

# IOLTA

*INTEREST ON LAWYERS' TRUST ACCOUNTS*

A program of the Tennessee Bar Foundation

## GUIDELINES FOR FINANCIAL INSTITUTIONS

**TENNESSEE BAR FOUNDATION**

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# INTRODUCTION

The IOLTA (Interest On Lawyers' Trust Accounts) program was established by the Tennessee Supreme Court in 1984, and the responsibility for its administration was assigned to the Tennessee Bar Foundation. The purpose of the program is to raise funds to be distributed, in the form of grants, to organizations in Tennessee that provide direct legal services to the indigent, to organizations that seek to improve the administration of justice and to students, in the form of scholarships, at the state-supported law schools.

Effective January 1, 2010, the Supreme Court amended Rule 8, RPC 1.15 to require all attorneys who hold eligible client funds to participate in the IOLTA program. Rule 43 of the Rules of the Supreme Court was also amended to modify various practices for those financial institutions that choose to offer IOLTA accounts. See Rule 43 beginning on page 15.

This booklet is designed to enhance the partnership between attorneys and financial institutions for the public benefit by assisting a bank in establishing a working IOLTA program. If questions arise or if there is a procedure that would ease participation for your institution, please contact the Foundation staff by telephone at 615/242-1531, or toll-free at 800/634-2516, or via e-mail at [info@tnbarfoundation.org](mailto:info@tnbarfoundation.org).

# IOLTA: Frequently Asked Questions

## WHAT IS THE BASIC CONCEPT OF AN IOLTA PROGRAM?

Attorneys routinely receive funds from clients or third parties to be held for future use. If these funds are large in amount or to be held for a long period of time, the attorney should make them productive for the client by depositing these monies in an interest-bearing account in the name of and for the benefit of the client.

For deposits small in amount or short-term in duration, it is impractical to establish separate accounts. The cost of administering these accounts, including the lawyer's time, bank charges and the year-end generation of an IRS Form 1099, would often be greater than the amount of interest the funds would generate.

Tennessee Rule of Professional Conduct 1.15 requires the attorney to place those funds that cannot be made productive for the client in an interest-bearing checking account participating in the IOLTA program. Interest earned on the entire balance (in accordance with Supreme Court Rule 43 – see page 15) is sent, by the financial institution, directly to the Tennessee Bar Foundation. There is no direct involvement by the attorney once the IOLTA account has been established.

## HOW IS THE INTEREST EARNED ON THESE ACCOUNTS USED?

Pursuant to Supreme Court Rule 43, after deduction of administrative expenses, the Foundation conducts an annual, competitive grant making process. Funds are awarded to organizations in Tennessee that:

- 1) Provide legal assistance to the poor;
- 2) Provide law student loans, grants and/or scholarships;
- 3) Provide improvements to the administration of justice and
- 4) For other programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.

## ARE IOLTA PROGRAMS A NEW IDEA?

No. IOLTA programs existed in the common law jurisdictions, including the Canadian provinces and Australia, for many years. The first IOLTA program in the United States was established in Florida in 1981, and Tennessee's program began in 1986. All fifty states and the District of Columbia operate IOLTA programs.

## **HOW DOES THE IOLTA PROGRAM AFFECT FINANCIAL INSTITUTIONS?**

Supreme Court Rule 43 does not mandate financial institution participation in the IOLTA program. It is hoped, however, that financial institutions will recognize the desire of their attorney customers to participate in the program, will welcome the contributions made by grants from the program to organizations in or around their community, will realize that attorney trust (also known as “escrow”) accounts represent a large source of stable liquidity and thus will readily offer the IOLTA product to their depositors. **If an institution chooses not to participate, then attorneys with trust accounts at that institution must transfer those accounts to institutions that do participate in IOLTA.**

## **WHO PAYS SERVICE CHARGES AND FEES FOR IOLTA ACCOUNTS?**

Deductions by the financial institution from interest earned may only be for allowable reasonable service charges or fees calculated in accordance with the institution’s standard practice for non-IOLTA customers. “Allowable reasonable service charges or fees” are defined as:

- a. per check or electronic debit charges;
- b. per deposit or electronic credit charges;
- c. a fee in lieu of minimum balance;
- d. FDIC insurance fees or FDIC account guarantees fees;
- e. a sweep fee; and
- f. a reasonable IOLTA account administrative fee.

