

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.830 Kentucky IOLTA Fund

The Kentucky Bar Foundation, Inc., a nonprofit corporation, shall maintain a special fund for the purpose of depositing interest from Kentucky Bar Association members' trust accounts, as hereinafter provided, and the name of the fund shall be the Kentucky IOLTA Fund ("IOLTA").

Except as set forth in paragraph (14) of this rule, a lawyer or law firm shall create and maintain in a participating financial institution, as defined in paragraph (4) below, an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time so that they could not earn interest income for the client in excess of the costs incurred to secure such income (hereinafter sometimes referred to as an "IOLTA account") in compliance with the following provisions:

(1) No funds may be deposited in any IOLTA account when either the amount or the period of time that the funds are held would earn for the client interest above the costs that would otherwise be incurred to generate such interest.

(2) No earnings from an IOLTA account shall be made available to a lawyer or law firm.

(3) An IOLTA account shall be established with a participating financial institution

(i) authorized by federal or state law to do business in Kentucky, and

(ii) insured by the Federal Deposit Insurance Corporation or its equivalent. Funds in each IOLTA account shall be subject to withdrawal upon request and without delay and without risk to principal by reason of said withdrawal.

(4) Participating financial institutions that maintain IOLTA accounts shall pay on the accounts 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. In determining the highest interest rate or dividend generally available from the institution, participating financial institutions may consider factors, in addition to the IOLTA account balance, that are customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers. Such factors should not discriminate between IOLTA accounts and accounts of non-IOLTA customers. All interest earned net of fees or charges shall be remitted to IOLTA, which is designated in paragraph (16) of this rule to organize and administer the IOLTA program, and the depository participating institution shall submit reports thereon as set forth below.

(5) A participating financial institution may satisfy the comparability requirements set forth in paragraph (4) above by electing one of the following options:

(i) Pay an amount on funds that would otherwise qualify for the investment options equal to 70% of the federal funds targeted rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable reasonable service charges or fees. The foregoing option of paying 70% of the federal funds targeted rate shall only apply when such rate is established in the range of 1.0% to 4.0% unless otherwise agreed to by IOLTA and the participating financial institution.

(ii) Pay a yield rate specified by IOLTA, if IOLTA so chooses, which is agreed to by the

participating financial institution. The rate would be deemed to be already net of allowable reasonable fees and would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between the financial institution and IOLTA.

(6) IOLTA accounts may be established as:

- (i) An interest-bearing checking account such as a negotiable order of withdrawal account;
- (ii) a checking account with an automated investment feature, such as an overnight and investment in repurchase agreements or money market funds invested solely in or fully collateralized by U.S. Government Securities, including U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrument thereof;
- (iii) a checking account paying preferred interest rates, such as money market or indexed rates;
- (iv) any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers.

(7) 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. 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, 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, the money market fund shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(A) Nothing in this rule shall preclude a participating financial institution from paying a higher interest or dividend than described above or electing to waive any service charges or fees on IOLTA accounts.

(B) Interest and dividends shall be calculated in accordance with the participating financial institution’s standard practice for non-IOLTA customers.

(C) Allowable reasonable service charges or fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account.

(D) Any IOLTA account which has or may have the net effect of costing IOLTA more in fees than earned in interest over a period of any time, may, at the discretion of IOLTA, be exempted from and removed from the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use IOLTA’s tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the property of client funds separately, as required above, in a trust account and also will not relieve the lawyer of the annual IOLTA certification.

(8) Lawyers or law firms depositing client funds in an IOLTA account established pursuant to this rule shall, on forms approved by IOLTA, direct the depository institution:

(A) to remit all interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution’s standard accounting practice, at least quarterly, solely to IOLTA. The depository

institution may remit the interest or dividends on all of its IOLTA accounts in a lump sum; however, the depository institution must provide, for each individual IOLTA account, the information to the lawyer or law firm and to IOLTA required by subparagraphs (8)(B) and (8)(C) of this rule;

(B) to transmit with each remittance to IOLTA a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, average daily balance, service charges, if any, and such other information as is reasonably required by IOLTA;

(C) to transmit to the depositing lawyer or law firm a periodic account statement for the IOLTA account reflecting the amount of interest paid to IOLTA, the rate of interest applied, the average account balance for the period for which the interest was earned, and such other information as is reasonably required by IOLTA; and

(D) to waive any reasonable service charge that exceeds the interest earned on any IOLTA account during a reporting period ("excess charge").

