

IOLTA

**Fund of the
Bar of New Jersey**

**Guidelines for
Financial Institutions**

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INTRODUCTION

The IOLTA Fund of the Bar of New Jersey was created by the Supreme Court of New Jersey in 1988 by enactment of Rule 1:28A. The purpose of the Fund is to provide funding for civil legal services for the poor, projects to improve the administration of justice, and education of lay persons in law related areas. Effective January 1, 1993, the Supreme Court amended Rule 1:28A to require all attorneys in private practice to participate in the IOLTA program.

IOLTA programs are currently operating in fifty states, the District of Columbia, Canada, Australia and elsewhere. Our neighboring states (New York, Pennsylvania, Connecticut, Massachusetts and Maryland) also have mandatory IOLTA programs. Each state's program is slightly different so this publication assists banks complying with only the New Jersey IOLTA Rule.

While financial institutions are not mandated by the IOLTA Rule to participate in IOLTA, IOLTA accounts must be available to attorneys in all Supreme Court approved Trust Account Depositories. The Supreme Court reserves the right to revoke or suspend a depository's status. Banks must offer pricing and account types that allow IOLTA a comparable and reasonable rate of return, net of fees, on a depository business which would not exist at all but for the intervention of the Court in requiring and regulating attorney trust accounts. ■

FREQUENTLY ASKED QUESTIONS

WHAT DOES THE ACRONYM "IOLTA" STAND FOR?

Interest on Lawyer Trust Accounts

WHAT IS THE BASIC CONCEPT OF IOLTA?

Very often, the amount of money that a lawyer handles for a single client is either nominal in amount or to be held only for a short time. It would not be feasible to establish separate interest-bearing accounts for these client funds since the cost of administering separate accounts, including the lawyer's time and bank charges, would be greater than the amount of interest that would be generated. Under Rule 1:28A established by the NJ Supreme Court, the interest earned on this common account is forwarded directly by the financial institution to the IOLTA Fund. There is no direct involvement by the attorney once the IOLTA Trust account has been established.

The lawyer retains the right to determine in any specific case whether to place client funds in a separate interest-bearing account for the benefit of the client or not to earn interest, in which case the funds must be deposited in the IOLTA trust account. Ultimately, the propriety of IOLTA deposits is a matter for the attorney's professional judgment, based upon the factors specified in Rule 1:28A.

WHERE DOES THE MONEY GO?

Pursuant to the Court Rule, after meeting expenses, at least 75% of net revenue is awarded to Legal Services of New Jersey, Inc. and through sub-grants to its local member Legal Services programs to support the delivery of civil legal services to New Jersey's poorest residents. In addition,

FREQUENTLY ASKED QUESTIONS

12.5% of net revenue is awarded to the New Jersey State Bar Foundation, for educational programs and publications on legal and justice-related subjects. The remaining 12.5% of net revenue is allocated by the IOLTA Board of Trustees to grants supporting civil legal assistance to income-eligible persons, improvements to the administration of justice, and law-related education. The money can be used for no other purposes. A small administrative staff reports to the Board of Trustees.

HOW DOES THE IOLTA PROGRAM AFFECT FINANCIAL INSTITUTIONS?

Financial institutions are not mandated by the IOLTA rule to participate. However, financial institutions that want to offer attorney trust accounts must first file an agreement with the Supreme Court to report overdrafts to the Office of Attorney Ethics and comply with the rules and regulations governing the IOLTA program. If an institution chooses to stop participating, then attorneys with trust accounts at that financial institution would have to transfer those accounts to institutions that do participate in the IOLTA program.

CAN BANKS ADVERTISE THE AVAILABILITY OF IOLTA ACCOUNTS?

Yes, financial institutions can attract new depositors by advertising that they offer IOLTA accounts.

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

Financial institutions may wish to cite their participation in IOLTA in their Community Reinvestment Act reports. There is no question that a bank's participation assists low income individuals with housing, income maintenance, and other consumer issues which can affect their credit rating. The availability of free legal services to low income persons is often directly related to their ability to obtain credit and/or maintain housing. Our Annual Report lists grant recipients and amounts for each fiscal year, as well as participating banks.

FREQUENTLY ASKED QUESTIONS

WHY DO WE NEED A DESIGNATED CONTACT?

The IOLTA Fund encourages all participating financial institutions to designate a contact person, or liaison, to the Fund. This arrangement has worked well since the inception of the program, and helps to expedite problem resolution for both the bank and IOLTA. We will communicate with the designated contact person on all operational matters, including sending completed Participation Forms to convert non-interest bearing trust accounts to IOLTA status. The financial institution should contact the Fund if a new IOLTA contact is designated.

ARE THERE ANY TAX CONSEQUENCES FOR THE CLIENT OR FOR THE ATTORNEY?

There are no tax consequences for the client or the attorney because of IOLTA participation. New Jersey has an Internal Revenue Service ruling stating that interest earned on IOLTA trust accounts and remitted by the bank to the IOLTA Fund are not taxable to the client or to the attorney. The attorney is not required to prepare or file IRS 1099 forms, and neither the client nor the attorney is named as a recipient on any 1099 form.

WHO PAYS SERVICE CHARGES AND FEES FOR IOLTA ACCOUNTS?

Basic bank service charges are paid from the interest earned on the IOLTA accounts. Check printing charges, wire transfer fees, bank checks or certified checks, cash management fees, and overdraft costs are not considered normal service charges and may not be paid from IOLTA's interest. Each account holder should make arrangements with the financial institution regarding these costs. Attorneys are permitted to keep up to \$250 of their own money in a pooled trust account to cover service charges although the law firm may want the financial institution to charge those fees to a business account instead.

FREQUENTLY ASKED QUESTIONS

WHAT IF AN ATTORNEY ONLY USES THE TRUST ACCOUNT INFREQUENTLY?