Check printing charges, wire transfer fees, bank checks or certified checks, cash management fees and overdraft costs, etc., are not considered “allowable reasonable” service charges and are not paid by IOLTA. Each account holder should make arrangements with the financial institution regarding these costs.

## **WHAT ARE THE TAX CONSEQUENCES?**

There are none. The Internal Revenue Service has ruled that there are no taxes levied on the client, the lawyer or the law firm attendant to IOLTA participation.

## **WHAT ABOUT REPORTING TO THE IRS WITH FORM 1099?**

The Tennessee Bar Foundation is exempt from federal income tax. **Form 1099 is not required to be prepared or submitted to the Internal Revenue Service for IOLTA accounts and should be suppressed if at all possible.** All IOLTA accounts should utilize the Foundation’s Taxpayer I.D. Number (TIN) 62-6074501. There is no requirement that a 1099 be mailed to the attorney. It is recommended that it not be sent, or sent to the IOLTA program.

## **HOW ARE W-9 FORMS HANDLED?**

If Form 1099 can be suppressed, W-9 forms are not necessary. If Form 1099 cannot be suppressed, financial institutions should submit a completed W-9 form to the Foundation for a signature. A financial institution need only have one W-9 form on file for all its IOLTA accounts.

## **WHAT METHOD SHOULD BE USED TO REMIT FUNDS?**

Funds may be remitted to the IOLTA program on a monthly or quarterly basis (monthly remittance preferred) in such manner as agreed upon by a bank and the IOLTA program. Monthly and/or quarterly interest payments and remittance reports should be submitted by the 10<sup>th</sup> of the following month or 10 days after the closing date of the remitting cycle.

Funds may be remitted:

- By check mailed to Foundation lockbox; OR
- By ACH initiated by the remitting bank; OR
- By ACH initiated by the Foundation

A single remittance report, reflecting all accounts, and either a single check representing all interest earned or a single ACH file, net of service charges and fees, if any, should be submitted. The remittance report (see pages 13 and 14 for an example but any format that provides this information is acceptable) must include:

1. The name of the lawyer or law firm on whose account the remittance is sent;
2. The account number;
3. The balance on which the interest rate is applied;
4. The rate of interest or dividends applied;
5. The gross interest or dividends earned;
6. The type and amount of any allowable service charges or fees deducted; and
7. The net amount remitted.

The same information, pertaining to their individual accounts, must also be provided to the participating attorney or firm either on the monthly statement or by some other means.

## **HOW MANY IOLTA ACCOUNTS MAY ONE ATTORNEY OR LAW FIRM HAVE?**

An attorney or law firm may have as many IOLTA-participating accounts as needed and may have those accounts at multiple banks.

**MAY FINANCIAL INSTITUTIONS USE PARTICIPATION IN IOLTA IN ADVERTISING OR PUBLIC SERVICE REPORTS?**

Yes. Advertising to the legal community that IOLTA accounts are offered may attract new depositors.

**MAY IOLTA PARTICIPATION BY BANKS BE COUNTED TOWARDS COMMUNITY REINVESTMENT ACT RESPONSIBILITIES?**

Financial institutions may wish to cite their participation in IOLTA in Community Reinvestment Act reports. There is no question that a bank’s participation assists Tennessee’s poorest citizens to obtain needed help for civil legal matters like landlord-tenant disputes, veteran’s benefits and domestic violence. The Foundation’s annual newsletter lists grant recipients and amounts for each fiscal year. A copy of the newsletter is sent to the bank’s IOLTA contact person each year, and additional copies are also available.