(9) The IOLTA program will issue refunds when interest has been remitted in error, whether the error is the bank's or the lawyer's. Requests for refunds must be submitted in writing by the bank, the lawyer, or the law firm on a timely basis, accompanied by documentation that confirms the amount of interest paid to the IOLTA program. As needed for auditing purposes, the IOLTA program may request additional documentation to support the request. The refund will be remitted to the appropriate financial institution for transmittal at the lawyer's direction after appropriate accounting and reporting. In no event will the refund exceed the amount of interest actually received by the IOLTA program.

(10) All interest transmitted to IOLTA shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by IOLTA and approved at least annually by the Supreme Court of Kentucky, for the following purposes:

(A) to pay or provide for all costs, expenses and fees associated with the administration of the IOLTA program;

(B) to establish appropriate reserves;

(C) to assist or help establish approved legal services and pro bono programs;

(D) for such other law-related programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.

(11) The information contained in the statements forwarded to IOLTA under paragraph (8)(B) of this rule shall remain confidential, and the provisions of any other Supreme Court Rules providing for confidentiality are not hereby abrogated; therefore, IOLTA shall not release any information contained in any such statement other than as a compilation of data from such statements, except as directed in writing by the Supreme Court.

(12) IOLTA shall have full authority to and shall, from time to time, prepare and submit to the Supreme Court for approval, forms, procedures, instructions and guidelines necessary and appropriate to implement the provisions set forth in this rule and, after approval thereof by the Court, shall promulgate same.

(13) On or before September 1 of each year, every lawyer admitted to practice in Kentucky shall certify to IOLTA, in such form as IOLTA shall provide ("IOLTA Certification Form"), that the member is in compliance with, or is exempt from, the provisions of this rule. The IOLTA Certification Form shall include the participating financial institution, account numbers, name of law firm or lawyer accounts and such other information as IOLTA shall require. If the lawyer is

exempt from the IOLTA program, the lawyer must still submit an IOLTA Certification Form annually to certify to IOLTA that the lawyer is exempt from the provisions in this rule. Each lawyer shall keep and maintain records supporting the information submitted in the IOLTA Certification Form. The lawyer shall maintain these records for a period of three years from the end of the period for which the IOLTA Certification Form is filed, and these records shall be submitted to IOLTA upon written request.

(14) The lawyer is exempt from this rule if:

(A) not engaged in the private practice of law;

(B) does not have a trust account in a financial institution within the Commonwealth of Kentucky;

(C) serving full time as a judge, attorney general, public defender, U.S. attorney, commonwealth attorney, county attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;

(D) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(E) has been exempted by an order of general or special application of this Court which is cited in the certification;

(F) compliance with Rule 3.830 would work an undue hardship on the lawyer or would be extremely impractical, based on the geographic distance between the lawyer's principal office and the closest participating financial institution, or on other compelling and necessary factors; or

(G) does not manage or handle client trust funds.

(15) The determination of whether a client's funds are nominal or short-term so that they could not earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

(16) IOLTA is hereby designated as the entity to organize and administer the program established by this rule in accordance with the following provisions:

(A) The determination of whether or not a financial institution is a participating institution as defined in paragraph (4) above, and whether it is meeting the requirements of this rule shall be made by IOLTA. IOLTA shall maintain a list of participating financial institutions, and shall provide a copy of the list to any Kentucky lawyer upon request.

(B) Lawyers may only maintain IOLTA accounts in participating financial institutions. Participating financial institutions are those that voluntarily offer IOLTA accounts and comply with the requirements of this rule. If a financial institution becomes non-participatory, the lawyer or law firm must move its IOLTA account to a participating financial institution as described in paragraph (4) above, upon ninety (90) days written notice by IOLTA, and recertify to IOLTA the transfer.

