

SUPREME COURT OF ARKANSAS

No. 13-370

IN RE PETITION TO MERGE
ARKANSAS ACCESS TO JUSTICE
FOUNDATION, INC., AND THE
ARKANSAS IOLTA FOUNDATION,
INC.

Opinion Delivered May 16, 2013

PER CURIAM

The Arkansas IOLTA Foundation, Inc., and the Arkansas Access to Justice Foundation, Inc., by and through their respective Boards of Directors, filed a “Petition To Approve the Agreement and Plan of Merger; To Amend Rule 1.15 of the Arkansas Rules of Professional Conduct; and To Amend Section 28 of the Procedures Regulating Professional Conduct.” The petition filed on April 30, 2013, is now before the court.

As more fully set out in the petition, the petitioners have reviewed the operations of their entities, and to enhance their common mission to provide legal services to low-income Arkansans, the Boards have concluded that the two entities should merge.

Arkansas IOLTA Foundation, Inc., shall be the surviving corporation, and it shall be renamed “Arkansas Access to Justice Foundation, Inc.”

Petitioners request that the supreme court approve the Agreement and Plan of Merger, which is attached to the petition as Exhibit 1. The petition and proposed agreement are attached to this per curiam order for comment from the bench, the bar, and the public. Comments should be made in writing before June 30, 2013, and addressed to: Les Steen,

Clerk of the Supreme Court, Attention: IOLTA, Justice Building, 625 Marshall St., Little Rock, AR 72201.

PETITION TO APPROVE THE AGREEMENT AND PLAN OF MERGER
BY AND BETWEEN ARKANSAS ACCESS TO JUSTICE FOUNDATION, INC. AND
ARKANSAS IOLTA FOUNDATION, INC.; TO AMEND RULE 1.15 OF THE ARKANSAS
RULES OF PROFESSIONAL CONDUCT; AND TO AMEND SECTION 28 OF THE
PROCEDURES REGULATING PROFESSIONAL CONDUCT

RECEIVED
SUPREME COURT OF ARKANSAS
CLERK'S OFFICE
2013 APR 30 P 2 10
LESLIE W. STEEN CLERK

The Arkansas IOLTA Foundation, Inc., and the Arkansas Access to Justice Foundation, Inc., by and through their respective Boards of Directors, respectfully petition the Court to approve the Agreement and Plan of Merger by and between Arkansas Access to Justice Foundation, Inc. ("AAJF"), and Arkansas IOLTA Foundation, Inc., to amend Rule 1.15 of the Arkansas Rules of Professional Conduct and to amend Section 28 of the Procedures Regulating Professional Conduct and for their reasons state:

1. On September 17, 1984, the Court permitted the establishment of the Arkansas IOLTA Foundation, Inc., a 501(c)(3) not-for-profit corporation, as the qualified recipient of interest earned by lawyer trust accounts to allocate net income for (a) legal aid to the poor, (b) student loans and scholarships, (c) improvement of the administration of justice and (d) other purposes as the Court may from time to time approve.

2. The Court created the Arkansas Access to Justice Commission ("the Commission") by per curiam order on December 18, 2003. The mission of the Commission is to provide equal access to justice in civil cases to all Arkansans. Since its creation, the Commission has worked to increase the pro bono representation of persons who qualify for legal aid as well as to raise funds for the legal aid organizations that serve Arkansans. In 2009, the Commission created AAJF, a 501(c)(3) not-for-profit corporation that solicits funds for the following purposes: (a) to promote and to support access to the justice system by persons in Arkansas who cannot afford a lawyer and for whom the law does not provide a right to counsel; (b) to educate the public regarding the needs of Arkansans related to meaningful access to the justice system;

FILED
APR 30 2013
LESLIE W. STEEN
CLERK

and (c) to assist in support activities, including fundraising, that enable the Arkansas Access to Justice Commission, the Center for Arkansas Legal Services, Inc., and Legal Aid of Arkansas, Inc., to fulfill their missions of providing access to justice and legal aid to Arkansans who cannot afford a lawyer and who qualify for legal services.

3. On April 2, 2009, the Court issued a per curiam order that recognized the need to provide staff support to the Commission. In its order the Court observed that the work of IOLTA and the Commission overlap in many areas, and further observed that a number of individuals serve on both the IOLTA Board of Directors and as members of the Commission. In order to assist the Court in determining how best to provide staff assistance, the Court requested the IOLTA Board of Directors and the Commission to explore possible options regarding mission and structure and to report as to how needs for legal services to low-income Arkansans can best be met.

4. Since the April 2, 2009 per curiam order, IOLTA and the Commission, with the Court's financial assistance, have employed an individual to act as executive director for both organizations. IOLTA began providing an annual grant to the Commission for an executive assistant position. The Commission and IOLTA have consolidated their staffs offices, leasing space contiguous to space leased by the Center for Arkansas Legal Services (CALs) with whom the staffs can share resources. In addition, consideration was given to the best way to coordinate the parallel fundraising efforts of IOLTA and AAJF for the betterment of legal services to low-income Arkansans.

5. On February 10, 2012, the respective Boards of Directors of IOLTA and AAJF, having determined that it would be a prudent and efficient and in the best interest of their respective corporations to combine, appointed a Special Joint Committee ("the Committee")

consisting of Richard “Toby” Atkinson, Nate Coulter, Charles Goldner, John Monroe, Richard C. Downing, Frank Sewall, and Annabelle Imber Tuck to study the matter and develop a plan for the merger of IOLTA and AAJF. For the next several months the Committee worked to develop a plan of merger by and between IOLTA and AAJF.

6. The Committee, in developing its recommendation, reviewed the structure used in other jurisdictions that have IOLTA programs. According to the *IOLTA Handbook*, first published in January 1995 by the American Bar Association Committee on Interest in Lawyers’ Trust Accounts, and updated in September 2011, there were 47 court-created IOLTA programs in 2011. The proposed structure parallels the model employed in a significant majority of these programs. In 2011, of the 47 court-created IOLTA programs, only Arkansas and eight other states used an independent 501(c)(3) corporation to administer the IOLTA program. Pre-existing bar foundations administered 28 of the programs; seven were administered as extensions or special programs of the state government, state supreme court, or state bar; and three were administered by bar foundations that were created to administer the states’ IOLTA programs.

7. The Committee concluded its study and recommended to the Boards of Directors of IOLTA and AAJF that the articles of incorporation of the surviving corporation include the following new purposes adopted from the purposes of both IOLTA and AAJF:

“This Corporation is organized and shall be operated as a nonprofit corporation exclusively for charitable and educational purposes as described in Section 501(c)(3) of the Internal Revenue Code which are more specifically described as follows:

- To receive interest income generated by deposits in trust accounts for the benefit of clients maintained by attorneys practicing in the State of Arkansas,
- To conduct fundraising; and
- To utilize such revenues received from interest income and fundraising to support programs

That promote and support access to the justice system by persons in Arkansas who cannot afford a lawyer and for whom the law does not provide a right to counsel;

That educate the public regarding the needs of Arkansans related to meaningful access to the civil justice system;

That provide student loans and scholarships for the education of lawyers;

That improve the administration of justice in the State of Arkansas;

That assist in support activities of institutions and organizations which improve the administration of justice, including, but not limited to, the Arkansas Access to Justice Commission, the Center for Arkansas Legal Services, Inc. and Legal Aid of Arkansas, Inc. to fulfill their missions of providing access to justice and legal aid to Arkansans who cannot afford a lawyer and who qualify for legal services; and

That carry out other purposes that may be approved from time to time by the Arkansas Supreme Court.”