**WHAT IS AN “IOLTA CONTACT PERSON”?**

The Foundation encourages all participating financial institutions to designate an “IOLTA contact person.” This arrangement has worked well since the inception of the program and is necessary to expedite problem resolution. The Foundation will communicate with the IOLTA contact person on all operational matters, including sending to him or her completed “Notice to Financial Institution” (sign-up) forms (see page 12) to convert non-interest bearing trust accounts to IOLTA status or open new IOLTA accounts. The financial institution should advise the Foundation if a new IOLTA contact person is designated.

**IS ASSISTANCE AVAILABLE FOR BANK PERSONNEL FROM THE FOUNDATION?**

Yes. The Foundation’s employees are available by all communication methods (**including a toll free number, 800/634-2516**) to assist both financial institution staff and attorneys with any questions that may arise regarding the IOLTA program.

# OPERATIONAL GUIDELINES

## ENROLLMENT: **THE LAWYER'S RESPONSIBILITY:**

The lawyer or law firm enrolls in the program when a completed and signed "Notice to Financial Institution" (see page 12) is submitted to a financial institution. This form authorizes the financial institution to establish an IOLTA account or to convert an existing account to an IOLTA account.

## REMITTANCE: **THE FINANCIAL INSTITUTION'S RESPONSIBILITY:**

The **four** steps required of the financial institution are:

- 1) **Submit a letter of participation to the IOLTA program.** A letter from an authorized representative of the financial institution should be sent to the Foundation. This letter should include the following:
  - a) A statement that the bank is willing to offer IOLTA accounts to its attorney depositors.
  - b) The effective date of participation;
  - c) Whether the bank has chosen to remit interest payments monthly or quarterly;
  - d) The name, title, address, telephone number and fax number of the "IOLTA contact person."\*

**\*NOTE:** The IOLTA program should be notified of any subsequent change in the IOLTA contact person.

- 2) **Submit a "Compliance Statement," (available from the Foundation), which advises how the financial institution will fulfill the comparability requirements of Rule 43.**
- 3) **Establish an account(s), using the IOLTA program's tax identification number, 62-6074501.** Upon request, establish an account in the name and address of the lawyer or firm, by converting the existing non-interest bearing client trust/escrow account to an interest bearing account or by opening a new IOLTA account. Flag and coordinate all IOLTA accounts to the same closing date or statement cycle.
  - a) Use the Foundation's TIN, 62-6074501, for all accounts.
  - b) Submit a W-9 form to the Foundation for signature if Form 1099 cannot be suppressed and/or bank policy dictates its necessity.



- 4) **Transmit interest and report to the Foundation on a monthly (preferred) or quarterly basis:**
- a) Calculate interest earned on each IOLTA account for each participant (lawyer or law firm).
  - b) Subtract those fees allowed by Supreme Court Rule 43 only from the interest earned\*\* on the account in which they were incurred.
  - c) Submit a “remittance report” (see pages 13 and 14 for a sample remittance report which may be photocopied for repeated use. A remittance report of your own design, incorporating the required information, is also acceptable).
  - d) Transmit to the Foundation on a monthly (preferred) or quarterly basis:
    - i) the remittance report and check for all IOLTA accounts **OR**
    - ii) the remittance report and ACH file for all IOLTA accounts. **OR**
    - iii) the remittance report only for a Foundation initiated ACH transfer.

**A remittance report should be forwarded each month or quarter whether or not interest is earned in a given period.**

**\*\*NOTE:** Service charges and handling fees for IOLTA accounts are deductible solely from the interest earned. The principal or corpus of the account cannot be invaded to pay charges imposed on an IOLTA account. These accounts contain client funds held in trust by attorneys. Any invasion of the corpus puts the lawyer in the position of misappropriating client funds, which is a violation of the disciplinary rules.

