petition with this court on July 1, 1982, requesting that the court amend the Code of Professional Responsibility to provide for a mandatory program relating to Interest on Lawyers' Trust Accounts in the State of Minnesota and providing for the establishment of a new Lawyer Trust Account Board to administer the program; and

WHEREAS, after due published notice in *Finance and Commerce, St. Paul Legal Ledger* and *Bench and Bar*, this court set a hearing on the MSBA petition before the court on October 8, 1982; and

WHEREAS, various parties, including representatives of the MSBA, and others, appeared to present their views personally to the court sitting *en banc* at the public hearing held on October 8, 1982, and the Court now having given due consideration to the proposals contained in the MSBA petition, and having considered legal briefs and correspondence from various persons, and the presentations by all interested parties desiring to be heard;

NOW, THEREFORE, IT IS HEREBY ORDERED that, effective July 1, 1983, Disciplinary Rules 9-102, 9-103 and 9-104 of the Code of Professional Responsibility be adopted as follows [new material underscored; matter to be deleted lined out]:

DR 9-102 PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT

(A) All funds of clients paid to a lawyer or law firm ~~other-than advances-for-costs-and-expenses,~~ shall be deposited in one or more identifiable bank interest bearing trust accounts ~~maintained in-the-state-in-which-the-law-office-is-situated~~ as set forth in DR 9-103. ~~and~~ No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds of the lawyer or law firm reasonably sufficient to pay bank service charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

DR 9-103 INTEREST BEARING TRUST ACCOUNTS

(A) Each trust account referred to in DR 9-102 shall be an interest bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence.

(B) A lawyer who receives client funds shall maintain a pooled interest bearing trust account for deposit of client funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.

(C) All client funds shall be deposited in the account specified in subdivision (B) unless they are deposited in:

(1) A separate interest bearing trust account for the particular client or client's matter on which the interest, net of any transaction costs, will be paid to the client; or

(2) A pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to the client.

(D) In determining whether to use the account specified in subdivision (B) or an account specified in subdivision (C), a lawyer shall take into consideration the following factors:

(1) The amount of interest which the funds would earn during the period they are expected to be deposited;

(2) The cost of establishing and administering the account, including the cost of the lawyer's services; and

(3) The capability of financial institutions described in subdivision (A) to calculate and pay interest to individual clients.

DR 9-10~~3~~4 REQUIRED BOOKS AND RECORDS; REQUIRED CERTIFICATE

(A) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, his private practice of law, and to establish compliance with DR 9-102 and DR 9-103. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients, for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9-10~~3~~4(A) shall certify, in connection with the annual renewal of his registration and in such form as the Clerk of the Supreme Court may prescribe that he or his law firm maintains books and records as required by DR 9-10~~3~~4(A).

IT IS HEREBY FURTHER ORDERED that, effective July 1, 1983, there is hereby created under supervision of this Supreme Court a new Lawyer Trust Account Board with its initial Rules to be as follows:

RULE 1. COMPOSITION

The Lawyer Trust Account Board shall consist of six lawyers having their principal offices in this state, three of whom the Minnesota State Bar Association may nominate, and three public members resident in this state, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that one-third of all terms expire each February 1st. No person may serve more than two three-year terms, in addition to any initial shorter term.

RULE 2. POWERS AND DUTIES

(a) General. The Board shall have general supervisory authority over the administration of these Rules.

(b) Receipt and investment of funds. The Board shall receive funds from lawyers' interest bearing trust accounts and make appropriate temporary investments of such funds pending disbursement of them.

(c) Disbursement of funds. The Board shall, by grants and appropriations it deems appropriate, disburse funds for the tax exempt public purposes which the Board may prescribe from time to time consistent with Internal Revenue Code Regulations and rulings, including those under Section 501(c)(3).

(d) Records and reports. The Board shall maintain adequate books and records reflecting all transactions, shall report quarterly to the Court, and shall report annually to the Minnesota State Bar Association and to the public.

RULE 3. OFFICERS

(a) Chairperson. The Board shall select a Board member to serve as Chairperson at the pleasure of the Board.

(b) Other officers. The Board may elect other officers as it deems appropriate and may specify their duties.

RULE 4. DIRECTOR

(a) Appointment. The Board may appoint an Executive Director to serve on a full or part time basis at the pleasure of the Board and to be paid such compensation as the Board shall fix.

(b) Duties. The Director shall be responsible and accountable to the Board for the proper administration of these Rules.

(c) Services. The Director may employ persons or contract for services as the Board may approve.