(17) If the IOLTA Certification Form is timely filed, indicating compliance, there will be no acknowledgment. Should an IOLTA Certification Form not be filed by a lawyer or if filed, fail to evidence compliance, IOLTA shall contact the lawyer and attempt to resolve the non-compliance administratively.

(18) Lawyers licensed in Kentucky must notify IOLTA in writing within thirty (30) days of any change in IOLTA status, including the opening or closing of any IOLTA accounts, except as provided in paragraph (16)(B) above.

(19) For the purpose of administering the funds deposited in the Kentucky IOLTA Fund, the Kentucky Bar Foundation is authorized to create a separate Board of Trustees to administer this fund, which shall consist of ten (10) members of the Association. One (1) member will be from each of the seven (7) Supreme Court Districts of the Commonwealth. The remaining three (3) members will be the Chief Justice of the Supreme Court of Kentucky, the President of the Kentucky Bar Association and the Chair of the Kentucky Bar Foundation, or a member of the Association appointed by each of such persons. These three (3) persons will serve year to year at the pleasure of the appointing person.

(A) Members of the Board of Trustees from the Supreme Court Districts shall be appointed by the Board of Governors of the Kentucky Bar Association and approved by the Supreme Court. Appointments shall be made for a three-year term. Members may be reappointed, but no member shall serve more than two (2) successive three-year terms. Each member shall serve until a successor is appointed and qualified. Vacancies occurring through death, disability, inability, or disqualification to serve, or by resignation, shall be filled for the remainder of the vacant term in the same manner as the initial appointments are made by the Court. The members of the Board of Trustees of the Kentucky IOLTA Fund shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The staff support for the Board of Trustees shall be paid by IOLTA.

(B) The IOLTA Board of Trustees (the "Trustees") shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court.

(C) The Trustees shall receive the net earnings from IOLTA accounts established in accordance with this rule and shall make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.

(D) The Trustees shall, by grants, appropriations and other appropriate measures, make disbursements from the IOLTA program funds, including current and accumulated net earnings, in accordance with the plan of distribution approved by the Supreme Court on at least an annual basis.

(E) The Trustees shall maintain proper records of all IOLTA program receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant approved by the Supreme Court.

(F) The Trustees shall be indemnified by IOLTA against any liability or expense arising directly or indirectly out of the good faith performance of their duties.

(G) The Trustees shall present an annual administrative budget request to the Board of Governors for their approval, after which the budget shall be forwarded to the Supreme Court for approval. Staff for the operation of IOLTA shall be under the supervision and responsible to the Executive Director of the Bar Association.

(H) The Trustees shall monitor attorney compliance with the provisions of this rule and will report to the Supreme Court those attorneys not in compliance.

(I) In the event the IOLTA program or its administration by IOLTA is terminated, all assets of the IOLTA program, including any program funds then on hand, shall be transferred in accordance with the Order of the Supreme Court terminating the IOLTA program or its administration by IOLTA; provided, such transfer shall be to an entity which will not violate the requirements IOLTA must observe regarding transfer of its assets in order to retain its tax-exempt status under the Internal Revenue Code of 1986, as amended, or similar future provisions of law.

(20) If the Kentucky IOLTA Fund receives residual funds as provided in Civil Rule 23.05(6), it shall deposit those funds into the Civil Rule 23 Account, an interest-bearing account maintained in a banking institution within the Commonwealth of Kentucky. Those funds are to be timely disbursed, in their totality, to the four Kentucky Civil Legal Aid Organizations in accordance with the current poverty formula established by the Legal Services Corporation in Washington, D.C. The Kentucky IOLTA Fund shall report to the Kentucky Supreme Court annually, on the first business day of September, regarding the status of the Civil Rule 23 Account, including all receipts and disbursements during the preceding year

HISTORY: Amended by Order 2013-14, eff. 1-1-2014; prior amendments eff. 1-1-2010 (Order 2009-12), 11-15-91 (Order 91-2), 8-28-89, 7-1-86; adopted eff. 7-1-86