

**Indiana Supreme Court
Rules of Professional Conduct
Rule 1.15**

**Interest on
Lawyer Trust Accounts
(IOLTA)
Handbook**

INDIANA BAR
FOUNDATION



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A GUIDE FOR LAWYERS AND FINANCIAL INSTITUTIONS

THE INDIANA IOLTA PROGRAM

The Indiana Supreme Court adopted Indiana's IOLTA (Interest on Lawyer Trust Accounts) program effective February 1, 1998. The IOLTA program became operational in September, 1999, with the first IOLTA dollars collected the next month. In 2005, the Court approved the conversion of Indiana's IOLTA program from an opt-out program to a "universal," or comprehensive program. This comprehensive IOLTA program requires Indiana lawyers to place nominal and/or short-term client funds that otherwise could not earn income for the client in excess of the costs incurred to secure such income into pooled interest-bearing demand (checking) accounts. Financial institutions are required to pay interest rates comparable to what they pay similarly situated non-IOLTA depositors, and remit the interest directly to the Indiana Bar Foundation ("Foundation") to assist in providing civil legal services for persons of limited means and improvements in the administration of justice. All 50 states, the District of Columbia, Canada and the United States Virgin Islands have IOLTA programs, the majority of which are comprehensive.

Pursuant to Indiana Supreme Court Rule 1.15, the IOLTA funds are used to support pro bono efforts throughout Indiana. Each pro bono district has its own district committee, chaired by a trial judge appointed by the Indiana Supreme Court, which determines how the money received can best be used throughout the district. With knowledge of the amount of funding available for distribution, the Indiana Pro Bono Commission and the Indiana Bar Foundation will decide how much money should be attributed to each district, based upon the needs of each district and their progress in filling those needs.

U.S. Supreme Court Decision, *Legal Foundation of Washington, et al. v. Washington Legal Foundation, et al.*, (2003)

In March, 2003, the United States Supreme Court issued an opinion addressing, and confirming, the constitutionality of the Washington State IOLTA program and the general concept of IOLTA programs across the country. Under the Constitution, taking of private property is acceptable, provided that the general public is served by this taking, and provided that just compensation is afforded to those whose property was taken. The Court ruled that the general public good was served, as hundreds of millions of IOLTA dollars each year is distributed for programs aiding the indigent nationwide. Further, interest is earned on the trust accounts only because they are IOLTA accounts, so the net loss to the clients whose funds were in those accounts was zero. With the Supreme Court ruling in such a fashion, the IOLTA programs throughout the United States continue to operate as they did prior to the ruling. Several states, including Indiana, have undergone or are currently undergoing conversions to comprehensive programs as a result of this ruling.

THE IOLTA ACCOUNT

The account that pools nominal and/or short-term deposits of client funds that cannot earn income for the client in excess of the costs incurred to secure such income and pays the interest to the Foundation is called the "IOLTA account." The IOLTA account remains in the lawyer/law firm's name, but bears the Foundation's tax identification number.

Not every lawyer's or law firm's trust account will be an IOLTA account. Lawyers and law firms are responsible for deciding (in compliance with Indiana Supreme Court Rules of Professional Conduct, Rule 1.15) which accounts they must have and what client funds are deposited in each account. Funds that are to be held for a long period of time and/or are of sizable amount, thereby earning interest for clients net of

administrative fees and taxes, should not be placed into IOLTA accounts.

Once the lawyer makes a good faith decision to deposit funds into an IOLTA account, the financial institution must remit the interest earned on deposits in that IOLTA account to the Foundation.

Those trust accounts determined by the lawyer or law firm not to be eligible for the IOLTA program should bear the social security number or tax identification number of the individual lawyer or law firm, or the client, as appropriate.