8. The Committee concluded and recommended to the Boards of Directors of IOLTA and AAJF that the Board of Directors of the surviving corporation initially be composed of fifteen (15) individuals appointed by and from among the respective boards of the entities that existed prior to their merger resulting in the formation of the Corporation. After the staggered terms for these members expire, the following criteria for tenure and qualification—which may be found in the proposed Bylaws attached as Exhibit B to the Agreement and Plan of Merger—shall apply:

Attorney appointments should fulfill diverse qualities which are not represented by the sitting attorney board members, including race, gender, geographic location (including representation from urban and rural areas), and firm size. Attorney members who are eligible should be enrolled in the Arkansas IOLTA Program. Each Director shall hold office for a term of three (3) years except as otherwise required to provide for the staggering of terms. Directors may serve one or more subsequent terms by reelection; provided, however, that after serving three consecutive terms, a Director must have a hiatus for one year before being eligible for reelection to the Board. No paid employee of the Corporation or spouse or child thereof shall be eligible to serve as a Director. The Directors shall be elected or appointed as follows:

Five (5) members who shall be appointed by the President of the Arkansas Bar Association, including three (3) attorneys licensed and practicing in the State of Arkansas and two (2) representatives (who may or may not be attorneys) of financial institutions that are approved by the Arkansas Supreme Court Office of Professional Conduct and that participate in the Arkansas IOLTA Program.

Five (5) members who shall be appointed by the Arkansas Supreme Court and who shall be attorneys licensed and practicing in the State of Arkansas.

Five (5) members who shall be elected by the members of the Board of Directors.

9. The Committee initially recommended that the surviving corporation of the merger be AAJF because its organizational documents were modern and complied with the Arkansas Nonprofit Corporation Act of 1993. However, during its discussions the Committee determined if AAJF were the surviving corporation, various bank and tax laws and regulations would require every bank holding IOLTA trust fund accounts to change the tax identification number on the accounts from the IOLTA tax identification number. Such a change might have required lawyers authorizing each account to reopen the account. To avoid this disruption in the current IOLTA trust accounts administration, the Committee redrafted the initial plan for AAJF to merge into IOLTA. IOLTA, the surviving corporation, would adopt the name "Arkansas Access to Justice Foundation, Inc.," as well as articles of incorporation and bylaws which incorporate many provisions from the bylaws of the old AAJF—substantially similar to those attached to the Agreement and Plan of Merger. The original IOLTA corporation would survive, but with a new name, "Arkansas Access to Justice Foundation, Inc." It would retain the IOLTA tax identification number.

10. The Committee also recommended continuing the current core functions of IOLTA—including separate accounting for interest earned on lawyers' trust accounts and administrative responsibility for bank and attorney compliance with Rule 1.15—as a distinct program of the Arkansas Access to Justice Foundation. IOLTA currently accounts for IOLTA program income by individual law firm and individual bank and tracks that income separately from other types of revenue. No new mechanism would therefore need to be established to

ensure continuation of such functions as a discrete program of an entity within a broader set of resource development objectives.

11. During the late summer of 2012, the Committee presented its proposed Agreement and Plan of Merger to the Boards of Directors of AAJF and IOLTA. The Board of Directors of AAJF approved the Plan of Merger on August 17, 2012. The Board of Directors of IOLTA approved the plan on September 13, 2012. On February 22, 2013 Richard C. Downing, President of IOLTA, and William A. Waddell, Jr., President of AAJF, executed the Agreement and Plan of Merger. A copy of the executed Agreement and Plan of Merger is attached, Exhibit 1.

12. In accordance with Subsection 5.b. of the Agreement and Plan of Merger, the Petitioners respectfully submit the Agreement and Plan of Merger to the Court for approval.

13. If the Court approves the Agreement and Plan of Merger, the implementation of the Plan of Merger will result in changing the name of the Arkansas IOLTA Foundation; for this reason, the Petitioners respectfully request the Court to amend Rule 1.15 of the Arkansas Rules of Professional Conduct and Section 28 of the Procedures Regulating Professional Conduct to substitute "Arkansas Access to Justice Foundation" or "AAJF" in place of "Arkansas IOLTA Foundation" as shown in the attached Exhibit 2.

14. Petitioners believe that approval of the Merger Agreement, with the conforming amendments to Rule 1.15 and Section 28, advances the mission of the original IOLTA Foundation to provide funds for legal services to low-income Arkansans, albeit with a new name, the Arkansas Access to Justice Foundation, Inc.

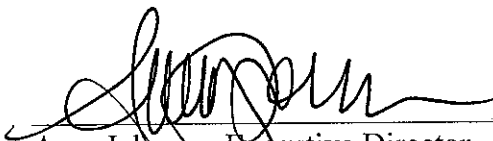
Respectfully submitted,



Nate Coulter, Board Member
Arkansas Access to Justice Commission
Arkansas Access to Justice Foundation
Arkansas IOLTA Foundation
Ark. Bar No. 85034



Richard C. Downing, President
Arkansas IOLTA Foundation, Inc.
Ark. Bar No. 74038



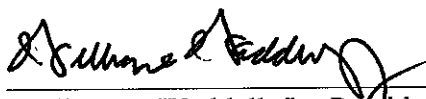
Amy Johnson, Executive Director
Arkansas Access to Justice Commission
Arkansas Access to Justice Foundation, Inc.
Arkansas IOLTA Foundation, Inc.
Ark. Bar No. 2002069



Frank Sewall, Board Member
Arkansas IOLTA Foundation, Inc.
Ark. Bar No. 75112



Annabelle Imber Tuck, Chair
Arkansas Access to Justice Commission
Ark. Bar No. 77032



William A. Waddell, Jr., President
Arkansas Access to Justice Foundation
Ark. Bar No. 84154

Execution Copy

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger, is made this 22nd day of February, 2013 (this "Agreement"), by and between ARKANSAS ACCESS TO JUSTICE FOUNDATION, INC., an Arkansas nonprofit corporation ("AAJF"), and Arkansas IOLTA Foundation, Inc. ("IOLTA").

RECITALS

A. IOLTA is an Arkansas nonprofit corporation, qualifying as a 501(c)(3) organization under Federal tax law, originally formed to receive interest income generated by deposits in trust accounts for the benefit of clients maintained by attorneys practicing in the State of Arkansas and to utilize such revenues to (i) support programs for legal aid to the poor; (ii) provide student loans and scholarships; (iii) improve the administration of justice in the State of Arkansas, and (iv) accomplish other purposes that may be approved from time to time by the Arkansas Supreme Court.

B. AAJF is an Arkansas nonprofit corporation, qualifying as a 501(c)(3) organization under Federal tax law, originally formed to (i) promote and to support access to the justice system by persons in Arkansas who cannot afford a lawyer and for whom the law does not provide a right to counsel; (ii) educate the public regarding the needs of Arkansans related to meaningful access to the justice system; and (iii) assist in support activities, including fundraising, that enable the Arkansas Access to Justice Commission, the Center for Arkansas Legal Services, Inc. and Legal Aid of Arkansas, Inc. to fulfill their missions of providing access to justice and legal aid to Arkansans who cannot afford a lawyer and who qualify for legal services.