A "low-balance" account category has been established to accommodate those attorneys who make infrequent deposits to their trust accounts. Trust accounts of new sole practitioners (and those of part-time and occasional practitioners) often fall into IOLTA's "low balance" category. These trust accounts remain non-interest bearing. The IOLTA Fund trustees exempt trust accounts with very small balances. It is the attorney's responsibility to notify the Fund when the average balance is sufficient to convert the account to IOLTA status.

IS A MASTER AND SUB ACCOUNT SYSTEM COMPATIBLE WITH IOLTA?

Yes. The IOLTA account may be an interest-bearing sub account in which client funds can be commingled, or an interest-bearing Master IOLTA account with multiple sub accounts. The IOLTA Regulation requires sub-accounts to bear interest to either a client **or** IOLTA. It is the attorney's responsibility to judge whether a client deposit fits the criteria for an IOLTA deposit. If the deposit will not be placed at interest for the client, then IOLTA should be the default beneficiary of the interest earned.

DOES FDIC COVER IOLTA ACCOUNTS?

Yes. An IOLTA account is insured like other fiduciary accounts. Funds are insured to the actual owner as if the funds were deposited directly by the owner, provided the account title discloses the fiduciary nature of the account and the identities and interests of the principals for whom the fiduciary is acting can be ascertained. For more information refer to the FDIC at www.fdic.gov.

FREQUENTLY ASKED QUESTIONS

CAN A FINANCIAL INSTITUTION USE THE IOLTA TAXPAYER IDENTIFICATION NUMBER ON ALL ATTORNEY TRUST ACCOUNTS?

No. If the account is a “low-balance” account, it will carry the lawyer’s or law firm’s taxpayer identification number. If the client is to get interest, the account must be opened with the client’s social security or taxpayer identification number.

IF AN ATTORNEY CHANGES BANKS, WILL IT BE NECESSARY TO FILL IN MORE FORMS? HOW MANY IOLTA ACCOUNTS CAN ONE ATTORNEY HAVE?

Each new or additional attorney trust account opened must be registered with the IOLTA Fund by filing an additional form. An attorney or law firm may have as many IOLTA accounts as needed, at multiple banks.

SHOULD THE BANK KEEP A SUPPLY OF FORMS ON HAND FOR ATTORNEYS?

No. Attorneys must call the IOLTA Fund upon opening a new trust account. Registration and Participation forms are available only from the IOLTA Fund, and are the responsibility of the lawyer, not the bank.

IS THERE ANY ASSISTANCE FOR BANK PERSONNEL AVAILABLE FROM THE FUND?

IOLTA operating procedures are generally managed from a bank’s main office or branch support center. However, since lawyers and law firms frequently ask questions in the branches, it is useful if branch personnel contact us directly if questions arise while establishing new trust accounts.

All of our materials, forms, and frequently asked questions are also available on our website at www.ioltanj.org. ■

OPERATIONAL GUIDELINES

Attorney wants to open an IOLTA account.

Bank opens a non-interest bearing attorney trust account and tells attorney to contact the IOLTA fund for necessary forms. Bank uses the attorney or law firm tax I.D. number to open.

Attorneys *do not* need IOLTA's authorization to open an attorney trust account.

Attorney receives forms from IOLTA, completes them and returns them to the IOLTA fund.

The Fund registers the attorney's compliance with New Jersey Supreme Court Rule 1:28A.

If the fund determines that the account should be interest bearing, the participation form is sent to the designated bank contact with a cover letter authorizing use of IOLTA tax I.D.

The participation form is the official authorization for the financial institution to use IOLTA's tax I.D. number and make the trust account interest bearing for IOLTA.

OPERATIONAL GUIDELINES

For the purpose of these guidelines the word “attorney” means a sole practitioner or a firm comprised of two or more attorneys, but responding as one because there is one general trust account for the firm.

BEFORE RECEIVING THE IOLTA PARTICIPATION FORM

- A. Even if the attorney indicates that he or she wishes to open an “IOLTA” account, ALL new accounts should be opened as **NON-INTEREST BEARING** attorney trust accounts. The second line of the account title must include the words “Attorney Trust Account”.

Instruct the attorney to contact the IOLTA Fund for the necessary forms to make the account an IOLTA account. You do not need IOLTA’s authorization to open the account. The attorney can use the account as soon as you permit, according to your usual policy.

- B. The attorney will complete the forms and return them to IOLTA.

- C. The Fund registers the attorney’s compliance with New Jersey Supreme Court Rule 1:28A. Since many attorney trust accounts maintain only minimal balances, not all will be converted to interest-bearing IOLTA accounts.

If the Fund determines, together with the attorney, that the account should be interest-bearing for IOLTA, the Participation Form is sent to the designated contact at the financial institution.

- D. The Participation Form is the official authorization for the financial institution to a) use IOLTA’s Tax Identification number and b) make the trust account interest bearing for IOLTA.

OPERATIONAL GUIDELINES

UPON RECEIPT OF IOLTA PARTICIPATION FORM

When the financial institution receives a notice (Participation Form and cover letter) sent by the IOLTA Fund to change an existing general trust account to an interest bearing transaction account, New Jersey Court Rule 1:28A requires the financial institution, if it accepts the account, to:

- I. **CHANGE ACCOUNT:** Convert the designated account to an interest-bearing transaction account.
- II. **REMIT:** Remit the interest earned, net of service charges to IOLTA.
- III. **REPORT TO IOLTA:** Accompany the remitted amount with a Remittance Report for the same period.
- IV. **REPORT TO ATTORNEY:** Provide reports as agreed upon by the attorney and the financial institution to each depositing attorney. ■

REFER TO THE FOLLOWING PAGES FOR
IMPORTANT DETAILS ABOUT THE STEPS DESCRIBED ABOVE.