ELIGIBLE ACCOUNTS

Appropriate federal regulatory agencies have determined that Negotiable Order of Withdrawal (NOW) and other interest bearing checking accounts may be used for IOLTA accounts by any participating lawyer or law firm (sole practitioner, partnership or professional corporation). These rulings are based on the fact that the Foundation holds the entire “beneficial interest” in IOLTA accounts. Copies of all appropriate rulings are available from the Foundation. Supreme Court Rule also requires IOLTA accounts to earn the highest interest rate or dividend rate generally available to non-IOLTA customers meeting the same balance and other requirements, as described on page 5 and 6. If you have questions concerning the type of account your institution can use for the IOLTA program, please contact the Foundation for assistance.

ELIGIBLE FINANCIAL INSTITUTIONS

Pursuant to Indiana Supreme Court Rule 1.15, an IOLTA account may be established with a financial institution (i) authorized by federal or state law to do business in Indiana, (ii) insured by the Federal Deposit Insurance Corporation or its equivalent, and (iii) approved as a depository for trust accounts pursuant to *Indiana Admission and Discipline Rules*, Rule 23, Section 29. 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. Eligible institutions must also meet the interest rate requirements described in 1.15(f)(5).

PROCEDURES TO ESTABLISH AN IOLTA ACCOUNT

To set up or convert an IOLTA account, the lawyer or law firm should complete a Notice to Financial Institution form and send a copy to the Foundation, who, in turn, will forward a copy to the financial institution. A completed copy is to be retained by the lawyer/law firm. No further action or operational changes are required by the lawyer or law firm.

FINANCIAL INSTITUTION INSTRUCTIONS

NOTICE TO FINANCIAL INSTITUTION FORM

The Notice to Financial Institution form gives authority to financial institutions to establish IOLTA accounts for their lawyer/law firm customers. The lawyer/law firm is to complete a separate Notice to Financial Institution form for each IOLTA account and forward the form(s) to the Foundation, which will, in turn, deliver a copy of the form(s) to the financial institution. The form instructs the financial institution to:

1. Set up (if new) or change the status of each existing (non-interest bearing) pooled account to an interest bearing “NOW” or, as the balance allows, “SUPER NOW” (or similar type) account. For new accounts, a lawyer may wish to establish the account as a non-interest bearing account initially at his or her local bank branch prior to forwarding the Notice form to the Foundation, enabling the account to be more readily converted into an IOLTA account.

2. The Foundation's tax identification number 35-6032377 must be assigned to all Indiana IOLTA accounts. An attorney's or law firm's tax identification number SHOULD NOT be used.
3. Remit interest for each IOLTA account, less reasonable service charges or fees, if any, directly to the Indiana Bar Foundation, or to the Foundation's depository financial institution. Please contact the Foundation for specific details.
4. Send remittance advice to the Foundation on each IOLTA account and provide the lawyer/law firm with regular periodic statements of account activity on a form promulgated by the Foundation or an electronic form with similar information. **The form must indicate the interest rate applied, the interest earned, service charges deducted, and the net remittance to the Foundation.**
5. It is impermissible to aggregate interest earned and service charges on all IOLTA accounts and remitting the balance, which would cause positive net accounts to subsidize negative accounts.

A copy of the Notice to Financial Institution form is included in this booklet and also available upon request from the Indiana Bar Foundation or on the Foundation's website, www.inbf.org. The Notice form must be completed even if the financial institution also requires the lawyer/law firm to sign new signature cards. (See "Signature Cards and Corporate Resolutions" below). The lawyer/law firm is to forward a copy to the Foundation and keep a copy for the lawyer/law firm records. The Foundation will make the necessary contacts with the financial institution on behalf of the lawyer/law firm.

SIGNATURE CARDS AND CORPORATE RESOLUTIONS

One way for financial institutions to streamline their IOLTA account procedures is to accept the Notice to Financial Institution form and not require new signature cards or corporate resolutions when an existing account is converted to an IOLTA account. The same authorized persons who sign customary signature cards or corporate resolutions for the account sign this form.

INTEREST RATE REQUIREMENTS

Indiana Supreme Court Rule 1.15(f)(5) sets forth that financial institutions must treat IOLTA accounts similarly to non-IOLTA accounts regarding the amount of interest that they pay. Specifically, the Rule states as follows:

"Participating financial institutions shall maintain IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining 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 balances, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts for non-IOLTA customers, and that these factors do not include that the account is an IOLTA account."