C. The respective Boards of Directors of IOLTA and AAJF having determined that it may be in the best interest of their respective corporations to combine their respective corporations, appointed a Special Joint Committee consisting of Richard "Toby" Atkinson, Nate Coulter, Ray Fulmer, Charles Goldner, John Monroe, Richard C. Downing, Frank Sewall, Annabelle Imber Tuck to study the matter and develop a plan for the merger ("the Merger") of IOLTA into AAJF in accordance with the Arkansas Nonprofit Corporation Act of 1993.

NOW, THEREFORE, in consideration of the mutual representation, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby agree as follows:

1. MERGER

- a. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Date (as defined below), AAJF shall be merged with and into IOLTA whereupon the separate existence of AAJF will cease and IOLTA shall be the surviving corporation in the merger ("the Surviving Corporation").
- b. As soon as practicable after satisfaction or waiver of the conditions to obligations of the parties to consummate the Merger, IOLTA and AAJF will file articles of merger ("the Articles of Merger") with the Arkansas Secretary of State and make all other filings or recordings required by applicable law in connection with the Merger.
- c. The merger shall be effective at such time as the Articles of Merger are duly filed with the Secretary of State or at such later time as is specified in the Articles of Merger ("the Effective Date"). It is contemplated that the Effective Date will be on or about January 1, 2014.
- d. From and after the Effective Date, title to all property owned by IOLTA and AAJF shall be vested in the Surviving Corporation and the Surviving Corporation shall have all liabilities of IOLTA and AAJF.

2. SURVIVING CORPORATION

- a. The Articles of Incorporation of the Surviving Corporation in effect at the Effective Date shall be the Articles of Incorporation of the Surviving Corporation until amended in accordance with applicable law. Subsequent to or simultaneous with the merger becoming effective, the Articles of Incorporation of the Surviving Corporation shall be amended so that they reflect substantially the same terms as Exhibit A attached hereto (the Articles).
- b. The bylaws of the Surviving Corporation shall be substantially in the form set forth in Exhibit B attached hereto (the Bylaws). On the Effective Date, the Board of Directors shall meet and amend the Bylaws to include the provisions set forth on Exhibit B.
- c. Prior to the Effective Date the officers and directors of the respective parties shall continue to serve in their respective capacities. On or prior to November 1, 2013, the new directors of the Surviving Corporation shall be designated in accordance

with the Surviving Corporation's Bylaws and the applicable provisions of Exhibit B.

- d. Subsequent to or simultaneous with the merger becoming effective, the name of the Surviving Corporation shall be changed to "Arkansas Access to Justice Foundation, Inc."

3. REPRESENTATIONS AND WARRANTIES

- a. AAJF represents and warrants to IOLTA that:
 - i. AAJF is duly organized, validly existing and in good standing under the laws of the State of Arkansas.
 - ii. AAJF has made available to IOLTA complete and correct copies of its Articles of Incorporation and Bylaws.
 - iii. AAJF has made available to IOLTA copies of its financial statements for the year 2012 ("the AAJF Financial Statements").
 - iv. Since the date of the last financial statement provided to IOLTA, AAJF has conducted its operation in the ordinary course and there has not been any change in the financial condition, properties or results of operations of AAJF except those changes that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on it.
 - v. Except as disclosed in the AAJF Financial Statements, there are no (A) criminal, civil or administrative actions, suits, claims, hearings, investigations or proceedings pending, or, to the knowledge of AAJF's officers ("the AAJF Officers"), threatened against it, or (B) obligations or liabilities, whether or not accrued, contingent or otherwise, or any other facts or circumstances known to the AAJF Officers that would reasonably be expected to result in any adverse claims against AAJF.
- b. IOLTA represents and warrants to AAJF that:
 - i. IOLTA is duly organized, validly existing and in good standing under the laws of the State of Arkansas.
 - ii. IOLTA has made available to AAJF complete and correct copies of its Articles of Incorporation and Bylaws.

- iii. IOLTA has made available to AAJF copies of its financial statements for the year 2012 (“the IOLTA Financial Statements”).
- iv. Since the date of the last financial statement provided to AAJF, IOLTA has conducted its operation in the ordinary course and there has not been any change in the financial condition, properties or results of operations of IOLTA except those changes that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on it.
- v. Except as disclosed in the IOLTA Financial Statements, there are no (A) criminal, civil or administrative actions, suits, claims, hearings, investigations or proceedings pending, or, to the knowledge of IOLTA’s officers (“the IOLTA Officers”), threatened against it, or (B) obligations or liabilities, whether or not accrued, contingent or otherwise, or any other facts or circumstances known to the IOLTA Officers that would reasonably be expected to result in any adverse claims against IOLTA.

4. COVENANTS

- a. AAJF covenants and agrees after the date hereof and until the Effective Date:
 - i. The business of AAJF shall be conducted in the ordinary and usual course and, to the extent consistent therewith, AAJF shall use its best efforts to maintain its existing relations and goodwill with vendors and employees.
 - ii. AAJF shall not enter into any new contracts or commitments that will extend beyond the Effective Date without the consent of IOLTA.
 - iii. AAJF will use its best efforts to obtain the actions necessary to consummate the merger contemplated herein.
 - iv. AAJF will coordinate with IOLTA all press releases and public announcements regarding the merger.
 - v. All costs and expenses incurred by a party in connection with this Agreement, shall be paid by the party incurring the expense.
- b. IOLTA covenants and agrees after the date hereof and until the Effective Date:
 - i. The business of IOLTA shall be conducted in the ordinary and usual course and, to the extent consistent therewith, IOLTA shall use its best

efforts to maintain its existing relations and goodwill with vendors and employees.

- ii. IOLTA shall not enter into any new contracts or commitments that will extend beyond the Effective Date without the consent of AAJF.
- iii. IOLTA will use its best efforts to obtain the actions necessary to consummate the merger contemplated herein.
- iv. IOLTA will coordinate with IOLTA all press releases and public announcements regarding the merger.
- v. All costs and expenses incurred by a party in connection with this Agreement, shall be paid by the party incurring the expense.

5. APPROVAL ACTIONS

- a. Both parties agree to submit this Agreement for approval of their respective Boards of Directors on or before February 22, 2013.
- b. If the Boards of Directors of IOLTA and AAJF approve this Agreement by votes required by their respective Articles of Incorporation or Bylaws, the parties shall submit this Agreement to the Arkansas Supreme Court for its consideration.
- c. If the Arkansas Supreme Court approves this Agreement, then Articles of Merger shall be executed and filed with the Arkansas Secretary of State.

6. TERMINATION

This Agreement may be terminated and the merger abandoned any time before the approval thereof by the directors of both AAFJ and IOLTA.

7. AMENDMENTS

This Agreement may be amended by the approval of the Boards of Directors of the parties at any time before or after their respective approvals, but not after approval by the Arkansas Supreme Court.

8. EXTENSION; WAIVER

At any time prior to the Effective Date, the Board of Directors of either party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document or instrument delivered pursuant hereto, and (c) waive compliance by the other party with any of the agreements or conditions

contained herein. Any such extension or waiver by a party shall be valid only if set forth in writing and delivered on behalf of such party.

IN WITNESS WHEREOF, the parties hereto, pursuant to the authority given them by their respective Boards of Directors, have caused this Agreement to be signed by their respective authorized officers as of the day and year first above written.