I. CHANGE ACCOUNT TO INTEREST BEARING TRANSACTION ACCOUNT

- A. Use IOLTA Fund Taxpayer I.D. Number (TIN) 22-2878549, for assignment of interest income. IOLTA is recognized by the I.R.S. as tax-exempt.
- B. Neither IOLTA nor the I.R.S. demands a 1099 for IOLTA accounts. There is no requirement that a 1099 be mailed to the attorney. It is recommended that the financial institution suppress the 1099 or send it to IOLTA, not the attorney.
- C. The interest rate and method of calculation on all IOLTA accounts shall be not less than the best rate and most advantageous method available to similarly-sized, non-IOLTA accounts at the financial institution, when the IOLTA account meets the same minimum balance requirements applied to those other depositors. The Supreme Court Administrative Determination regarding the Best Customer Standard explains these requirements (page 27.)
- D. The account name is to have the word IOLTA as the first word, but IOLTA should not appear on checks or deposit slips.
- E. Service charges and fees may include reimbursement for the reasonable costs of administering the account, but no greater than the institution's customary pricing procedures for similar-sized accounts at that institution ("allowable service charges"). IOLTA **will not** pay for cashier's checks, official bank checks, or certified checks, wire transfers, check printing, cash management services or overdraft costs ("impermissible service charges"). Account analysis, a cash management service in which an earnings credit is given to the law firm to offset service charges, may not be used on trust accounts. These costs should be billed directly to the attorney in a manner agreed upon between the attorney and financial institution.
- F. The IOLTA Fund Trustees reserve the right to remove from IOLTA participation those trust accounts with small balances that might cost the IOLTA Fund more in service charges than will be generated in interest by the account.
- G. The interest rate must be comparable to the highest available rate offered to similar customers when the IOLTA account meets the same

OPERATIONAL GUIDE

minimum balance requirements. The net yield to IOLTA must provide a reasonable return, according to the standard established by the IOLTA Fund from time to time. Rates, therefore, must be both comparable and reasonable. Refer to the Best Customer Standard (page 27) for information about the current standard.

- H. Lawyers may delegate to a depository institution the responsibility for maintaining and administering a separate sub account for each single client from whom the lawyer receives fiduciary funds. The lawyer retains the right to determine in any specific case whether to place client funds in a separate interest-bearing account for the benefit of the client or not to earn interest, in which case the funds must be deposited in the IOLTA trust account.

Every sub account must be interest-bearing. If no owner is specified, then IOLTA is the default beneficiary. (IOLTA Regulation II.B.2.) Master accounts (including disbursement accounts) should be interest-bearing to IOLTA. (IOLTA Rule 1:28A-2 (a)) If the aggregate average balance of all the sub accounts is greater than \$100,000, then the interest rate must meet the return standard for this category of accounts as established by the Fund from time to time. Please contact the IOLTA Fund to discuss master trust accounts with sub accounts in the IOLTA program.

II. REMIT NET INTEREST TO IOLTA

- A. Earned interest net of service charges may be remitted on a monthly cycle or a quarterly cycle, subject to the following guidelines:
1. Banks remitting \$2,000 or more per month (or \$24,000 annually) must remit net interest monthly. All other banks may select a monthly or quarterly cycle, however if your financial institution elects to remit quarterly, a separate interest bearing account should be established for the IOLTA Fund to act as a holding account for the interest earned.

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2. All monthly or quarterly interest checks and remittance reports must be submitted by the 10th of the following month or 10 days after the closing date of the cycle for which you are remitting. A report must be submitted for each remittance period, whether or not interest has been earned on accounts held at your financial institution.

B. Calculation of Interest

Financial institutions may calculate interest on the account(s) using:

1. The ordinary method of calculating interest on a single account; or
2. The total of the average daily balances of a number of accounts being remitted and reported upon in the same period (Summary Report Form B required); or
3. The aggregate average balance of all IOLTA accounts in the institution being remitted and reported upon for the same period (Summary Report Form B required).

C. Service Charges

Allowable account service charges and fees may be charged against IOLTA interest earned, but may not exceed the interest earned by that account. Allowable service charges may be:

1. waived;
2. deducted from the interest earned on the account;
3. carried over to the next remittance period if earned interest is not sufficient to cover the period's cost.

D. Remittance Contents

The financial institution may:

1. Remit for a single account per remittance; or
2. Remit for a number of accounts in one remittance when those accounts are in the same reporting cycle; or
3. Remit for all accounts within the institution in one remittance when all are within the same cycle.

E. Remittance Source

Interest earned by the accounts may be held until remittance by the financial institution in a manner consistent with internal procedure.

Interest earned may be remitted from:

1. Interest held in the depositing attorney's individual account until remitted; or
2. Interest debited from the individual attorney's account and held in a separate, interest-bearing account until remitted; or
3. Interest paid directly into a separate interest-bearing IOLTA account until interest and interest-earned on deposit are both remitted.
4. Interest paid directly into an IOLTA interest-bearing master account when the institution has more than 50 accounts and when the institution and IOLTA agree upon the rate of interest to be paid and the method and timing of withdrawal or transfers at IOLTA's active notice; or
5. Interest debited from the attorney account and paid directly to IOLTA; or
6. Interest paid directly to IOLTA.

F. Remittance Method

Payment for single or multiple accounts may be remitted by:

1. Check, wire transfer or ACH funds transfer, or
2. Transfer of earned interest into an IOLTA Fund Master Account within the institution when the institution has more than 50 attorney IOLTA accounts and IOLTA and the institution agree upon the rate of interest to be earned by the Master Account; or
3. Other arrangement negotiated with the IOLTA Fund.

IOLTA prefers electronic funds transfers. Contact the IOLTA Fund office for instructions.

III. REPORT TO IOLTA

Financial institutions must submit a Remittance Report to account for the amount remitted and the activity in each attorney IOLTA account. The Remittance Report must be completed for each account even when there is no charge to or interest generated by that individual account.