What this Means:

Rule 1.15(f) simply means that IOLTA accounts must earn the same rates as other customers when they meet the same eligibility requirements. For example, if the financial institution only offers one type of interest bearing checking account, then that is the rate that should be applied to IOLTA accounts. However, if the institution offers multiple types of checking accounts, the highest yielding product that an IOLTA account qualifies for should be applied to that IOLTA account, including:

- Business checking accounts with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money market mutual funds, fully collateralized by or invested in US government securities.
- A government (such as for municipal deposits) interest bearing checking account.
- Any other interest bearing checking account offered by the institution to its non-IOLTA customers.

Safe Harbor Provision:

The Foundation has also established a “Safe Harbor” interest rate provision as an alternative to the highest interest rate or dividend requirement described above. An institution that agrees to pay a net yield (net interest after any fees) equal to the higher of 0.50% or 60% of the Federal Funds target rate as reported in the Wall Street Journal on the first business day of each calendar month will be considered an eligible institution for the purpose of Rule 1.15(f)(5), without further consideration of interest rates to their non-IOLTA customers. Safe Harbor institutions are also considered part of our Leadership Banks and eligible for the benefits described for that program.

Example of Multiple Product Compliance with Rule 1.15(f):

If an institution has multiple products for which IOLTA accounts are eligible, and for example pays 1.5% on NOW accounts for all balance levels, and 3.0% on an automated investment (sweep) account for account balances above \$100,000 then the bank must pay at least 1.5% on all IOLTA accounts with balances below \$100,000 and at least 3.0 % on all IOLTA accounts with balances exceeding \$100,000 (less applicable sweep fees, if any). The institution could either place IOLTA accounts in the two different product categories, or simply apply the same rate structure (tiered) to the IOLTA product.

Alternatively, the institution could choose to pay ALL IOLTA accounts a blended rate equal to the weighted average of the two products above. Finally, the institution could also chose to pay the Safe Harbor interest rate.

Please contact the Foundation if you have specific questions about how to correctly determine the required IOLTA interest rate as an eligible institution.

REMITTANCE TO THE FOUNDATION

Interest, net of reasonable service charges, if any, must be remitted to the Foundation either monthly (preferred) or quarterly. Interest should be calculated on the average monthly balance or as otherwise computed in accordance with the financial institution’s standard accounting practices.

As indicated above, financial institutions may not aggregate interest earned and service charges on all IOLTA accounts and remit the net amount, thereby causing positive net accounts to subsidize negative accounts. Said another way, service charges may only be assessed up to the amount of interest earned for each individual account. Excess charges not covered by interest earned may only be recovered by billing the Foundation. Accounts frequently billed for recovery of service charges may be converted to non-IOLTA accounts at the Foundation’s discretion.

One remittance should be made for all of a financial institution’s IOLTA accounts in a lump sum. One way to facilitate the remittance process is to flag and coordinate all IOLTA accounts to the same closing date or statement cycle.

INTEREST REMITTANCE REPORTS

The IOLTA interest remittance report forms allow the Foundation to record IOLTA interest by each individual lawyer/law firm IOLTA account, using the account number assigned by the financial institution.

The financial institution must submit either its own remittance report or a completed report template supplied periodically by the Foundation for each IOLTA account even if no interest is being paid for the remitting period. Pursuant to Supreme Court Rule 1.15, information reported on the remittance advice must show:

1. Account name and number;
2. Average account balance for each month of the accounting period;
3. Interest rate and amount of interest;
4. Amount deducted for service charges;
5. Net amount remitted to the Foundation;
6. Financial institution's routing number; and
7. A cumulative row of account balances, total interest earned, service charges and net amount remitted to the Foundation.

Banks with a considerable number of IOLTA accounts (more than 30 or so) are encouraged to remit their periodic reports electronically, either as text files or in a format prescribed by the Foundation. The Foundation will contact banks not currently remitting in this fashion to determine the feasibility of electronic remittance.