Richard C. Downing, President
Arkansas IOLTA Foundation, Inc.



William A. Waddell, Jr., President
Arkansas Access to Justice Foundation, Inc.

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
ARKANSAS ACCESS TO JUSTICE FOUNDATION, INC.
f/k/a
ARKANSAS IOLTA FOUNDATION, INC.**

We, the undersigned, acting as members of the Board of Directors of a corporation incorporated under the provisions of Act 176 of 1963, do hereby elect to be governed by the provisions of the Arkansas Nonprofit Act (Act 1147 of 1993) and adopt the following Amended and Restated Articles of Incorporation of such corporation.

FIRST. The name of this Corporation shall be Arkansas Access to Justice Foundation, Inc. (herein referred to as the "Corporation").

SECOND. This Corporation is a public benefit corporation.

THIRD. The period of existence of this Corporation shall be perpetual.

FOURTH. This Corporation is organized and shall be operated as a nonprofit corporation exclusively for charitable and educational purposes as described in Section 501(c)(3) of the Internal Revenue Code, including the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, and which are more specifically described as follows:

- To receive interest income generated by deposits in trust accounts for the benefit of clients maintained by attorneys practicing in the state of Arkansas;
- To conduct fundraising; and
- To utilize such revenues received from interest income and fundraising to support programs
 - that promote and to support access to the justice system by persons in Arkansas who cannot afford a lawyer and for whom the law does not provide a right to counsel;
 - that educate the public regarding the needs of Arkansans related to meaningful access to the justice system;
 - that provide student loans and scholarships for the education of lawyers;
 - that improve the administration of justice in the State of Arkansas;

- that assist in support activities of institutions and organizations which improve the administration of justice, including, but not limited to the Arkansas Access to Justice Commission, the Center for Arkansas Legal Services, Inc., and Legal Aid of Arkansas, Inc., to fulfill their missions of providing access to justice and legal aid to Arkansans who cannot afford a lawyer and who qualify for legal services; and
- that carry out other purposes that may be approved from time to time by the Arkansas Supreme Court.

FIFTH. The Corporation shall have and exercise all powers, privileges and rights conferred on corporations by the laws of the State of Arkansas and all powers and rights incidental to carrying out the purposes for which this Corporation is formed, except such as are inconsistent with the express provisions of the Act under which this Corporation is incorporated, and the enumeration of the foregoing purposes shall not be held to limit or restrict in any manner the general powers conferred on this Corporation by the laws of the State of Arkansas.

SIXTH. Notwithstanding any other provision of these Articles, the following restrictions and limitations shall apply to comply with the requirements imposed by § 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law (hereinafter the "Code"):

(a) No part of the net earnings of the Corporation shall inure to the benefit of any director or officer of the Corporation, or to any other interested individual; provided, however, that reasonable compensation may be paid for services rendered to or for the Corporation effecting one or more of its purposes.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distribution of statements) in any political campaign on behalf of (or in opposition to) any candidate for public office.

(c) The Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

SEVENTH. Because this Corporation is organized as a charitable corporation with perpetual existence, the Incorporators do not anticipate the dissolution of the Corporation. However, if the Corporation should ever be dissolved pursuant to Section 4-33-1401, *et seq.*, of the Arkansas Code of 1987 Annotated, then upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the Corporation, dispose of all assets of the Corporation

exclusively to such organization or organizations organized and operated exclusively for charitable and educational purposes which shall, at the time, qualify as an organization or organizations exempt under Section 501(c)(3) of the Code, and any articles of dissolution adopted by the Corporation shall so provide. Any of such assets not so disposed of shall be disposed of by the Circuit Court of the county in which the principal office of the Corporation is located, exclusively to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

EIGHTH. The principal office or place of business of this Corporation shall be located at 1300 West 6th Street, Little Rock, Arkansas 72201.

NINTH. The name and address of the registered agent of this Corporation is Amy Johnson, Executive Director, Arkansas Access to Justice Foundation, 1300 West 6th Street, Little Rock, Arkansas.

TENTH. The Corporation shall not have or issue shares of stock and no dividends shall be paid, and no part of the income of the Corporation shall be distributed to its directors or officers, or any other individuals.

ELEVENTH. The Corporation shall have no members, classes of membership or membership fees.

TWELFTH. The business of the Corporation shall be conducted by the Board of Directors; provided, however, that in accordance with § 4-33-801(c) of the Arkansas Code Annotated, the Executive Committee shall have the power to transact all regular business of the Corporation during the period between the meetings of the Board, subject to any prior limitations imposed by the Board. The Board of Directors shall have the direction of the affairs of this Corporation and shall meet as soon as practicable after the adoption of these Articles of Incorporation for the purposes of electing officers, adopting Bylaws and taking such other action as may be necessary to perfect the organization of the Corporation. Thereafter, Bylaws may be amended and officers elected as provided in the Bylaws.

THIRTEENTH. The name and addresses of the Incorporators of this Corporation are:

Richard C. Downing
James, Fink & House
P.O. Box 3585
801 W. Third St.
Little Rock, AR 72203

Annabelle Imber Tuck
34 Marcella Drive
Little Rock, AR 72223

William A. Waddell, Jr.
Friday, Eldredge & Clark, LLP
400 W. Capitol Ave., Suite 2000
Little Rock, AR 72201-3522

FOURTEENTH. These Articles may be amended by the Board of Directors of this Corporation. Unless notice is waived, the Corporation shall provide seven (7)

days written notice of any meeting of the Board of Directors at which an amendment is to be voted upon. The notice must state that a purpose of the meeting is to consider a proposed amendment to the Articles, and the notice must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

FIFTEENTH. A director is not liable to the Corporation for monetary damages for an act or omission in the director's capacity as director except to the extent otherwise provided by the Act.

SIXTEENTH. The Corporation may indemnify a person who was, is or is threatened to be made a named defendant or respondent in litigation or other proceedings because the person is or was a director or other person related to the Corporation as provided by the provisions in the Act governing indemnification. As provided in the Bylaws, the Board of Directors shall have the power to define the requirements and limitations for the corporation to indemnify directors, officers, or other related to the Corporation.

SEVENTEENTH. During any period in which the Corporation is a private foundation, and only during such period, the corporation shall make distributions at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code of 1954; the corporation shall not engage in any act of self-dealing (as defined in section 4941(d) of the Code) which would subject it to tax under section 4941 of the Code; the corporation shall not retain any excess business holdings (as defined in section 4943(c) of the Code) which would subject it to tax under section 4943 of the Code; the corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Code; and the corporation shall not make any taxable expenditures (as defined in section 4945(d) of the Code) which would subject it to tax under section 4945 of the Code.

IN WITNESS WHEREOF, the undersigned have executed these Articles of Incorporation this ____ day of _____, 2013.

RICHARD C. DOWNING, Incorporator

ANNABELLE IMBER TUCK, Incorporator

WILLIAM A. WADDELL, JR., Incorporator

BYLAWS
of
ARKANSAS ACCESS TO JUSTICE FOUNDATION, INC.
f/k/a ARKANSAS IOLTA FOUNDATION, INC.

ARTICLE I. PURPOSES

The corporation is organized and operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") as set forth in the Articles of Incorporation.

ARTICLE II. OFFICES

The principal office of the Corporation in the State of Arkansas shall be located in the City of Little Rock, County of Pulaski. The Corporation may have such other offices, either within or without the State of Arkansas, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

ARTICLE III. BOARD OF DIRECTORS

SECTION 3.01 General Powers. The affairs, activities and operation of the Corporation shall be managed by its Board of Directors.