## **HOW TO TRANSMIT INTEREST**

1) **By CHECK:**

- a) Make a single check for the net interest on all accounts payable to the Tennessee Bar Foundation IOLTA Fund.
- b) Send remittance report and **CHECK** to:  
  
Tennessee Bar Foundation – IOLTA Fund  
MSC 30152  
P.O. Box 415000  
Nashville, TN 37241-5000

2) **By financial institution-initiated ACH:**

- a) FAX remittance report to 615/255-0306  
  
**OR**
- b) Email remittance report to: [info@tnbarfoundation.org](mailto:info@tnbarfoundation.org)
- c) Initiate ACH to Foundation

3) **By Foundation – initiated ACH:**

- a) Gather interest earned on all IOLTA accounts into a single suspense or Foundation account (contact Foundation at outset to provide account number).
- b) FAX remittance report to 615/255-0306  
  
**OR**
- c) Email remittance report to: [info@tnbarfoundation.org](mailto:info@tnbarfoundation.org)
- d) Foundation will initiate ACH

**CORRESPONDENCE** concerning IOLTA accounts  
should be mailed to the Foundation's street address:

Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219

## OPERATIONAL TIPS

1. Financial institutions should designate a staff member as the “IOLTA contact person” to serve as a liaison to the Foundation. By selecting one IOLTA contact, customer service representatives can refer attorney’s IOLTA questions to one person who can best respond to their concerns, and the Foundation will stay in touch with that employee. If a new “IOLTA contact” is designated, please advise the Foundation.
2. Not every lawyer or law firm “trust” account will be an “IOLTA” account. Lawyers and law firms may have multiple trust accounts and the lawyer(s) is responsible for deciding which among the accounts should participate in IOLTA. Non-IOLTA accounts should bear the lawyer/law firm, individual clients or third person’s Social Security or Taxpayer Identification Number. **Only IOLTA accounts should bear the Foundation’s Taxpayer Identification Number.**
3. If an error occurs in remittance to the IOLTA program, call the Foundation staff as soon as it is discovered for refund instructions.
4. If the lawyer or law firm closes an IOLTA account, please note on the next remittance report, that the account will no longer appear and it may be deleted from future remittance reports.

# NOTICE TO FINANCIAL INSTITUTION

The undersigned hereby enrolls this account in the Tennessee IOLTA (Interest On Lawyers' Trust Account) program established by the Supreme Court of Tennessee. Under this program, the financial institution should open (if new) or change the status of my/our law firm's existing trust account to an interest-bearing account that complies with the provisions of RPC 1.15 and Rule 43 of the Rules of the Supreme Court of Tennessee.

## LAWYER INFORMATION

INSTRUCTIONS TO LAWYERS: (1) COMPLETE THIS FORM (2) TAKE THIS FORM TO A FINANCIAL INSTITUTION ELIGIBLE TO OFFER IOLTA ACCOUNTS (3) SEND A COPY OF THE FORM **AFTER THE ACCOUNT HAS BEEN OPENED OR CONVERTED** TO THE TENNESSEE BAR FOUNDATION AT THE ADDRESS BELOW. PLEASE INCLUDE A VOIDED CHECK OR DEPOSIT TICKET TO VALIDATE THE IOLTA ACCOUNT NUMBER.

Firm Name: \_\_\_\_\_  
Lawyer Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Board of Professional Responsibility Number: \_\_\_\_\_  
Authorized Signature Lawyer/Law Firm: \_\_\_\_\_

## FINANCIAL INSTITUTION INFORMATION

INSTRUCTIONS TO FINANCIAL INSTITUTIONS: The IOLTA account must be established in the name of the lawyer or law firm opening or converting this account, with further designation indicating the fact that this is an IOLTA account. The Taxpayer Identification Number (TIN) must be that of the Tennessee Bar Foundation (TBF), shown below. The TBF is a tax exempt organization and is exempt from backup withholding. No IRS form 1099 is required for IOLTA accounts opened under this program, and the financial institution is not subject to penalty for a mismatched TIN when the payee is an exempt organization. The establishment of interest-bearing trust accounts by law firms, including professional corporations, under the IOLTA program has been approved by federal regulatory agencies. Copies of those determinations are available upon request from the TBF.