The financial institution must also send the lawyer/law firm holding the account a regular periodic account statement of activity or other report from which the following information can be obtained: the account balance, the interest rate applied, interest earned, service charges, and the net remittance to the Foundation.

REMITTANCE ERRORS

Financial institutions must immediately report to the Foundation in writing any error in remittance showing both the original and corrected information.

SERVICE CHARGES

Financial Institutions recover the costs of operating IOLTA accounts in the customary way: through reasonable service charges. However, because IOLTA is a charitable program benefiting the public, many financial institutions have chosen to waive service charges. (See the "Benefits to Banks" section below).

Financial institutions may deduct service charges from the interest earned on IOLTA accounts. The Supreme Court IOLTA Rule provides that service charges must be reasonable and may only be deducted from the interest earned. These charges, which recur on a regular basis, may not be deducted from the principal balance.

NSF charges, stop payment charges, wire transfer fees, check printing costs or any other charge which is not a regular maintenance fee may not be deducted from earned interest; these charges should be billed to the lawyer/law firm directly.

If total reasonable service charges exceed the interest on any single IOLTA account, the excess service charges may be either waived or billed to the Foundation. The Foundation may direct the conversion of any IOLTA account to a non interest-bearing account if the IOLTA account does not generate sufficient interest to cover the service fees regularly.

Under the *Indiana Supreme Court Admission and Disciplinary Rules, Rule 23, Section 29*, financial institutions are required to promptly notify the Disciplinary Commission of the Supreme Court of Indiana at 30 South Meridian Street, Suite 850, Indianapolis, Indiana 46204, in the event a lawyer or law firm presents an instrument to any lawyer/law firm client trust account (including an IOLTA account) which contains insufficient funds, whether or not the instrument is honored.

BENEFITS TO BANKS

Participation in IOLTA is a great way for banks to support their local communities and to be recognized in those communities for their activities. The following are several ways IOLTA can improve a banks visibility in the community.

CRA: Banks can and should report their IOLTA participation in their financial institution public CRA statement, highlighting waived fees and preferred interest rates. Please see page 10 of this handbook for a sample statement or contact us for additional information.

Leadership Bank Program: The Leadership Bank program has two levels of participation and a wide array of accompanying benefits that can significantly raise a bank's visibility in the community and with local attorneys and law firms.

- Safe Harbor Banks (as described on p. 6) achieve compliance with the comparability provisions of the IOLTA Rules by paying the applicable Safe Harbor interest rate. Because of the reduced administrative costs and self-adjusting interest rate features of this option the Foundation encourages banks to consider this option and also offers a series of benefits for participating in this program. Please contact us for a full list of current benefits and details.
- Visionary Banks go above the safe harbor level and agree to pay a net yield (net interest after any fees) on IOLTA accounts equal to the higher of 75% of the Federal Funds target rate or 1.00%. Visionary Banks receive our highest level of publicity and promotion throughout the year and can significantly raise a banks visibility in the community and with local law firms and lawyers. Contact us for the current list of all available benefits and to participate in the program.

In addition, banks that agree to participate as Visionary Banks in the Leadership Bank program will receive all of the benefits

BENEFITS TO LAWYERS

Lawyers have a professional responsibility to serve the members of their communities, much as banks do. As demonstrated by the hundreds of millions of dollars each year delivered to legal service organizations throughout the country, IOLTA accounts are an easy way for lawyers to accomplish this duty. Establishing these IOLTA accounts requires very little time and no administrative burden on the part of the law firm. Routine maintenance costs are covered by the Foundation, rather than by the lawyer or law firm. In short, IOLTA is an easy way for attorneys and law firms to show the community at large that they are indeed doing their part to improve the image of the legal profession.

NO 1099 OR W-9 FORMS REQUIRED

Each IOLTA account will carry the tax identification number of the Foundation, which has the entire beneficial ownership of the interest generated on IOLTA accounts. The Foundation is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Accordingly, 1099 forms or other reports of interest should not be prepared or submitted to the IRS, or to the law firm for IOLTA accounts. Because the Foundation's tax identification number will not match the lawyer/law firm's name on the account, unnecessary tax reporting on these accounts could cause confusion.