RULE 5. COMPENSATION AND EXPENSES

The Chairperson and other members of the Board shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. All expenses of the operation of the Board shall be paid from funds the Board receives from lawyers' interest bearing trust accounts.

RULE 6. DISPOSITION OF FUNDS UPON DISSOLUTION

If the Lawyer Trust Account Board is discontinued, any funds then on hand shall be transferred to its successor state agency or organization qualifying under Internal Revenue Code section 501(c)(3), if any, for distribution for the purposes specified under Rule 2 or, if there is no successor, to the general fund of the State of Minnesota.

RULE 7. SUPPLEMENTAL RULES

The Board may make and adopt rules not inconsistent with these Rules to govern the conduct of its business and performance of its duties.

To assure that the program authorized by these rule changes will be ready for implementation on July 1, 1983, the effective date of this order,

IT IS HEREBY FURTHER ORDERED:

(a) That by April 30, 1983, the MSBA will report to this court as to compliance of the program with governmental regulations including the approval of the Board of Governors of the Federal Reserve System;

(b) That by April 30, 1983, the MSBA will report to this court on the status of administrative procedures that may be necessary to implement the program; and

(c) That the MSBA take such action deemed appropriate to it to publicize to all the lawyers of the state prior to July 1, 1983, the manner in which the Interest on Lawyers' Trust Accounts program will function.

Dated: December 13, 1982.

BY THE COURT

Chief Justice

EXHIBIT B

NO. A-8

STATE OF MINNESOTA

IN SUPREME COURT

- - - - - - - - - - - - - - - -

IN THE MATTER OF THE PETITION OF THE MINNESOTA STATE BAR ASSOCIATION, a Corporation, for Amendment of DR 9-102 and 9-103, and to enact a new DR 9-104 of the Code of Professional Responsibility Relating to Trust Funds, and for Establishment of a Lawyer Trust Account Board.

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MEMORANDUM OPINION

This administrative proceeding was commenced by a petition on behalf of the Minnesota State Bar Association ("MSBA") seeking amendments to the Code of Professional Responsibility as applicable in the State of Minnesota and providing for the establishment of a Lawyer Trust Account Board. The petition addresses itself essentially to the provisions of Disciplinary Rule 9-102 of the Code of Professional Responsibility as it pertains to the maintenance of the funds of clients in identifiable bank accounts, *i.e.*, lawyers' trust accounts. Traditionally, such funds have been held in trust by lawyers in a non-interest bearing checking account. This practice developed because of the general unavailability of interest-bearing demand accounts. However, as a matter of practice, individual sums of clients' money which are capable of generating significant amounts of interest are often deposited by lawyers in interest bearing savings accounts with the interest earned thereon, less the costs of maintaining the account, paid over directly to the client or credited to the client's account. In most cases, however,

client funds are small in amount or held for brief periods and thus are presently maintained by each lawyer or law firm in its own so-called "pooled" non-interest bearing checking account. All client funds of a particular lawyer or law firm are deposited in such an account because such funds can be withdrawn for any one client's account upon demand consistent with the directions of the client.

In the summer of 1981, the Board of Governors of the MSBA appointed a special Committee on Interest on Lawyers' Trust Accounts to examine the impact of recent developments in banking law and computer technology which might make it possible to have interest accrue on accounts in which client trust funds were kept. That Committee, comprised of nine lawyers representing various types of law practices and geographic areas in the state, and three public members, was also charged with the responsibility of analyzing and making recommendations to the Board of Governors of the MSBA with respect to the appropriate use of interest that might be earned on deposits in lawyers' trust accounts.

The Committee prepared an extensive report which was submitted to the Board of Governors of the MSBA for consideration. With minor revisions, the Board of Governors approved the report and referred the recommendations to the state convention of the delegates and members of the MSBA. At the General Assembly session of the convention on June 12, 1982, the recommendations of the Committee report were approved by the MSBA convention.

In its report the MSBA Committee concluded that the practice in Minnesota of placing client funds in ordinary

checking accounts where they would not draw interest was no longer sensible. There appeared to be a practical vehicle for recovering interest on such accounts through the advent of the negotiable order of withdrawal ("NOW") accounts generally available in Minnesota.

The experience in the Austrialian states and in the Canadian provinces, and now in several states in the United States, has demonstrated that interest on nominal deposits in trust accounts and on larger deposits held in trust for only a short period of time can be effectively captured and not lost if deposited into a lawyer's "pooled" checking account which pays interest. Organized bars in various Australian states and in the Canadian provinces were first to establish programs, first voluntary and now mandatory, that demonstrated the logic of capturing interest which cannot economically or practically be identified or paid to specific clients and allowing the interest to be used for various law-related, public purposes. *See* England and Carlisle, History of Interest on Trust Accounts Program, 56 Fla. B.J. 101, 102 (1982).