- A. Interest rates paid on IOLTA accounts shall be stated on IOLTA Form B, Summary Statement if the same rate is applied to all accounts reported on, or on IOLTA Form A, Attorney Accounts if different rates are applied to individual accounts.
- B. At IOLTA's request, the Chief Compliance Officer of the financial institution will be asked to certify that throughout the period specified, the IOLTA accounts received the highest interest rate available to non-IOLTA depositors, when the IOLTA account meets the same minimum balance requirements as those other depositors.
- C. Remittance Report Contents (mandatory except where noted)
 1. Name and address of institution
 2. Name and number of attorney account
 3. Average daily balance
 4. Balance at close of reported period (optional)
 5. Dates of reporting period
 6. Interest earned
 7. Service charges
 8. Net interest paid
 9. Interest rate(s) paid during the reported period
- D. Remittance Report Format
 1. For single accounts:
 - a. Submit a copy of the depositor's account statement when all items (1.-9.) requested above are included, or
 - b. Report using IOLTA Fund Form A, Attorney Accounts with the requested information.

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2. For two or more attorney accounts:
 - a. Submit a copy of each depositor's account statement when all items (1.-9.) requested above are included, along with IOLTA Fund Form B, Summary Statement showing details of the total remittance, or
 - b. Submit an IOLTA Fund Form A, Attorney Accounts with each attorney account on a separate line showing all requested items above, along with IOLTA Fund Form B, Summary Statement, showing details of the total remittance, or
 - c. Submit another report designed by the financial institution containing the information requested by IOLTA. The report must be acceptable to IOLTA.

IV. REPORT TO ATTORNEY

The financial institution shall provide the depositing attorney with reports as agreed between the attorney and the financial institution.

V. MISCELLANEOUS

1. Notify the IOLTA Fund if:
 - a. The bank's IOLTA liaison changes, or
 - b. An account number change is required for one or a group of accounts, or
 - c. The bank acquires, merges with or is acquired by another financial institution.
2. Report errors in remittance within 60 days of the error to the IOLTA Fund. Upon receipt of supporting documentation, excess payments on an attorney trust account may, with approval, be deducted from subsequent interest earned.
3. Contact the IOLTA Fund directly to replace paper remittance reports with electronic transmittal (file transfer, diskette, CD-Rom, etc.)

VI. AUTHORIZATION OF FINANCIAL INSTITUTIONS TO HOLD ATTORNEY TRUST ACCOUNTS

- A. In the exercise of its exclusive constitutional authority over the practice of law, the Supreme Court regulates attorney trust accounts. To that end, the court authorizes attorneys to establish accounts at financial institutions that will report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, agree to other reporting requirements set forth in Rule 1:21-6 as amended from time to time, and co-operate with the IOLTA Program.
1. To become an authorized trust account depository:
 - a. Contact the Office of Attorney Ethics (609-530-4321) to request a Trust Account Overdraft Notification Agreement.
 - b. Contact the IOLTA Fund (732-247-8222) to request a Financial Institution Certification Statement and other start-up materials.
 - B. The Court may withdraw its authorization if a financial institution fails to cooperate with the IOLTA Program and the Best Customer Standard.
 1. If a financial institution does not meet the Standard or fails to cooperate with any other element of the IOLTA program, IOLTA will send a letter giving preliminary notice to the bank that it is not in compliance. The notice will state what must be done to come into compliance. Absent compliance *or a promise to comply within the stated time period*, the bank's name will be reported to the Supreme Court with the recommendation that the bank's status as an authorized depository be withdrawn unless and until it comes into compliance.
 2. IOLTA will forward the name of the financial institution and pertinent specifics to the Clerk of the Supreme Court and the Office of Attorney Ethics. On receipt of IOLTA's report, the Clerk will send a Final Notice to the financial institution indicating that if it does not come into compliance, as certified by IOLTA, within thirty days of the Final Notice, the bank's name will be withdrawn from the list of approved depositories for attorney trust accounts.

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3. If a financial institution's authorization is withdrawn by the Court, attorneys will have up to sixty days from that action within which to transfer their accounts to a Court-authorized financial institution in the highest yielding 50% of participating institutions. Notices will be sent to all affected attorneys by the Office of Attorney Ethics providing instructions for such transfers together with the list of the highest yielding 50% of participating financial institutions.
4. A financial institution that has been deauthorized will be reinstated on the Court's receipt of a certification from IOLTA that the bank is in compliance with the Standard. As a condition of reinstatement, the financial institution will be required to compensate IOLTA for the difference between the interest remitted at the non-complying account/rate option and the interest that would have been remitted at the selected complying account/rate option for the entire period of non-compliance ("retroactive interest").

In addition, the reinstated financial institution may be required to reimburse the Office of Attorney Ethics for the cost of notifying attorneys who had accounts with the bank at the time of its deauthorization.

CONCLUSION

These guidelines are provided to facilitate a uniform IOLTA program throughout New Jersey, and compliance with New Jersey Supreme Court Rule 1:28A and the Regulation governing the establishment and maintenance of attorney trust accounts. If your institution wishes to modify any of the procedures described in this booklet, please contact the IOLTA Fund to discuss your request and concerns. We strive to be accommodating to institutions offering this service and are receptive to reasonable modifications and changes which do not jeopardize the intent of the program. ■

RULE: 1:28A

INCOME ON NON-INTEREST BEARING LAWYERS TRUST ACCOUNTS (IOLTA) FUND

1:28A-1. PURPOSE; ADMINISTRATION; APPOINTMENTS

(a) **Administration.** The Supreme Court shall appoint six Trustees to administer and operate, in accordance with these Rules, the IOLTA Fund of the Bar of New Jersey, whose purpose is to provide a means of using the return to IOLTA on income earned by depository institutions from funds held in IOLTA accounts to fund law-related, public-interest programs. In addition to the Trustees appointed by the Supreme Court, the following shall be ex officio members and will have the right to vote on all matters except grant applications made to the Board of Trustees, but they may participate in Board discussions of the grant applications: the President of the New Jersey State Bar Association; the First Vice President of the New Jersey State Bar Foundation; and the President of Legal Services of New Jersey, Inc.