Financial institutions will simplify their administration of IOLTA and avoid difficulties with the Internal Revenue Service by using their 'non-resident alien' status or similar code to suppress 1099 forms for IOLTA accounts. However, if their data processing system cannot bypass tax reporting, the institution should be sure to identify the Foundation as the payee/recipient of the interest.

Financial institutions that must issue 1099 forms for IOLTA accounts should use their "second address" capability for this purpose and send the forms directly to the Foundation rather than to the lawyer or law firm. Also, if a W-9 form is issued, it should list the Foundation as "Payee", bear the Foundation's tax identification number, and state "IOLTA Accounts Are Not Subject to Backup Withholding".

MINIMUM BALANCE REQUIREMENTS

Lawyers or law firms establish IOLTA accounts for charitable purposes, as mentioned in the above "Benefits to Lawyers" section. Therefore, financial institutions may wish to waive minimum balance requirements. Also, precautions should be taken in the financial institutions' data processing to avoid automatic "zeroing out" or closing IOLTA accounts that temporarily reach a low balance.

DISTRIBUTING IOLTA PROCEDURES TO BRANCH PERSONNEL

IOLTA operating procedures are generally developed by a financial institution's main office or branch operations center. However, because lawyers and law firms may ask questions of new account or other lobby personnel, it is important that financial institutions distribute their IOLTA procedures, and any updates, to those branch personnel who most often deal directly with the lawyer and law firm customers of the financial institution. Branch personnel should refer lawyers and law firms to the Foundation should they be unable to answer questions posed by the lawyer or law firm.

IOLTA CONTACT PERSON

Financial Institutions are encouraged to designate an "IOLTA Contact Person" for their institution to serve as liaison with the Foundation. Financial institutions should advise the Foundation of any new "IOLTA Contact Person" and that person's contact information.

SAMPLE CRA STATEMENT

A sample CRA Statement (for use under the Community Reinvestment Act of 1977, as amended (12 U.S.C. S2901)) concerning a financial institution's participation in the IOLTA program is included in this handbook for use by the financial institution. A financial institution may select that it is eliminating or reducing fees on IOLTA accounts or paying higher interest rates on IOLTA accounts than on comparable business accounts to reflect the manner in which it is participating in the IOLTA program. The CRA Statement also invites financial institutions to contact the Foundation for assistance in calculating contribution amounts or for specific examples of programs funded by IOLTA in the city or surrounding area in which the financial institution is located.

ASSISTANCE AVAILABLE

The Foundation is available to answer questions and help financial institutions with their IOLTA accounts. Additional copies of the Indiana IOLTA Handbook, IOLTA forms, and relevant United States Supreme Court rulings are available upon request or on the Foundation's website, www.inbf.org.

FOR MORE INFORMATION

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Thank you for your support of the Indiana Interest on Lawyer Trust Accounts program. The Indiana Bar Foundation also welcomes your comments and suggestions.

SAMPLE CRA STATEMENT RE: IOLTA

REMINDER TO FINANCIAL INSTITUTION:

All financial institutions are keenly aware of the ongoing requirements of the Community Reinvestment Act. Banks and savings and loans are judged on a wide variety of efforts toward improving the quality of life for everyone in their communities.

We believe that your participation in the IOLTA program will enhance and improve your financial institution's CRA review. Following is a sample CRA Statement that you may wish to use in your regulatory reporting after your involvement in the IOLTA program.

_____ [Financial Institution] participates in the Indiana Interest on Lawyer Trust Accounts (IOLTA) program which is administered by the Indiana Bar Foundation. Deposits from law firm clients, which would not otherwise earn interest after administration costs and taxes, are pooled and deposited into special interest-bearing accounts maintained by lawyers and law firms. Interest proceeds are automatically paid to the Indiana Bar Foundation to support law-related charitable purposes, primarily pro bono civil legal services to persons of limited means.