SECTION 3.02 Number, Tenure and Qualifications. The number of the Directors of the Corporation shall be comprised of fifteen members who shall meet the qualifications set forth in this section. Initially, the Board of Directors shall consist of fifteen (15) individuals appointed by and from among the respective boards of the entities that existed prior to their merger resulting in the formation of the Corporation. The foregoing Directors shall serve as Directors until their successors are duly appointed or elected and qualified. The initial Directors shall draw terms of one, two and three years by lot in order to create staggered terms for each Director.

Thereafter, the following criteria for tenure and qualifications shall apply. Attorney appointments should fulfill diverse qualities which are not represented by the sitting attorney board members, including race, gender, geographic location (including representation from urban and rural areas), and firm size. Attorney members who are eligible should be enrolled in the Arkansas IOLTA Program. Each Director shall hold office for a term of three (3) years except as otherwise required to provide for the staggering of terms. Directors may serve one or more subsequent terms by reelection; provided, however, that after serving three consecutive terms, a Director must have a hiatus for one year before being eligible for reelection to the Board. No paid employee of the Corporation or spouse or child thereof shall be eligible to serve as a Director. The Directors shall be elected or appointed as follows:

A. Five (5) members who shall be appointed by the President of the Arkansas Bar Association, including three (3) attorneys licensed and practicing in the State of Arkansas and two (2) representatives (who may or may not be attorneys) of financial institutions that are approved by the Arkansas Supreme Court Office of Professional Conduct and that participate in the Arkansas IOLTA Program.

B. Five (5) members who shall be appointed by the Arkansas Supreme Court and who shall be attorneys licensed and practicing in the State of Arkansas.

C. Five (5) members who shall be elected by the members of the Board of Directors.

SECTION 3.03 Regular Meetings. An annual meeting of the Board of Directors shall be held at a time and place established by resolution of the Board, for the purpose of electing Directors provided for in Section 3.02.C of these Bylaws and for the transaction of such other business as may come before the meeting. If the election of Directors shall not be held on the day designated herein for any such meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Directors as soon thereafter as conveniently may be. The time and place of additional regular meetings may be fixed by resolution of the Board. If the day fixed for a regular meeting shall be a legal holiday in the State of Arkansas, such meeting shall be held on the next succeeding business day. There shall be a minimum of four (4) regular meetings of the Board of Directors each year.

SECTION 3.04 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of any Director or the President. The person or persons authorized to call special meetings of the Board of Directors may fix the place for holding any special meeting of the Board of Directors called by such person or persons.

SECTION 3.05 Notice. Notice of any special meeting shall be given at least ten (10) days previously thereto by written notice, delivered either personally, by regular mail, by electronic mail, or by facsimile transmission, to each Director at his address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 3.06 Quorum. A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

SECTION 3.07 Manner of Acting: Conflict of Interest Transactions. The affirmative vote of a majority of the Directors present at a meeting when a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these bylaws. Upon disclosure of the material facts of the transaction and the Director's interest therein, a Conflict of Interest Transaction may be authorized, approved or ratified if it receives the affirmative vote of a majority of the Directors then in office who have no direct or indirect interest in the transaction. However, a Conflict of Interest Transaction may not be authorized, approved or ratified by less than a majority of the entire Board of Directors. Definitions and procedures dealing with Conflict of Interest Transactions are set forth in the Corporation's Conflict of Interest Policy.

SECTION 3.08 Action Without A Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board. The action must be evidenced by one or more written consents describing the action taken, signed by each Director, and included in the minutes filed with the corporate records reflecting the action taken. Any action taken under this Section 3.08 shall be effective when the last Director has signed the consent, unless the consent specifies a different effective date, which effective date shall control. A consent delivered by facsimile transmission or electronic mail shall constitute a valid signed consent. A consent signed under this Section 3.08 has the effect of a meeting vote and may be described as such in any document.

SECTION 3.09 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can simultaneously hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

SECTION 3.10 Removal of Directors. A Director may be removed with cause by the vote of a majority of the Directors present at a meeting which is called for the purpose of removing a Director and for which the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of a Director. The Director shall be entitled to appear before and be heard at such meeting.

SECTION 3.11 Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of the Director's predecessor in office or until the selection, nomination and confirmation of a successor Director in accordance with Article III, Section 3.02, whichever occurs first. Any directorship to be filled by reason of an increase in the number of Directors may be filled by election by the Board of Directors for a term of office continuing only until the next election by the Directors. Any Director who fails to attend three (3) consecutive regular Board meetings without a valid excuse shall be considered for all purposes as having resigned as Director.

SECTION 3.12 Chair and Vice-Chair of the Board. The Chair of the Board of Directors shall preside at all meetings thereof, and in the Chair's absence the Vice-Chair shall preside. The Chair and Vice-Chair shall also serve on the Executive Committee as more fully set forth herein.

SECTION 3.13 Compensation. No compensation shall be paid to the Directors, as such, for their services, but under policies established by Resolution of the Board, a Director may be reimbursed for actual expenses incurred in attending each regular or special meeting of the Board. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving reasonable compensation therefor within the constraints of the Arkansas law and the federal law relating to charitable organizations tax exempt under § 501(c)(3) of the Code.

ARTICLE IV. OFFICERS

SECTION 4.01 Officers. The officers of the Corporation may be a President, one or more Vice-Presidents (the number thereof to be determined by the Board of Directors), a Secretary and a Treasurer, each of whom shall be elected by the Directors. In the absence of a salaried chief executive officer, the Chair may serve also as President upon election to that office by the Board of Directors. Any of those officers may also be Directors, provided that no such officer who is a salaried employee of the Corporation may serve on the Board of Directors. The same individual may simultaneously hold more than one office in the Corporation, but no individual may act in more than one capacity where action of two or more officers is required. Such other officers and assistant or subordinate officers as may be deemed necessary may be elected or appointed by the Board of Directors. The Board also may delegate to any officer the power to appoint any assistant or subordinate officers and to prescribe the duties and authority thereof.

SECTION 4.02 Election and Term of Office. The officers of the Corporation shall be elected annually by the Directors at the annual meeting of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until the officer's death, resignation, or removal in the manner hereinafter provided.

SECTION 4.03 Removal. The President may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby. Any other paid employee-officer or agent may be removed by the President or the Board of Directors whenever in their judgment the best interests of the Corporation will be served thereby.

SECTION 4.04 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 4.05 President. The President shall be the principal executive officer of the Corporation, subject to the control of the Board of Directors, and shall in general supervise and control all of the business and affairs of the Corporation. The President may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed, and the President shall in general perform all duties as may be prescribed by the Board of Directors from time to time.

SECTION 4.06 Vice-President. In the absence of the President or in event of the President's death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

SECTION 4.07 Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Directors and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

SECTION 4.08 Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds of the Corporation; (b) receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors and in accordance with the financial control procedures duly adopted by the Board of Directors; (c) provide a report on the financial condition of the corporation at the annual meeting of the Directors and at such other times as may be requested by the Board of Directors; and (d) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

ARTICLE V. COMMITTEES

SECTION 5.01 Establishment. The Board of Directors from time to time may establish, instruct, and discharge one or more committees of the board. A committee may be established either as a standing committee or as an ad hoc committee for a special purpose. Each committee established by the Board of Directors shall consist of two or more Directors each of whom shall serve at the pleasure of the Board of Directors. The creation of each committee and

the appointment of members shall be approved by the Board of Directors acting in any manner permitted under Article III of these Bylaws.