Several states have already taken action to provide for the handling of client trust funds in this manner. Leading in this effort in the United States has been the State of Florida. In that state, the Florida Supreme Court in 1978 approved of such a program. *In re Interest on Trust Accounts*, 356 So.2d 799 (Fla. 1978). Thereafter, in order to comply with various requirements of the Internal Revenue Service ("IRS"), the program in Florida was revised in certain respects. *See Matter of Interest on Trust Accounts*, 372 So.2d 67 (Fla. 1979); 402 So.2d 389 (Fla. 1981). A voluntary

program has now also been adopted by the Supreme Court of Idaho. Both voluntary and mandatory plans are also under consideration in other states at the present time as well.

In the State of California a mandatory program was enacted by legislation. *See* §§ 6210-6228 of Calif. Business and Professions Code. This Court has been advised that the California State Bar Association is presently in the process of promulgating regulations that would govern the procedures under the California mandatory interest on trust accounts program for all lawyers in the California integrated bar. The State of Maryland has likewise proceeded via the legislative route with a voluntary plan. *See* 1982 Md. Laws chs. 829, 830, codified at Md. Ann. Code art. 10, § 44 (1982).

Following its study and analysis of these and other interest on lawyers' trust account ("IOLTA") programs, the MSBA Committee recommended that where the amount of interest which client funds would earn during the period they are on deposit would exceed the cost of establishing and administering the account, including bank service charges and the cost of the lawyer's services, such funds should be maintained in a separate interest bearing trust account for a particular client or client matter with the interest, net of any transaction costs, to be paid or credited to the client. We agree with that recommendation since we believe that when larger sums of interest are involved that can more than cover administrative costs, bank fees and the like, such deposits should not lie idle but should draw interest for the benefit of the client.

The MSBA has demonstrated to this Court, however, that the relatively small amounts of interest to be earned on small deposits and on larger deposits held in trust for only a short period of time do not permit or warrant the establishment of a separate interest-bearing savings account for each of such deposits. The administrative costs of setting up such an account, accounting for such interest on a client-by-client basis, filling out the required IRS and state tax forms for taxing authorities and for the clients,[1] together with the cost of the lawyer's services in administering such accounts, present quite a different situation. We therefore conclude that under these circumstances, a pooled interest-bearing checking account from which client funds can be withdrawn on request and without delay is appropriate for such client funds. Since it is not possible as a practical matter to credit the interest to individual clients, we approve of the proposed concept of allowing such funds to be used for tax-exempt public purposes rather than to allow the interest to be lost.

We recognize that a question immediately arises as to how the attorney will determine which client funds are to be deemed "nominal in amount" or "held in trust for only a short period of time" so as to be placed in the pooled account. We also recognize that an attempt could be made to define such controlling terms, thereby removing entirely the judgment of individual lawyers who will be required to make such decisions. However, the new DR 9-103 which we have this date

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1 The court is aware of the 10% withholding of interest requirements of the new Tax Equity and Fiscal Responsibility Act, Pub. L. No. 97-248, § 301 (codified at I.R.C. §§ 3451-3456 (1982)), to become effective July 1, 1983. Such requirements would further complicate the paperwork and administrative burden involved in handling such accounts.

approved provides, in subparagraph (D), the criteria for the lawyer to use in making a judgment as to whether the client funds should be placed in the lawyer's pooled account with other similar client funds, or placed in a separate interest bearing savings account. We believe that setting out the general factors to be applied by lawyers in their best judgment is a better approach than developing specific definitions where the various parameters of administrative costs, bank fees, current interest rates and other influencing factors fluctuate or change from time to time. We therefore choose to follow the approach of the Florida Supreme Court which concluded that the determination of whether or not a client's funds are "nominal in amount" or "to be held for a short period of time" should rest exclusively in the sound judgment of each attorney or law firm, and that no charge of ethical impropriety or other breach of professional conduct should attend an attorney's good faith exercise of judgment in that regard. *See Matter of Interest on Trust Accounts*, 402 So.2d 389 at 394 (Fla. 1981). We likewise emphasize, as did the Florida Court, that the test must be the good faith judgment made by the attorney at the time the funds are received and deposited, and not as a result of hindsight reexamination based on how long the funds did in fact actually remain on deposit. *Id.* at n.14. Obviously, an extreme violation of a lawyer's fiduciary duty to place a client's funds in a separate account for that client at interest amounting to gross neglect of a clients' funds would provide a basis for professional discipline.