(b) **Qualification, Terms of Trustees.** The original appointment shall be of two Trustees for a one-year term, one for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms all subsequent appointments shall be for a term of five years, and no Trustee who has served a full five-year term shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof. At least four of the Trustees appointed by the Supreme Court shall be members of the bar of this State

**RULE 1:28A • INCOME ON NON-INTEREST BEARING
LAWYERS TRUST ACCOUNTS (IOLTA) FUND**

(c) Organization; Meetings. The Trustees shall organize annually and shall then elect from among their number a chairperson and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chairperson. Except as may be otherwise provided by this rule or by regulations promulgated by the Trustees, five of the nine trustees, including the ex officio members, shall constitute a quorum and may transact all business not involving grants. Four of the six Trustees appointed by the Supreme Court shall constitute a quorum for all decisions concerning grants.

(d) Regulations. The Trustees shall adopt regulations, consistent with these rules and subject to the approval of the Supreme Court, governing the administration of the Fund, the procedures for the presentation, consideration, and payment of grants, and the exercise of their investment powers.

(e) Reimbursement. The Trustees shall serve without compensation.

Note: Note: Adopted February 23, 1988, to be effective March 1, 1988; paragraphs (a), (b), (c) and (d) amended September 15, 1992, to be effective January 1, 1993; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; caption of Rule 1:28A and paragraphs (a) and (b) of Rule 1:28A-1 amended February 6, 2003 to be effective March 1, 2003.

**RULE 1:28A • INCOME ON NON-INTEREST BEARING
LAWYERS TRUST ACCOUNTS (IOLTA) FUND**

1:28A–2. Attorney IOLTA Trust Accounts

(a) Attorney Participation. Commencing on the date established by regulations to be adopted by the Board of Trustees pursuant to Rule 1:28A–1(d), every attorney who practices in this State shall maintain in a financial institution in New Jersey, in the attorney's own name or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability entity of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed, an IOLTA non-interest-bearing trust account or accounts for all clients' funds that are not placed at interest for the benefit of the client.

- (1) The IOLTA non-interest-bearing trust account may be established with any financial institution approved by the Supreme Court to hold attorney trust funds under R. 1:21–6(a) and insured by the Federal Deposit Insurance Corporation or an analogous federal government agency. Funds in each IOLTA non-interest-bearing trust account will be subject to withdrawal on request and without delay.
- (2) Funds shall be deposited in an IOLTA non-interest-bearing trust account authorized by this Rule when an attorney determines that a trust account deposit will not be placed at interest for a client. Such a determination shall be made whenever an attorney determines that either (A) the amount of the funds or the period of time that the funds are held, if deposited in an interest-bearing account, would not earn interest in excess of the cost incurred to secure such interest, or (B) because of particular costs in accounting, administration, or attribution of income, as may occur when multiple parties or clients pool advance payments against the costs of litigation in a single fund, a client's funds should not be deposited in an interest-bearing account because they will not realize income. No ethical impropriety will attend an attorney's depositing such funds in an IOLTA non-interest-bearing trust account in accordance with this Rule.

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- (3) An attorney or law firm shall maintain one or more IOLTA non-interest-bearing trust accounts and shall submit to the approved financial institutions in which such accounts are maintained such forms as may be necessary to establish and maintain such accounts, on forms prescribed by the Trustees, and provide a copy of such form to the IOLTA Fund Trustees. If such a form is not filed, the signed registration statement required by Rule 1:20-1 and Rule 1:21-6 shall constitute such authorization.

(b) Deposit of Funds in IOLTA Account. An attorney will exercise good-faith judgment in determining initially whether the funds of a client are of a nominal amount, are expected to be held by the attorney for a short period of time, or otherwise fall within the circumstances described in (a) above.

In exercising that judgment, the attorney will also consider such other factors as:

- (1) the cost of establishing and maintaining a separate non-IOLTA, interest-bearing trust account, including service charges, bookkeeping and accounting and tax-reporting procedures;
- (2) the nature of the transaction(s) involved;
- (3) the likelihood of delay in the matter for which the funds are held;
- (4) whether the funds received by an attorney in a fiduciary capacity from a client or beneficial owner will generate less than \$150 of interest, provided that that \$150 figure may be used by an attorney as a minimum threshold indicating whether monies received in a fiduciary capacity should be placed in an IOLTA trust account, but shall not preclude the use of a higher figure if the costs or circumstances warrant; and
- (5) the other circumstances described in (a) above.

(c) Periodic Review of Deposits. At reasonable intervals, an attorney should consider whether changed circumstances require different action respecting the deposit of client funds.

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LAWYERS TRUST ACCOUNTS (IOLTA) FUND**

(d) Registration; Enforcement. The accounts required by this Rule shall be registered annually with the IOLTA Fund in the manner prescribed by the IOLTA Fund Trustees. The Trustees shall annually report the names of all attorneys failing to comply with the provisions of this Rule to the Supreme Court for inclusion on a list of those attorneys deemed ineligible to practice law in New Jersey by Order of the Court. An attorney shall be removed from the Ineligible List without further Order of the Court on submission to the Trustees of the prescribed forms.

(e) Duties of Financial Institution. The financial institution must:

- (1) from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institutions a just and reasonable return equivalent to their return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund. And
- (2) report in the form provided by the Fund.

***Note:** Adopted February 23, 1988, to be effective March 1, 1988; former rule deleted and R. 1:28A-3 renumbered as 1:28A-2 September 15, 1992, to be effective January 1, 1993; paragraph (a)(1) of former R. 1:28A-3 amended November 7, 1988, to be effective January 2, 1989; rule amended September 15, 1992, to be effective January 1, 1993; new paragraph (d) adopted and former paragraph (d) redesignated as paragraph (e) December 13, 1993, to be effective January 3, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (e) amended February 6, 2003 to be effective March 1, 2003.*

RULE 1:28A • INCOME ON NON-INTEREST BEARING
LAWYERS TRUST ACCOUNTS (IOLTA) FUND

1:28A-3. Duties of Trustees and Officers

(a) **Audit and Report.** The Trustees shall arrange for an independent audit annually and at such other times as the Supreme Court shall direct, such audits to be at the expense of the Fund. The annual audit shall be included in a report to be submitted annually by the Trustees to the Supreme Court, reviewing in detail the administration of the Fund during the preceding year.