Financial Institution Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
By (financial institution representative): \_\_\_\_\_ Date : \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_

Interest computed in accordance with the applicable regulations for this account must be remitted monthly or quarterly to:

Please attach deposit slip  
or voided check

**Tennessee Bar Foundation**  
618 Church Street, Suite 120  
Nashville, Tennessee 37219-2456  
Phone: 615-242-1531 or 800-634-2516  
Fax: 615-255-0306  
Web: [www.tnbarfoundation.org](http://www.tnbarfoundation.org)

**TAXPAYER I.D. NO. 62-6074501**

Copies filed with the **BANK**, the **LAWYER**, the **TENNESSEE BAR FOUNDATION**

**TENNESSEE BAR FOUNDATION IOLTA  
(INTEREST ON LAWYERS' TRUST ACCOUNTS) PROGRAM**

Remittance Report

**Page 1**

\_\_\_\_\_  
(Name of financial institution)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (State) (Zip)

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Report Period \_\_\_\_\_ through \_\_\_\_\_  
Date Date

TOTAL AMOUNT FOR ALL ACCOUNTS \$ \_\_\_\_\_

1. **If remitting by CHECK:** send this form, the attached report and the check to:

**Tennessee Bar Foundation IOLTA Fund  
MSC 30152  
P.O. Box 415000  
Nashville, TN 37241-5000**

2. **If remitting by ACH** (initiated by the bank or by the Foundation):

**Email this form and report to: [info@tnbarfoundation.org](mailto:info@tnbarfoundation.org)**

**OR**

**FAX this form and report to: 615/255-0306**

**Remittance Report**

Page 2

|  | Account<br>Number | Account<br>Name | Gross<br>Interest/Dividends<br>Earned | Service<br>Charge | Balance on Which<br>Interest Rate Applied | Net<br>Interest/<br>Dividend<br>Earned | Interest<br>Rate | Account<br>New/<br>Closed |
|--|-------------------|-----------------|---------------------------------------|-------------------|---|--|------------------|---------------------------|
|--|-------------------|-----------------|---------------------------------------|-------------------|---|--|------------------|---------------------------|

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

TOTALS:      \$ \_\_\_\_\_      \$ \_\_\_\_\_      \$ \_\_\_\_\_

N = New  
C = Closed

## Supreme Court Rule 43

### Interest on Lawyers' Trust Accounts

Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.15, requires that Tennessee lawyers who maintain pooled trust checking accounts for the deposit of client funds participate in the IOLTA (Interest On Lawyers' Trust Accounts) program.

The following rule shall govern the operation of IOLTA accounts and the IOLTA program:

**Section 1.** The determination of whether or not a financial institution is an eligible institution which meets the requirements of this Rule shall be made by the Tennessee Bar Foundation, the organizational administrator of the IOLTA program. The Foundation shall maintain a list of eligible financial institutions and shall make that list available to Tennessee lawyers. The selection of an institution from the list of those eligible rests with the lawyer or law firm.

**Section 2.** Eligible institutions are those financial institutions which voluntarily offer IOLTA accounts and comply with the requirements of this Rule, including maintaining IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers in a local market area when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. To determine the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered when setting interest rates or dividends for customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. The determination of the highest interest rate or dividend generally available shall not include consideration of promotional rates that are offered by the financial institution for a limited time. Nothing in this Rule shall prohibit an eligible institution from paying an interest rate or dividend higher than required herein.

