

To: NH Supreme Court Advisory Committee on the Rule
From: Derek Lick
Re: Proposed Changes to Supreme Court Rule 50
Date: 11/13/23

Currently, there are concerns that law firm trust accounts are only insured to the \$250,000 federal insurance limit placed on single accounts by the FDIC and similar federal government agency bank deposit insurers. Often attorney and law firm trust account balances are above the insured limit. To address this concern, banks and law firms are exploring so-called “sweep” accounts in which banks “share” deposits with one another, opening separate accounts for deposits greater than the insured limit. New Hampshire attorneys are asking for clear guidance on whether they can use such “sweep” accounts, and if that is still permissible if the funds in such “sweep” accounts may be deposited by their financial institutions with banks outside of New Hampshire. This proposed rule change is to provide clarity to lawyers that such “sweep” accounts are permitted, so long as the accounts to which the funds are deposited are also insured and allow for “on demand” withdrawals.

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Rule 50. Trust Accounts.

(1) Interest-Bearing Pooled Trust Accounts. In addition to any individual client trust accounts, a member of the New Hampshire Bar who is not exempt from this requirement pursuant to Rule 50(1)(F) shall create or maintain a pooled, interest-bearing trust account known as "Interest on Lawyers Trust Accounts program" or "IOLTA" account for clients' funds which are nominal in amount or to be held for a short period of time and must comply with the following provisions:

A. An interest-bearing trust account shall be established with any bank, ~~or~~ savings and loan association, or credit union authorized by ~~F~~ederal or State law to do business in New Hampshire and insured by the Federal Deposit Insurance Corporation, ~~or~~ the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, or other financial institution with adequate federal insurance covering client funds ("financial institution"). Funds in each interest-bearing trust account shall be subject to withdrawal upon demand. A lawyer establishing such a trust account and the financial institution holding the trust account funds are permitted to deposit the trust account's funds into so-called "sweep" accounts to secure more than the federal insurance coverage provided for individual accounts. Additionally, such "sweep" accounts are permitted under this Rule even if the trust funds in the "sweep" accounts may be deposited by the lawyer's New Hampshire financial institution in financial institutions outside of New Hampshire, so long as all financial institutions holding the trust funds are federally insured by the federal entities as identified above. For purposes of this Rule, "sweep" accounts are those accounts that automatically transfer amounts above a client-established threshold into separate accounts at the close of each business day, but whose funds are still available for withdrawal upon demand.

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