SECTION 5.02 Powers. The Board of Directors may delegate such of its powers as it deems necessary to such committees as it may from time to time establish; provided, however, that a committee of the Board may not (i) authorize distributions; (ii) approve the dissolution, merger or the sale, pledge or transfer of all or substantially all of the Corporation's assets; (iii) elect, appoint or remove Directors or fill vacancies on the Board or any of its committees; (iv) adopt, amend or repeal the articles or bylaws; or (v) approve the annual budget. Any committee may exercise such of the Board's authority as the committee is granted by the Board of Directors, subject to the restrictions contained in the Articles of Incorporation or these Bylaws.

SECTION 5.03 Meetings and Action. The provisions of Article III of these Bylaws shall apply to govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of each committee and its members. Pursuant to those provisions, the chair of each committee shall fix the time and place of its meetings, shall provide for the recording of minutes of committee meetings, and shall promptly report the committee's actions and recommendations to the Board of Directors. If the committee chair is unable or otherwise fails to perform those duties, the Chair of the Board of Directors may take such actions as are necessary to ensure that the committee's responsibilities are fulfilled, including without limitation the replacement of the committee chair.

SECTION 5.04 Executive Committee. There shall be a standing committee to be known as the Executive Committee. The members of the committee shall consist of the Chair, the Vice-Chair, the Secretary and the Treasurer of the Corporation and the chairs of each standing committee. The Executive Committee may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation as allowed under the Arkansas Nonprofit Corporation Act of 1993. The Executive Committee shall maintain regular minutes of their proceedings and report the same to the Board of Directors at each regular meeting of the Board.

SECTION 5.05 Finance Committee. There shall be a standing committee to be known as the Finance Committee. The members of this committee shall consist of the Treasurer and at least two other Directors selected by the Board of Directors. The Finance Committee shall be responsible for oversight of all financial matters of the Corporation, including preparation of financial policies and procedures; recommendation of the annual operating budget and any amendment thereto for approval by the Board of Directors; and the making of recommendations to the Board of Directors on budgetary, investment, and other financial matters.

SECTION 5.06 Grants Committee. There shall be a standing committee to be known as the Grants Committee. The members of this committee shall consist of the Vice-President and at least two other Directors selected by the Board of Directors. The Grants Committee shall be responsible for overseeing all aspects of the Corporation's grantmaking and monitoring process, including the development of grantmaking policies, procedures, and priorities; the issuance and

review of annual grant applications; and the recommendation of grantees and grant awards to the Board of Directors.

ARTICLE VI. INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 6.01 Mandatory Indemnification. In accordance with Ark. Code Ann. §§ 4-33-852 and 4-33-856, the Corporation shall indemnify any Director or officer and his or her estate or personal representative who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the Director or officer is a party by virtue of his or her status as a Director or officer of the Corporation.

SECTION 6.02 Permissible Indemnification. Pursuant to A.C.A. § 4-33-851, and except as provided in Section 6.03 below, the Corporation may indemnify a Director or officer made a party to a proceeding by virtue of his or her status as a Director or officer, against liability incurred in the proceeding if the following conditions are met: (i) the Director or officer conducted himself or herself in good faith; (ii) with respect to conduct in his or her official capacity, the Director or officer had reason to believe that his or her conduct was in the best interests of the corporation; (iii) in cases of conduct not in his or her official capacity, the Director or officer had reason to believe that his or her conduct was at least not opposed to the best interests of the Corporation; and (iv) in the case of any criminal proceeding, the Director or officer had no reasonable cause to believe his or her conduct was unlawful.

SECTION 6.03 Prohibition of Indemnification in Certain Cases. The Corporation shall not indemnify a Director or officer in connection with any proceeding by or in the right of the Corporation in which the Director or officer was adjudged liable to the Corporation, or in connection with any other proceeding charging improper personal benefit to the Director or officer, whether or not involving action in his or her official capacity, in which the Director or officer was adjudged liable on the basis that personal benefit was improperly received by the Director or officer.

SECTION 6.04 Procedure for Authorizing Indemnification of Directors. Before the Corporation may indemnify any Director pursuant to Section 6.02 above, a determination must be made that indemnification of a Director is permissible because the Director has met the standards of conduct set forth in Section 6.02 of this Article VI. The Board of Directors shall make that determination by a majority vote of a quorum consisting of Directors who are not at the time parties to the proceeding; provided, however, that if such a quorum cannot be obtained, then the determination shall be made either by a committee designated by the Board of Directors or by special legal counsel in accordance with A.C.A. § 4-33-855(b)(2) and (3). Furthermore, the Corporation may not indemnify a Director until twenty (20) days after the effective date of the written notice of the proposed indemnification to the Attorney General of the State of Arkansas. The Corporation may pay for or reimburse the reasonable expenses incurred by a Director or officer who is a party to a proceeding in advance of final disposition of the proceeding upon authorization made in accordance with A.C.A. § 4-33-855 and upon satisfaction of all the conditions prescribed in § 4-33-853.

SECTION 6.05 Insurance. The Corporation may purchase and maintain insurance on behalf of its Directors and officers to insure against liabilities asserted against or incurred by the Corporation's Directors and officers in that capacity or arising from their status as Directors and officers, whether or not the Corporation would have the power to indemnify them against the same liability under the preceding sections of this Article VI.

SECTION 6.06 Definitions. The following definitions apply to the indemnification provisions of this Article VI:

(a) Proceeding. "Proceeding" means any threatened, pending or completed civil action, suit or proceeding, whether judicial, administrative, or investigative, and whether formal or informal.

(b) Liability. "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

(c) Expenses. Indemnification against expenses which is mandated or permitted under this Article VI is limited to reasonable expenses, including attorneys' fees, incurred in connection with a proceeding.

(d) Ark. Code Ann. All citations in these Bylaws to "Ark. Code Ann." or to "A.C.A." shall refer to the Arkansas Code of 1987 Annotated, as amended from time to time by the Arkansas Legislature.

ARTICLE VII. CONTRACTS, LOANS, CHECKS AND DEPOSITS

SECTION 7.01 Contracts. The Board of Directors may authorize by resolution any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

SECTION 7.02 Loans. No loans shall be made by the Corporation to its Directors or officers. Any Directors who vote for or assent to the making of a loan to a Director or officer, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until repayment thereof in accordance with the provisions of the Arkansas Nonprofit Corporation Act of 1993. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

SECTION 7.03 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

SECTION 7.04 Deposits. All funds of the Corporation not otherwise employed shall be deposited promptly to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE VIII. FISCAL YEAR

The fiscal year of the Corporation shall be January 1 through December 31.

ARTICLE IX. DIVIDENDS PROHIBITED

The Corporation shall not have or issue shares of stock, and no dividend shall be paid and no part of the income of the Corporation shall be distributed to its Directors or officers. The Corporation may pay compensation in a reasonable amount to its Directors or officers for services rendered, and may reimburse its Directors, officers and employees for expenses incurred in attending to their authorized duties; provided, however, that such expenses shall be evidenced by receipt or other proper document.

