

IOLTA

INTEREST ON LAWYERS' TRUST ACCOUNTS

A program of the Tennessee Bar Foundation

GUIDELINES FOR FINANCIAL INSTITUTIONS

TENNESSEE BAR FOUNDATION

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IOLTA GUIDELINES

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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.

Supreme Court Rule 8, RPC 1.15 requires all attorneys who hold eligible client funds to participate in the IOLTA program. Rule 43 of the Rules of the Supreme Court specifies practices for those financial institutions that choose to offer IOLTA accounts. Both Rules are available on the Foundation's website: www.tnbarfoundation.org.

This booklet is designed to assist financial institutions when an IOLTA program is established. If questions arise or if there is a procedure that would ease participation, please contact the Foundation staff:

615/242-1531
800/634-2516
dpate@tnbarfoundation.org

IOLTA: The Basics

➤ WHAT IS THE CONCEPT OF AN IOLTA PROGRAM?

Attorneys routinely receive and hold funds from clients or third parties for future use. If these funds are large in amount or to be held 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, financial institution 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) is sent, by the financial institution, directly to the Tennessee Bar Foundation. There is no involvement by the attorney in the calculation of interest or transmission of it to the Foundation, once the IOLTA account has been established.

➤ HOW DOES THE FOUNDATION USE THE INTEREST EARNED ON THESE ACCOUNTS?

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
- 4) Benefit the public after specific approval by the Supreme Court.

A list of current IOLTA program grant recipients, by city, is available on the Foundation's website.

➤ 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.

➤ WHAT IS THE ROLE OF FINANCIAL INSTITUTIONS?

Supreme Court Rule 43 does not mandate financial institution participation in the IOLTA program. It is hoped, however, that a financial institution will recognize the desire of its attorney customers to participate in the program, will welcome the contributions made by grants from the program to organizations in or around its 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 its 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 (see Rule 43, Section 9). “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 and/or NCUA insurance fees or NCUA account guarantee fees;
- e. a sweep fee; and
- f. a reasonable IOLTA account administrative fee.

Check printing charges, wire transfer fees, remote deposit capture, 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 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, instead, be 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.

➤ 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 financial institutions.

➤ **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 BE COUNTED AS COMMUNITY REINVESTMENT ACT ELIGIBLE ACTIVITY?**

That will depend on the regulator and the region, but financial institutions may consider citing participation in IOLTA in Community Reinvestment Act reports. Participation in the IOLTA program makes possible grants to organizations that offer civil legal services to persons of limited means. Assistance is provided with housing, income maintenance and other consumer issues which may affect a credit rating. Contact the Foundation for examples of IOLTA grantee services in specific geographic areas.

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

The Foundation encourages all participating financial institutions to designate an “IOLTA contact person.” 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 open new IOLTA accounts. The Foundation should be advised when a new IOLTA contact person is designated.

➤ **IS ASSISTANCE AVAILABLE FOR FINANCIAL INSTITUTION STAFF 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 11) is submitted. 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 **three** steps required of the financial institution are:

- 1) **Ensure that a "Compliance Statement," (available on the Foundation's website), which advises how the financial institution will fulfill the comparability requirements of Rule 43, has been completed and submitted to the Foundation to receive "Eligible Financial Institution" status. The Compliance Statement is generally signed by an officer.**
- 2) **Establish IOLTA account(s).** Upon lawyer or law firm request, establish an account in the name and address of the lawyer or firm. 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) If Form 1099 cannot be suppressed and/or policy dictates its necessity, submit a W-9 form to the Foundation for signature.
- 3) **Transmit interest and report to the Foundation on a monthly basis (quarterly basis is acceptable but not preferred):**
 - 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 13-14 for an example of the Excel spreadsheet that will be provided by the Foundation).
 - d) Transmit the interest (see transmittal instructions on page 10).

**** NOTES:**

- A remittance report should be forwarded each period whether or not interest is earned. The remittance report must include all OPEN accounts, even those with a zero balance.
- A financial institution may not net fees on all accounts against interest earned on all accounts. Each account is responsible for its own fees.
- Service charges and handling fees for IOLTA accounts are deductible solely from the interest earned. The principal or corpus of the account may not 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.
- If the lawyer or law firm closes an IOLTA account, please note the closure on the next remittance report. The account may then be deleted from future remittance reports
- If an error occurs in remittance to the IOLTA program, call the Foundation staff as soon as it is discovered for further instructions.
- 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.**
- 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 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.

HOW TO TRANSMIT INTEREST

Funds should be transmitted to the IOLTA program on a monthly or quarterly basis (monthly remittance preferred). Payments and remittance reports should be submitted by the 15th of the following month or 10 days after the closing date of the remitting cycle.

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

a) Email remittance report to: dpate@tnbarfoundation.org

AND

b) Initiate ACH to Foundation
(For the Foundation's routing and account numbers, call the office: 615.242.1531 or 800.634.2516).

2) **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 and routing number).

AND

b) Email remittance report to: dpate@tnbarfoundation.org

THEN

c) Foundation will initiate ACH

3) **By CHECK:**

a) Email remittance report to: dpate@tnbarfoundation.org.

b) Write a single check for the net interest on all accounts payable to the Tennessee Bar Foundation IOLTA Fund. Mail **CHECK** to:

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

CORRESPONDENCE concerning IOLTA accounts

may be emailed to: dpate@tnbarfoundation.org

OR may be MAILED to the Foundation's street address:

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

NOTICE TO FINANCIAL INSTITUTION

The undersigned authorizes that the account specified below be enrolled in the Tennessee IOLTA (Interest On Lawyers' Trust Account) program established by the Supreme Court of Tennessee.

I. LAWYER INFORMATION

INSTRUCTIONS TO LAWYERS: (1) OPEN NEW ACCOUNT OR CHANGE THE STATUS OF AN EXISTING TRUST ACCOUNT AT A FINANCIAL INSTITUTION ELIGIBLE TO OFFER IOLTA ACCOUNTS.
(2) COMPLETE SECTIONS I and II.
(3) ATTACH A VOIDED CHECK OR DEPOSIT SLIP TO CONFIRM THE ACCOUNT NUMBER.
(4) **RETURN COMPLETED FORM & VOIDED CHECK OR DEPOSIT SLIP TO THE TENNESSEE BAR FOUNDATION AFTER THE ACCOUNT HAS BEEN OPENED OR CONVERTED.**

Firm Name (if applicable): _____

Lawyer Name: _____

Mailing Address: _____ E-mail: _____

City: _____ State: _____ Zip Code: _____ Telephone: _____

Board of Professional Responsibility Number: _____

Authorized Signature Lawyer/Law Firm: _____

Please attach voided check/deposit slip

II. 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: _____

Account Name: _____

Account Number: _____ Date : _____

Interest computed in accordance with the applicable regulations for this account must be remitted, by the financial institution, monthly or quarterly to the Tennessee Bar Foundation. Contact the Foundation for further information.

Tennessee Bar Foundation

618 Church Street • Suite 120 • Nashville, TN 37219

Phone: 615-242-1531 or 800-634-2516

Web: www.tnbarfoundation.org

TBF TAXPAYER I.D. NO. 62-6074501

**** Please provide a copy of this form to the FINANCIAL INSTITUTION, the LAWYER and the TENNESSEE BAR FOUNDATION**