**Section 3.** If a financial institution offers one or more of the following product types to its non-IOLTA customers and an IOLTA account qualifies for one or more of the products pursuant to Section 2 of this Rule, then, in order to be an eligible financial institution, the financial institution must pay an interest rate on the IOLTA account equal to the highest yield available at that financial institution among those product types. The financial institution may, at its discretion, either use the identified product or products as the IOLTA account or pay the equivalent yield on the IOLTA account in lieu of using the highest yield bank product(s) identified:

(a) A business checking account with an automated investment feature, such as an overnight investment in repurchase agreements or money market funds fully collateralized by or invested solely in United States government securities which are direct debt obligations of the government of the United States or of agencies or instruments thereof guaranteed by the full faith and credit of the

government of the United States as to the payment of principal and interest at maturity; or

(b) A checking account paying preferred interest rates, such as market based or indexed rates; or

(c) A public funds interest-bearing checking account, such as accounts used for governmental agencies and other non-profit organizations; or

(d) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

(e) A business demand deposit checking interest-bearing transaction account (when permitted by federal law); or

(f) Any other suitable interest-bearing deposit account with or tied to unlimited check writing ability offered by the institution to its non-IOLTA customers.

**Section 4.** As an alternative to compliance under Section 3, a financial institution may also comply with this rule if it agrees to pay a rate voluntarily negotiated with the Foundation to be in effect for and remain unchanged during a period of up to twelve months as provided pursuant to a voluntary agreement between the financial institution and the Foundation.

**Section 5.** A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities, and 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.

**Section 6.** An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities and shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

**Section 7.** An eligible financial institution participating in the IOLTA program must also:

(a) Remit interest or dividends net of any allowable service charges or fees, preferably monthly, but at least quarterly, to the Tennessee Bar Foundation;

(b) Transmit to the Tennessee Bar Foundation, in a format specified by the Tennessee Bar Foundation, a report which contains:

(i) the name of the lawyer or law firm on whose account the remittance is sent;



- (ii) the account number;
- (iii) the balance on which the interest rate is applied;
- (iv) the rate of interest or dividends applied;
- (v) the gross interest or dividends earned;
- (vi) the type and amount of any allowable service charges or fees deducted; and
- (vii) the net amount remitted.

A financial institution which maintains more than thirty IOLTA accounts may, at the request of the Tennessee Bar Foundation, be required to transmit the report in an electronic format.

(c) Transmit information to the lawyer or law firm maintaining that account in accordance with the institution's normal procedures for reporting to depositors.

**Section 8.** No financial institution service charges or fees may be deducted from the principal of any IOLTA account.

**Section 9.** Deductions by the financial institution from interest earned may only be for allowable reasonable service charges or fees calculated in accordance with the institution's standard practice for non-IOLTA customers. For purposes of this Rule, "allowable reasonable service charges or fees" are defined as:

- (a) per check or electronic debit charges;
- (b) per deposit or electronic credit charges;
- (c) a fee in lieu of minimum balance;
- (d) FDIC insurance fees or FDIC account guarantee fees;
- (e) a sweep fee; and
- (f) a reasonable IOLTA account administrative fee.

Other financial institution service charges or fees shall not be deducted from IOLTA account interest and shall be the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. Nothing in this Rule shall be construed to require that a financial institution charge fees on an IOLTA account, nor does anything in this Rule prohibit a financial institution from waiving or discounting fees associated with an IOLTA account.

**Section 10.** Allowable reasonable service charges or fees in excess of the interest earned on any one IOLTA account may not be deducted from interest earned on any other IOLTA account.

**Section 11.** If the Tennessee Bar Foundation, for any reason, determines a financial institution does not meet the requirements of this rule, the Tennessee Bar Foundation will notify the financial institution. The financial institution will be provided not less than thirty days to take corrective action that results in compliance with this rule.

**Section 12.** A lawyer, law firm or financial institution that objects to a determination of the Tennessee Bar Foundation that a financial institution is not an eligible institution under Section 1 through 10 of this Rule or a lawyer who objects to a determination of the Tennessee Bar Foundation that the lawyer is not eligible for an exemption under Section 14(e), may appeal such determination to the Board of Professional Responsibility in accordance with regulations adopted by the Board of Professional Responsibility.

**Section 13.** Interest transmitted shall, after deductions for the necessary and reasonable administrative expenses of the Tennessee Bar Foundation for operation of the IOLTA program, be distributed by that entity, in proportions it deems appropriate, for the following purposes:

- (a) To provide legal assistance to the poor;
- (b) To provide student loans, grants, and/or scholarships to deserving law students;
- (c) To improve the administration of justice; and
- (d) For such other programs for the benefit of the public as are specifically approved by the Tennessee Supreme Court.