(b) **Applications to the Supreme Court.** The Trustees may apply to the Supreme Court for interpretations of these Rules and of the extent of their powers thereunder and for advice regarding the proper administration of the Fund.

(c) **Treasurer's Duties.** The treasurer shall maintain the assets of the Fund in separate accounts and shall disburse monies therefrom only on the action of the Trustees pursuant to these Rules. He or she shall file a bond annually with the Trustees with such surety as may be approved by them and in such amount as they may fix.

Note: Adopted as R. 1:28A-4 February 23, 1988, to be effective March 1, 1988; renumbered as R. 1:28A-3 and paragraphs (b) and (c) amended September 15, 1992, to be effective January 1, 1993.

1:28A-4. General Powers of Trustees

(a) **Reserve Fund.** The Trustees of the Fund are authorized to maintain a reasonable reserve fund. At least annually, after a reasonable reserve fund has been created, the Trustees will solicit applications for grants and award grants to those entities deemed to be meritorious under the regulations of the Fund. Grant-making decisions of the Board are final and are not subject to appeal or judicial review.

**RULE 1:28A • INCOME ON NON-INTEREST BEARING
LAWYERS TRUST ACCOUNTS (IOLTA) FUND**

(b) Grants. Grants will be made only for the following purposes:

- (1) legal aid to the poor;
- (2) improvement of the administration of justice;
- (3) education of lay persons in legal and justice-related areas; or
- (4) such other programs for the benefit of the public as are specifically approved by the New Jersey Supreme Court from time to time.

(c) Awards. The Board of Trustees shall award:

- (1) to Legal Services of New Jersey, Inc., not less than 75% of the funds available annually for grants, to be used directly by itself and, through subgrants, by its local member Legal Services programs, in conducting legal assistance activities on behalf of the poor throughout New Jersey;
- (2) to the New Jersey State Bar Foundation, not less than 12.5% of the funds available annually for grants to be used for the purposes enumerated in R. 1:28A-4(b)(1)-(4) above; and
- (3) to other entities deemed to be meritorious under the regulations of the Fund, the balance of the funds available annually for grants to be used for the purposes enumerated in R. 1:28A-4(b) (1)-(4) above.

The foregoing may be amended by the Supreme Court from time to time in the public interest.

(d) General Powers. In addition to the powers conferred by these Rules on the Trustees, they shall have the following general powers:

- (1) to receive, hold, manage, distribute, and invest the funds received by the Fund and such other funds as it may receive by voluntary contribution or otherwise;

**RULE 1:28A • INCOME ON NON-INTEREST BEARING
LAWYERS TRUST ACCOUNTS (IOLTA) FUND**

- (2) to employ and compensate consultants, agents, legal counsel, and such other employees as they deem necessary and appropriate consistent with personnel policies of the Judiciary; and
- (3) to monitor and insure compliance with the provisions of this Rule.

Note: *Adopted as R. 1:28A-5 February 23, 1988, to be effective March 1, 1988; renumbered as R. 1:28A-4 and amended September 15, 1992, to be effective January 1, 1993.*

1:28A-5. Confidentiality

All activities conducted and records made or maintained by the IOLTA Fund in connection with its operations under this rule shall not be disclosed, except that the IOLTA Board is authorized to:

- (a) Release such information as it may deem necessary to carry out its responsibilities as prescribed by this rule, including the identity of recipients and amounts and purposes of grant awards, and data concerning participating financial institutions; and
- (b) Release statistical and other information in its annual report to the Supreme Court or as requested by the Supreme Court.

Note: *Former Rule 1:28A-5 redesignated as Rule 1:28A-4 September 15, 1992 to be effective January 1, 1993. New Rule 1:28A-5 adopted July 12, 2002 to be effective September 3, 2002. ■*

IOLTA - BEST CUSTOMER STANDARD

(As Amended February 18, 2009, to take effect March 1, 2009)

This standard describes the actions necessary to demonstrate that a financial institution is offering a comparable and reasonable return on IOLTA accounts, as required by the IOLTA Guidelines.

- A. A financial institution shall provide to IOLTA the highest yield available among the following types of accounts, as provided to the best customers of the institution with similarly-sized deposits in such accounts in New Jersey:
 1. A money market account with or tied to check writing capability;
 2. A business interest-paying checking account backed by a sweep capability, with the sweep to a money market fund or daily overnight financial institution repurchase agreement invested in or fully collateralized by U.S. Government securities;
 3. A government (such as for municipal deposits) checking account;
 4. An open-end money market fund with or tied to check writing capability solely invested in or fully collateralized by U.S. Government securities (and with total assets of at least \$250,000,000); or
 5. Any other interest-paying business checking account product with preferred interest rates, such as money market, tiered, or indexed rates.

**SUPREME COURT ADMINISTRATIVE DETERMINATION
RE: AMENDMENTS TO IOLTA RULES**

- B. As alternatives to the foregoing, the institution may offer:
1. The higher of 60% of the Federal Funds Target Rate or 1%, paid on an interest-bearing checking account; or
 2. A yield specified by IOLTA, if IOLTA so chooses, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the inception of the agreement between the institution and IOLTA.
- C. The following additional provisions are applicable. As indicated by their terms, some apply only to one or some of the options set forth above.
1. If the highest yielding of the first five options is chosen by the institution, it shall pay not less than the best rate paid by the lowest bank in the third quartile of all IOLTA participating financial institutions offering that type of account, as specified in options 1 through 5. Quartiles will be created by ranking all banks according to the rates paid for each of options 1 through 5 above, from highest to lowest, and then dividing them into fourths. Such quartiles and amounts shall be determined by IOLTA on a quarterly basis. Based on the reports submitted by participating financial institutions concerning the rates paid to all bank customers for each type of account, IOLTA will determine on a quarterly basis the distribution of banks in each quartile and the cut off rate at the bottom of the third quartile for each type of account.
 2. The sixth option (Fed Funds) shall be calculated as of the first day of each month or on the day following the announcement of a Federal Funds rate change.