ARTICLE X. AMENDMENTS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors at any regular or special meetings thereof. Unless the amendments are unanimously adopted by the Directors acting without a meeting pursuant to Section 3.08 of Article III hereof or unless notice is waived, the Corporation shall provide ten (10) days written notice to the Directors that the amendment will be voted upon at the meeting of Directors, and the notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment of the Bylaws, and the notice shall also contain or be accompanied by a copy or a summary of the amendment or state the general nature of the amendment. Any amendment must be approved by a majority of the Directors in office at the time the amendment is adopted.

CERTIFICATE

I, the undersigned, hereby state and certify that the foregoing is a true, correct and conformed copy of the Bylaws of Arkansas Access to Justice Foundation, Inc. duly adopted by the Board of Directors of said organization on the ____ day of _____, 2013, and that the same have not been altered, modified, amended or repealed in any respect and remain in full force and effect on this date.

Secretary

Proposed Revisions to Rule 1.15 for Merger Petition

Rule 1.15. Safekeeping property and trust accounts

(a) Safekeeping property.

(1) A lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

(2) Property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.

(3) Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client.

(4) A lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order.

(5) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons.

(6) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(b) Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.

(1) Funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

(2) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer may deposit funds belonging to the lawyer or the law firm in a client trust account for the sole purposes of paying bank services charges on that account, or to comply with the minimum balance required for the waiver of bank charges, but only in the amount necessary for those purposes, but not to exceed \$ 500.00 in any case. Such funds belonging to the lawyer or law firm shall be clearly identified as such in the account records.

(4) Each trust account referred to in section (b)(1) shall be an interest- or dividend bearing account held at an eligible institution.

(5) Each such trust account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable

instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account ("IOLTA" account) for such funds. The account shall be maintained in compliance with the following requirements:

(i) The trust account shall be maintained in compliance with sections (b)(1)-(b)(5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;

(ii) No earnings from the account shall be made available to the lawyer or law firm; and,

(iii) The interest accruing on this account, net of allowable reasonable fees, shall be paid to the IOLTA Program of the Arkansas IOLTA Access to Justice Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.

(7) All client funds shall be deposited in the account specified in section (b)(6), unless they are deposited in a separate interest-bearing account ("non-IOLTA" account) for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in this Rule.

(8) The decision whether to use an "IOLTA" account specified in section (b)(6) or a "non-IOLTA" account specified in section (b)(7) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

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

(ii) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.

(9) Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(10) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on a form provided by and in a manner designated by the Clerk of the Supreme Court.

(11) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas IOLTA Access to Justice Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the IOLTA Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.

(c) ~~IOLTA Foundation relationship~~ Relationship with eligible and member institutions.

(1) DEFINITIONS. As used in this rule, the terms below shall have the following meaning:

(i) "IOLTA account" means an interest- or dividend-bearing trust account benefiting the Arkansas IOLTA Access to Justice Foundation, Inc., established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons, which may be withdrawn upon request as soon as permitted by law.

(ii) "Eligible institution" for IOLTA accounts means a depository bank or savings and loan association or credit union authorized by federal or state laws to do business in Arkansas, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Arkansas. In addition, an eligible institution must either (1) maintain a physical office in the state of Arkansas or (2) be owned by a bank holding company regulated by the Federal Reserve System, of which a subsidiary federally-insured depository bank or savings and loan association or credit union maintains a physical office in the state of Arkansas. Eligible institutions must meet the requirements set out in section (b) above.

(iii) "Interest- or dividend-bearing trust account" means a federally insured checking account or an investment product, including a sweep product and a daily (overnight) financial-institution repurchase agreement or an open-end money market fund. A daily financial-institution repurchase agreement must be fully collateralized by U.S. Treasury Securities; an open-end money-market fund must invest primarily in U.S. Treasury Securities or repurchase agreements fully collateralized by U.S. Treasury Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and, at the time of investment, have total managed assets of at least \$ 250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(iv) "Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) federal deposit insurance fees, (5) sweep fees, 12b-1 fees, and subaccounting fees, and (6) a reasonable IOLTA account administrative fee.

(v) "U.S. Treasury Securities" means direct obligations of the federal government of the United States.

(vi) "Repurchase agreements" means transactions in which a fund buys a security from a dealer or bank and agrees to sell the security back at a mutually agreed upon time and price. The repurchase price exceeds the sale price, reflecting the fund's return on the transaction. This return is unrelated to the interest rate on the underlying security. Repurchase agreements are subject to credit risks.

(2) Participation in the IOLTA ~~program~~Program of the Arkansas Access to Justice Foundation is voluntary for banks, savings and loan associations, and investment companies. Any eligible institution that elects to provide and maintain IOLTA accounts shall do so according to the following terms:

(i) Determination of Interest Rates and Dividends. Eligible institutions that maintain IOLTA accounts that are, or are invested in, interest-bearing deposits or daily financial-institution repurchase agreements shall pay no less than the highest rate and dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the balance in the IOLTA account, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer may accept, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account into a daily financial institution repurchase agreement or a money-market fund. However, this Rule shall not require any eligible institution to offer or otherwise make available sweep accounts for IOLTA accounts.

(ii) Written Agreements. There shall be a written agreement between the lawyer and the eligible institution, designating interest on the IOLTA account be remitted to the Arkansas IOLTA Access to Justice Foundation, Inc. on a monthly basis.

(iii) Interest Rates and Dividends. Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(iv) Reasonable Fees. Reasonable fees means (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balances, (4) federal deposit insurance fees, (5) sweep fees, 12b-1 fees, and subaccounting fees, and (6) a reasonable IOLTA account administrative fee. Reasonable fees are the only service charges or fees permitted to be deducted from interest earned on IOLTA accounts. Reasonable fees may be deducted from interest on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for all of its customers with interest-bearing accounts. All other fees and charges shall not be assessed against the accrued interest on the IOLTA account but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

(v) Negative Netting Prohibited. Fees or charges in excess of the interest earned on the account for any month shall not be taken from interest earned on other IOLTA accounts or from the principal of the account.

(vi) Reporting Requirements. A statement should be transmitted monthly to the Arkansas IOLTA Access to Justice Foundation, Inc. with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the average daily rate applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period. The Foundation supplies a monthly remittance form tailored to each bank listing

the required information; however, should the bank elect to generate its own report, the requirements in this section must be addressed.

(3) In addition to the attorney trust account "automatic overdraft" notification procedures set out in Section 28 of the Procedures of the Arkansas Supreme Court regulating professional conduct of attorneys at law:

(i) Banks may only be removed from the IOLTA ~~program~~Program after notice from the Foundation to the bank of the action needed to correct or implement any needed changes and a timely response from the bank.

(ii) Should a bank be removed from the IOLTA ~~program~~Program, the Foundation will give attorneys sufficient notice and time in order to move their IOLTA accounts to another participating bank.

PROPOSED CHANGES TO
PROCEDURES OF THE ARKANSAS SUPREME COURT
REGULATING PROFESSIONAL CONDUCT
OF
ATTORNEYS AT LAW

SECTION 28. Attorney trust account and automatic "overdraft" notification procedure.

A. Consent By Lawyers. Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the trust account overdraft reporting and production requirements mandated by this Section.