**Section 14.** Unless exempt under this Section 14, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration statement required by Tennessee Supreme Court Rule 9, Section 20.5, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.1 5(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and account number(s) where such funds are deposited. This certification shall be made on a form provided by the Board of Professional Responsibility and shall be submitted by the lawyer within the time period set forth in Rule 9, Section 20, for the annual registration statement.

A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

- (a) the lawyer is not engaged in the private practice of law in the State of Tennessee;

(b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, in-house counsel, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;

(c) the lawyer does not have an office in Tennessee; however, for purposes of this Rule, a lawyer who practices, as a principal, employee, of counsel, or in any other capacity, with a firm that has an office in Tennessee shall be deemed for purposes of this Rule to have an office in Tennessee if the lawyer utilizes one or more offices of the firm located in Tennessee more than the lawyer utilizes one or more offices of the firm located in any other single state;

(d) under regulations adopted by the Board of Professional Responsibility under criteria established upon recommendation of the Tennessee Bar Foundation, the lawyer or law firm is exempted from maintaining an IOLTA account because such an IOLTA account has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or

(e) the lawyer is exempted by the Tennessee Bar Foundation from the application of this Rule following a written request for exemption by the lawyer and determination by the Tennessee Bar Foundation that no eligible financial institution (as defined and determined in accordance with this Rule 43) is located within reasonable proximity of that lawyer.

**Section 15.** Upon its receipt of a lawyer's certification under Section 14 of this Rule, the Tennessee Bar Foundation shall, on or before March 31 of each year, report to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with this Rule will result in the following action:

(a) On or before May 15 of each year, the Board of Professional Responsibility shall compile a list of those lawyers who are not in compliance with this Rule. On or before the first business day of May of each year, the Board of Professional Responsibility shall serve each lawyer on the list compiled under this Rule a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice on or before May 31 of that year. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before May 31 of that year, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before May 31 of that year, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such deficiency or fails to timely file

such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before June 30 of each year, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance and who failed to remedy their deficiencies by May 31;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(d) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reactivation of his or her law license. Payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

(e) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9, Section 20.5, and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

**Section 16.** The Board of Professional Responsibility, acting in concert with the Tennessee Bar Foundation, may promulgate such forms and procedures to implement Sections 14 and 15 of this Rule and of Supreme Court Rule 8, RPC 1.15.

**Section 17.** The information contained in the statements forwarded to the Tennessee Bar Foundation under Section 14 and/or Section 15 of this Rule shall remain confidential other than as to Tennessee Supreme Court or the Board of Professional Responsibility. The Tennessee Bar Foundation shall not release any information contained in such statements other than as a compilation of data from such statements, except as directed in writing by the Tennessee Supreme Court or the Board of Professional Responsibility or in response to a subpoena.

**Compiler's Note.** - By order filed on July 8, 2009, the Supreme Court of Tennessee amended Tenn. Sup. Ct. R. 8, RPC 1.15 and Tenn. Sup. Ct. R. 43. The Court's order contained the following transition provision governing the effective dates of the amended rules:

For the purposes of implementing amended Rule 8, RPC 1.15 and amended Rule 43, including without limitation the promulgation of regulations, forms and procedures, and the determination of eligible financial institutions, the amended rules shall take effect upon the Supreme Court's filing of this order. However, in order to permit a reasonable period for the implementation of the amended rules, lawyers maintaining pooled accounts pursuant to Rule 8, RPC 1.15 and Rule 43 shall have until January 1, 2010 within which to comply with the provisions of the amended rules. All lawyers shall comply with amended Rule 8, RPC 1.15 and amended Rule 43 on or before January 1, 2010. Prior to that date, lawyers shall comply either with the applicable rules in effect immediately prior to the adoption of the amended rules or with the amended rules.