**RULE 1:28A • INCOME ON NON-INTEREST BEARING
LAWYERS TRUST ACCOUNTS (IOLTA) FUND**

3. A bank may elect to offer the highest rates that it pays on sweep, government or high-yield money market accounts on another qualifying IOLTA checking account, instead of actually offering such an account.
 4. All account types will provide immediately available funds as required by Supreme Court rule for attorney trust accounts. Money market accounts shall comply with applicable banking regulations.
 5. IOLTA will continue to exempt low balance accounts as part of its annual registration process.
 6. Participating financial institutions shall certify their compliance with these requirements in the form and manner prescribed by the IOLTA Fund.
 7. The requirements set forth in this section shall apply to IOLTA accounts with average balances of \$100,000 or more.
 8. All participating financial institutions shall report, in the form and manner prescribed by the IOLTA Fund, on the best rate paid to their best customers for each of the types of accounts they offer within the definitions specified in options 1 through 5 above.
 9. Attorneys with accounts in a financial institution which ceases for any reason to be an approved depository for attorney trust accounts shall move those accounts to an institution in the first or second quartiles at the time of the move.
 10. Where there is reasonable cause to believe a financial institution is willfully misrepresenting its best yield information, the IOLTA Fund may condition continued trust account depository approved status on a finding by the institution's auditor that its certifications have been accurate.
- D. The IOLTA Board shall monitor and report periodically to the Supreme Court on the effectiveness of this standard.

REGULATIONS OF THE IOLTA FUND OF THE BAR OF NEW JERSEY

I. AUTHORITY AND SCOPE

These regulations are promulgated by the Trustees of the IOLTA Fund of the Bar of New Jersey pursuant to Rule 1:28-A. They are effective January 1, 1993 and supersede all previous regulations. These regulations implement and amplify the basic procedures set forth in Rule 1:28-A. As used herein, "attorney" shall include any attorney, law firm or professional corporation obligated to maintain an attorney trust account pursuant to Rule 1:21-6.

II. REQUIRED IOLTA TRUST ACCOUNTS

- A. Rule 1:28A-2 (a) and (b) specify the funds which shall be deposited in an IOLTA attorney trust account, hereafter "IOLTA account". Attorneys must deposit all such funds in accounts designated as IOLTA accounts, and may not deposit such funds in other non-interest bearing accounts. Attorneys shall designate as an IOLTA account every attorney trust account in which such funds are deposited. These accounts shall be registered annually with the IOLTA Fund in the manner prescribed by the IOLTA Fund Trustees.
- B. Trust accounts which must be converted to IOLTA accounts include:
 1. General attorney trust accounts which hold any funds specified in R.1:28A-2 (a) and (b). These accounts may bear such titles as Attorney Trust Account; Attorney Trust Account - Real Estate; Attorney Trust Account - Collections; or other special designations consistent with Rule 1:21-6.

**REGULATIONS OF THE IOLTA FUND
OF THE BAR OF NEW JERSEY**

2. A sub account of a Master Trust Account which holds any funds specified in R.1:28A-2 (a) and (b) Such funds shall not be deposited in non-interest bearing sub accounts for specific clients.

III. PROCEDURES FOR ATTORNEYS WHO ARE REQUIRED TO MAINTAIN TRUST ACCOUNTS AS SPECIFIED IN R.1:28A-2 (a) AND (b):

- A. All attorneys shall establish or convert his or her existing trust account(s) to an IOLTA account(s) as required by (II) above by completing and forwarding the IOLTA Participation Form(s), in the manner prescribed by the IOLTA Fund Trustees on or before January 1, 1993.
- B. Trust accounts with an average balance below an amount to be established annually by the Board of Trustees and set forth on the IOLTA Low Balance Form may be given an exemption from active participation. The IOLTA Fund Trustees reserve the right to issue such exemptions to attorneys having trust accounts with small balances that will cost the IOLTA Fund more in service charges than will be generated in interest by the account. Such exemptions shall be in the manner prescribed by the IOLTA Fund Trustees.
- C. In cases of geographical hardship or other unusual and extreme circumstances, the IOLTA Fund Trustees may consider other exemptions.
- D. Attorneys shall file a statement of compliance annually as part of the Annual Attorney Registration Statement and shall register these trust accounts annually with the IOLTA Fund in the manner prescribed by the IOLTA Fund Trustees.
- E. The Trustees shall annually report the names of all attorneys failing to comply with the provisions of Rule 1:28A and these Regulations to the Supreme Court for inclusion on the list of those attorneys deemed ineligible to practice law in New Jersey by order of the Court. An attorney shall be removed from the Ineligible List without further order of the Court upon submission to the Fund of the prescribed forms.

**REGULATIONS OF THE IOLTA FUND
OF THE BAR OF NEW JERSEY**

- F. Attorneys who are admitted to practice or reinstated to practice after January 1, 1993 shall have 60 days from the establishment of trust accounts to comply with Rule 1:28-A and these regulations.
- G. An attorney shall exercise good faith judgement in determining whether the funds of a client are those specified in R.1:28A-2 (a) and (b). Among the factors that an attorney should take into account are:
 - 1. the cost of establishing and maintaining a separate non-IOLTA, interest-bearing trust account, including service charges, bookkeeping and accounting and tax-reporting procedures;
 - 2. the nature of the transaction(s) involved;
 - 3. the likelihood of delay in the matter for which the funds are held;
 - 4. whether the funds received by an attorney in a fiduciary capacity from a client or beneficial owner will generate less than \$150 of interest. The \$150 figure is a minimum threshold. Funds generating more than \$150 in interest may still be deposited into an IOLTA account if other factors so warrant.

In addition, funds should be deposited in an IOLTA account when an attorney determines that because of particular costs in accounting, administration or attribution of income, as may occur when multiple parties or clients pool advance payments against the costs of litigation in a single fund, a client's funds should not be deposited in an interest-bearing account because they will not realize income.

Attorneys shall notify the IOLTA Fund when any changes occur that affect their IOLTA participation. These changes include change of financial institution, change of account number, change of name and/or address of firm.