B. Overdraft Notification Agreement Required. A financial institution shall be approved as a depository for lawyer trust accounts only if it files with the Arkansas Supreme Court Office of Professional Conduct (the "Office") an agreement, in a form provided by the Office, to report to that Office whenever any properly payable instrument is presented against any lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Office may establish additional procedures, to be approved by the Supreme Court, governing approval and revocation of approved status for financial institutions. The Office shall annually file with the Supreme Court Clerk and the Arkansas ~~IOLTA~~ Access to Justice Foundation, and post on the Court's website, not later than January 1, a current list of approved financial institutions. No attorney or law firm trust account shall be maintained in any financial institution that does not agree to so report and is not approved by the Office. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days written notice to the Office.

C. Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution to the Office shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

D. Timing of Reports. Reports under subsection 28.C shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

E. Costs. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Section.

F. Lawyers who practice law in this state shall deposit all funds held in trust in this jurisdiction in accordance with Rule 1.15(a) of the Model Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts.

Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions approved by the Office.

G. Every lawyer engaged in the practice of law in this state shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

H. Definitions. For purposes of this Section:

- (1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers.
- (2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.
- (3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.
- (4) "Office" means the Office of Professional Conduct of the Arkansas Supreme Court.

I. The form of the "Attorney Trust Account Overdraft Reporting Agreement" attached hereto, and as may be subsequently revised, is approved for use.

J. Disapproval or Revocation of Approval of Financial Institutions.

- (1) Refusal of the Office to approve a financial institution due to failure of the financial institution to timely submit an initial properly executed written agreement on the form approved by the Court or the Office is not appealable or otherwise subject to challenge, including by civil action in any court.
- (2) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found by the Executive Director to have engaged in a pattern of neglect or to have acted in bad faith in not complying with its obligations under the written agreement.
- (3) The Executive Director of the Office shall communicate any decision to revoke approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for the revocation decision and advise of any right to reconsideration or review. The financial institution shall have thirty (30) days from the date of receipt of the written notice to file a written request with the Executive Director seeking reconsideration of the Executive Director's decision or a review of that decision by a panel of the Committee on Professional Conduct. The financial institution may request a review by either ballot vote of a panel or a public hearing before a panel, following the Procedures. The decision of the panel shall be final and not subject to any review. The approved status of the financial institution shall continue until such time as this review process is final.
- (4) Once the approval of the financial institution has been finally revoked, the institution shall not thereafter be approved as a depository for attorney trust accounts until such time as the financial institution petitions the Office for new approval, including in the petition a plan for curing any

deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future, and approval is granted.

(5) Within fifteen (15) days of receipt of the notice of revocation, or final order of revocation if reviewed by a panel, of its approved status, a financial institution shall give written notification of the revocation action to all holders of attorney trust accounts on deposit with the financial institution, and file a report with the Office of all such attorney notification contacts within thirty (30) days of the date of receipt by the financial institution of the notice or final order of revocation.

(6) Any attorney or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked shall remove all trust accounts from the financial institution within thirty (30) days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the Office, including the name and address of the new trust account depository institution.

(7) Failure of any financial institution, attorney, or law firm to comply with the provisions of Section 28 may be treated as contempt of the Arkansas Supreme Court upon petition by the Office, and punished as such upon a finding of contempt."

Commentary to Section 28:

1. This Section is generally based on Rule 29 of the Model Rules for Lawyer Disciplinary Enforcement (1996) of the American Bar Association's Standing Committee on Professional Discipline.

2. This Section establishes that consent to the reporting and production requirements mandated by amended Model Rule 1.15 is a condition of the privilege to practice law in Arkansas. This condition is intended to protect financial institutions from claims by lawyer-depositors based on disclosures made by financial institutions, provided that the disclosures are in accordance with this Section. Parties to an overdraft notification agreement are the Court, through its Office of Professional Conduct, and a financial institution. The consent provision in this Section avoids the necessity for financial institutions to draft separate agreements with lawyers to establish consent to overdraft notification or for the attorney disciplinary office to do so with each attorney.

3. The overdraft notification agreement requires that all overdrafts be reported, irrespective of whether the instrument is honored. In light of the purposes of this Section, and in view of ethical proscriptions concerning the preservation of client funds and commingling of client and lawyer funds, it would be improper for a lawyer to accept overdraft privileges or any other arrangement for a personal loan on a client trust account in exchange for the institution's promise to delay or not to report an overdraft.

4. Absence of discretion makes notification by a financial institution an administratively simple matter. An institution which receives an instrument for payment against insufficient funds need not evaluate whether circumstances require that notification be given; it merely provides notice.

5. It then becomes the responsibility of the disciplinary agency to determine whether further action is necessary. In cases where an overdraft is a result of an accounting error (caused by either the lawyer or the institution), but notification has already been sent to the Office, the institution should provide the lawyer with a written explanation (preferably, an affidavit from an officer of the institution) that the lawyer can then submit to the Office to verify the error.

6. This Section provides the proper format for overdraft reports. In so doing, the Section

distinguishes between dishonored instruments and instruments that are presented against insufficient funds but honored. Where instruments are presented against insufficient funds but paid, the Section specifies the information that the institution should provide.

7. Ordinarily, within 24 hours of dishonor an institution gives notice of an overdraft to a depositor whose account is charged. See Uniform Commercial Code, Section 3-508. This is the same time period in which overdraft notification is given to the Office. Where an instrument presented against insufficient funds is honored, the financial institution should send overdraft notification to the agency within five (5) days of the date of presentation.

8. Upon receipt of an overdraft notification, this Section contemplates that the Office will contact the lawyer or firm by telephone and request an explanation for the overdraft. A letter requesting a documented explanation may also be sent. If the overdraft is an accounting error, the lawyer or firm submits a written explanation, including any documents to substantiate the claim. Where the lawyer or firm cannot supply an adequate or complete explanation for the overdraft, other action may be generated, including an audit or a demand for production of the lawyer's books and records.

9. In addition to normal monthly maintenance fees on each account, a lawyer or firm can anticipate additional fees to be charged by the financial institutions for reporting overdrafts in accordance with this Section. However, because financial institutions already flag overdrafts and returned checks, it appears only slightly more burdensome for the institution to forward a copy to the Office. As a result, the additional cost to the lawyer should not be exorbitant.

10. This Section should not be interpreted to allow a lawyer to permit trust account funds to be reduced through deductions made by a financial institution to cover costs of overdraft notification. Such costs should not be borne by clients.

11. Under the laws of most jurisdictions, the definition of "properly payable" will be contained in section 4-104 of the Uniform Commercial Code.

12. This Section sets forth the requirements for deposit of trust funds in clearly identified trust accounts in approved financial institutions. Funds held not in connection with a representation, such as a trust fund for a lawyer's own spouse or minor child, do not fall under this Section. This Section also does not concern a lawyer's own funds properly held in a non-fiduciary capacity, such as funds in a business or personal account.

13. Under Rule 1.15(a) of the Model Rules of Professional Conduct, trust property may be held outside the lawyer's home jurisdiction upon consent of the client. The overdraft notification rule here governs funds held within the adopting state. A lawyer's obligation to deposit trust funds in an approved institution will arise upon adoption of the overdraft notification rule in a state where the lawyer deposits trust funds, whether that state is the state wherein the lawyer's office is situated or some other state.

14. Under the laws of most jurisdictions, the definition of "notice of dishonor" will be determined by reference to section 3-508 of the Uniform Commercial Code, under which notice must be given by a bank before its midnight deadline and by any other person or institution before midnight on the third business day after dishonor or receipt of notice of dishonor.

SLIP OPINION

|