Some have urged that the Court adopt an IOLTA program that is voluntary rather than mandatory, *i.e.*, that individual lawyers and law firms be given a choice as to whether to

participate or not in such a program. The MSBA committee felt strongly that if a program is to be adopted, it should be applicable to all Minnesota lawyers in order to accomplish its purpose. The membership of the MSBA approved that recommendation at the MSBA convention. Moreover, in a communication to the MSBA from the Director of the Florida IOLTA program, the Florida Director strongly urged that such a program, if adopted in Minnesota, be mandatory so as best to benefit the public through the additional funds that would be available for public purposes. We have concluded that, under all the circumstances, the MSBA's recommendation of a mandatory program should be adopted since the participation of all lawyers in this state will benefit the public at large to the maximum extent.

In some state jurisdictions, the subject of the constitutional base for an IOLTA program has been raised. This has been done in the context of the Fifth Amendment of the U.S. Constitution's protection of private property from a "taking" without just compensation. (*See also* Minnesota Constitution, Art. 1, § 13.)

Another issue that has been raised in other jurisdictions is the Fifth Amendment's protection against deprivation of property without due process of law. (*See also* Minnesota Constitution, Art. 1, § 7.) We do not find that under the circumstances here the client has any "property" that is being taken without compensation or without due process of law under either the Fifth Amendment of the U.S. Constitution or under Article 1, §§ 13,7 of the Minnesota Constitution. *See Matter of Interest on Trust Accounts*, 402 So.2d 389 at 395 (Fla. 1981). There simply is no "property" now in existence that would be taken.

yers' Trust Accounts programs. The MSBA has urged that a Board, operating under the jurisdiction of this Court, which has public members as well as lawyers, would best serve the public purposes for which the Board would be created. This newly created Board would hold the entire beneficial interest in the funds earned under the IOLTA program. We adopt that approach and do so having in mind that the purposes for which the funds generated by the program would be used will, as recommended by the MSBA, initially be limited to that of legal aid to the poor, law-related education, and projects to improve the administration of justice, to the extent the same are consistent with the Internal Revenue Code and regulations promulated thereunder. *See* England and Carlisle, *supra*, 61 Fla. B.J. 101 at 103.

At the present time there are certain statutory and regulatory restrictions on the use of NOW accounts. Generally, such accounts may not be used by professional associations incorporated under Minnesota Law. These are a common form of law firm organization today. There are exceptions to the NOW account restrictions, however, when the beneficial ownership of the interest generated on such accounts rests in tax-exempt organizations which use the funds for charitable purposes consistent with the Internal Revenue Code and regulations of the IRS. It was on this basis that the Florida Bar Association received an opinion from the General Counsel of the Board of Governors of the Federal Reserve System, dated October 15, 1981, reprinted in Middlebrooks, The Interest on Trust Accounts Program, Mechanics of its Operation, 56 Fla. B.J. 115, 116-17 (1982), authorizing financial institutions in Florida to make NOW accounts available to law firms and attorneys in that state, regardless of their form of business organization, since the interest would inure to the benefit of an organization operated for charitable pur-

poses. We recognize that a similar administrative approval may be necessary for the program which we hereby approve in Minnesota. There may be other aspects of the program which we here adopt which need to be approved by, or considered by, other administrative agencies or governmental departments. It is for that reason that our order approving the program recommended by the MSBA provides that the IOLTA program not be effective until July 1, 1983. During the intervening time, the MSBA will have the opportunity to lay the groundwork for implementing the program. We contemplate that appropriate interest-bearing accounts will be conveniently and reasonably available to lawyers throughout the state and that the MSBA will work co-operatively with financial institutions to work toward that goal.

We also are of the view that, as with any new program that breaks with the traditional practices of lawyers, there should be time permitted for the MSBA even further to publicize the program and to explain to all the lawyers in the State of Minnesota, and to the public, how the program will operate. For example, some opposition to the IOLTA program here adopted has been expressed on the grounds that it may require more paperwork and additional administrative burdens and costs for lawyers. It has been represented to the Court by the MSBA that the experience in Florida and in British Columbia has demonstrated that such is not the case. Since it is contemplated that the financial institutions will handle the computation of the interest, provide the Lawyers' Trust Account Board and the lawyer with the pertinent information, and pay over the interest to the Board, net of transaction costs, we see little change in the handling of trust accounts by lawyers in Minnesota under the new program from

how they handle their trust accounts at the present time. However, to the extent that any problems arise in the preparation for the date of implementation, such problems should be reported by the MSBA to this Court so that such problems might be appropriately addressed.