IV. HANDLING OF IOLTA INTEREST AND OTHER FUNDS BY FINANCIAL INSTITUTIONS AND TRUSTEES:

- A. Interest generated by attorney IOLTA accounts shall be paid to one or more central IOLTA accounts, which shall constitute and be maintained in the names of the IOLTA Fund, in such fashion as the Trustees may determine from time to time.

REGULATIONS OF THE IOLTA FUND
OF THE BAR OF NEW JERSEY

- B. Funds in these central accounts may be invested from time to time by the Trustees in federally-secured instruments, or other investment vehicles that consist exclusively of federally-secured instruments, or The State of New Jersey Cash Management Fund.
- C. The Trustees may make such investments directly, or through an investment manager with whom they contract.

V. PARTICIPATING FINANCIAL INSTITUTIONS:

The guidelines for financial institutions adopted by the Trustees will set forth the methods for establishing and maintaining attorney IOLTA accounts, and for the payment and reporting of earned interest.

***Note:** Adopted by the Trustees of the IOLTA Fund and approved by the Supreme Court of New Jersey, May 10, 1988; amended and approved by the Supreme Court September 15, 1992, to be effective January 1, 1993; amended and approved by the Supreme Court December 13, 1993, to be effective January 3, 1994. ■*

FINANCIAL INSTITUTION CERTIFICATION STATEMENT
SAMPLE FORM

The IOLTA Fund of the Bar of New Jersey
Financial Institution Certification Statement

I. Declaration of the Financial Institution

Upon receipt and review of the 2009 Best Customer Standard, effective (mm/dd/yyyy) _____, the financial institution shall (choose A, B or C):

- A. Pay a variable rate on IOLTA accounts equal to or greater than the higher of 60% of the Federal Funds Target Rate or one percent (1.00%) on an interest-bearing checking account (Option 6, the "Indexed Option")
- B. Enroll in the "Leadership Bank" Program and pay a variable rate on IOLTA accounts equal to or greater than the higher of 80% of the Federal Funds Target Rate or one percent (1.00%). (Please also complete the enclosed enrollment form.)
- C. Provide to IOLTA the highest yield available among the following types of accounts/rates, as provided to the best customers of the institution with similarly-sized deposits in such accounts in New Jersey (circle one):

Option 1: A money market account with or tied to check writing capability.

Option 2: A business interest-paying checking account backed by a sweep capability, with the sweep to a money market fund or daily overnight financial institution repurchase agreement invested in or fully collateralized by U.S. Government securities.

Option 3: A government (such as for municipal deposits) checking account.

Option 4: An open-end money market fund with or tied to check writing capability solely invested in or fully collateralized by U.S. Government securities (and with total assets of at least \$250,000,000).

Option 5: Any other interest-paying business checking account product with available preferred interest rates, such as money market, tiered or indexed rates.

This account is called _____ and currently pays the following interest rate: _____% (provide tier levels and corresponding rates if appropriate) which is the **highest interest rate(s) available to non-IOLTA depositors having similar eligibility requirements.** (Please note documentation requirement in Section II).

FINANCIAL INSTITUTION CERTIFICATION STATEMENT
SAMPLE FORM

II. Documentation Requirement

If you checked Box C, attach substantiating documentation as noted below:

- Internal rate sheet showing all deposit/investment accounts from Box C (Options 1 through 5).
- Explanatory product literature and disclosures in support of the single account option selected in Box C.
- Any analysis or explanation in support of the single account option selected.
- All documentation and disclosures for business sweep products if you selected Option 2 or 4.

No further documentation is required for institutions choosing A or B (Indexed Option or Leadership Bank Program Option).

III. Reporting Institution

Name of financial institution: _____

Name of person executing this form: _____

Title: _____

Address: _____

Telephone: _____ Email: _____

Fax: _____ Web Address: _____

Contact Person (if different): _____

Address: _____

Telephone: _____ Email: _____

Fax: _____ Web Address: _____

I certify that the above statements are true and accurate and that the information requested in Sections I and II has been provided.

Authorized Signature: _____

Date: _____

Please mail or fax this form to:

Bank Compliance Reporting
The IOLTA Fund of the Bar of New Jersey
The New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901
Tel: 732-247-8222 Fax: 732-247-6868

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PARTICIPATION FORM

SAMPLE FORM

**DO NOT USE THIS FORM
FOR EXISTING IOLTA ACCOUNTS**

This form should be completed and returned only for a **NEW** account with a balance over **\$2,500** or for accounts formerly designated Low-Balance which now have an average balance over **\$2,500**.



PARTICIPATION FORM
(INSTRUCTIONS ON REVERSE SIDE)

DO NOT SEND TO BANK

Return to:

**IOLTA
NEW JERSEY LAW CENTER
ONE CONSTITUTION SQUARE
NEW BRUNSWICK, NEW JERSEY 08901-1520**

TO:

FROM:

FINANCIAL INSTITUTION

ATTORNEY FIRM

ADDRESS

ADDRESS

SAMPLE FORM
Do not reproduce

Instructions to Financial Institution:

FIRM CONTACT

PHONE

The account named below is my/the firm's general trust account. I/we shall participate in the Interest on Lawyer's Trust Accounts (IOLTA) Program established pursuant to New Jersey Court Rule 1:28-A. Please change the account identified below to an interest-bearing transaction account. Interest shall be paid by you directly to IOLTA. The effective date for use of this account shall be as soon as possible but no later than the first of the month following receipt of the form.

FOR IRS REPORTING:

1. Name the account: IOLTA/ _____
(Attorney/firm name: include "Attorney Trust Account")
2. Trust Account Number _____
3. Enter IOLTA's T.I.N. #22-2878549
4. IOLTA's name shall not appear on checks or deposit slips.

Account signatory - (please print)

Signature

Date

ATTORNEYS: PLEASE ATTACH A LIST OF FIRM ATTORNEYS INCLUDED IN THIS NOTICE.

IOLTA 732-247-8222
www.ioltanj.org

Your participation helps provide equal access to justice - thank you.