Disbursements from the IOLTA fund are made to organizations providing civil legal services to persons of limited means, such as those organizations assisting low-income individuals with housing, income maintenance, and other consumer issues which can affect their credit rating. The availability of legal services to low-income persons is often directly related to their ability to obtain credit and/or maintain housing.

Other IOLTA disbursements are awarded to organizations and projects which strengthen local communities, such as those organizations assisting abused women, helping the homeless with civil legal matters and governmental benefits, offering services to assure homeless children are permitted to enroll in schools and educational programs, and providing community educational materials on civil legal rights and responsibilities in consumer credit and other areas.

Financial institutions are not obligated to participate in the IOLTA program in Indiana.

_____ [Financial Institution] maintained ____ IOLTA accounts in 20____, and enabled more IOLTA revenue to be remitted to the Foundation for these public interest purposes by [eliminating all fees/reducing all fees/paying higher interest rates relative to comparable business accounts] on IOLTA accounts. This resulted in an estimated total contribution by _____ [Financial Institution] of \$_____ for 20____.

Please contact the Indiana Bar Foundation for assistance in calculating contribution amounts or for specific examples of IOLTA grantee services in your area.

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Rule 1.15. Safekeeping Property

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) A lawyer may deposit his or her own funds reasonably sufficient to maintain a nominal balance in a client trust account.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (f) Except as provided in paragraph (g) of this rule, a lawyer or law firm shall create and maintain 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 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) Client funds shall be deposited in a lawyer's or law firm's IOLTA account unless the funds can earn income for the client in excess of the costs incurred to secure such income. A lawyer or law firm shall establish a separate interest-bearing trust account for clients' funds which are neither nominal in amount nor to be held for a short period of time and which could earn income for the client in excess of costs for a particular client or client's matter. All of the interest on such account, net of any transaction costs, shall be paid to the client, and no earnings from such account shall be made available to a lawyer or law firm.
 - (2) No earnings from such an IOLTA account shall be made available to a lawyer or law firm.
 - (3) The IOLTA account shall include all clients' funds which are nominal in amount or to be held for a short period of time.
 - (4) An IOLTA account may be established with any financial institution (i) authorized by federal or state law to do business in Indiana, (ii) insured by the Federal Deposit Insurance Corporation or its equivalent, and (iii) approved as a depository for trust accounts pursuant to *Indiana Admission and Discipline Rules*, Rule 23, Section 29. 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.
 - (5) Participating financial institutions shall maintain IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining 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 by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account. All interest earned net of fees or charges shall be

remitted to the Indiana Bar Foundation (the "Foundation"), which is designated in paragraph (i) of this rule to organize and administer the IOLTA program, and the depository institution shall submit reports thereon as set forth below.

- (6) Lawyers or law firms depositing client funds in an IOLTA account established pursuant to this rule shall, on forms approved by the Foundation, 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 the Foundation. 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 the Foundation required by subparagraphs (f)(6)(B) and (f)(6)(C) of this rule;
 - (B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and such other information as is reasonably required by the Foundation;
 - (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 the Foundation, 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 the Foundation; and
 - (D) to waive any reasonable service charge that exceeds the interest earned on any IOLTA account during a reporting period ("excess charge"), or bill the excess charge to the Foundation.
- (7) Any IOLTA account which has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of time may, at the discretion of the Foundation, be exempted from and removed from the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use the Foundation'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 clients and third persons separately, as required above, in a non-interest bearing account.
- (8) The IOLTA program will issue refunds when interest has been remitted in error, whether the error is the banks 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.
- (9) All interest transmitted to the Foundation shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by the Foundation and approved at least annually by the Supreme Court of Indiana, 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 establish approved pro bono programs as provided in Rule 6.6;
 - (D) for such other programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.
- (10) The information contained in the statements forwarded to the Foundation under subparagraph (f)(6) of this rule shall remain confidential and the provisions of Rule 1.6 (Confidentiality of Information), are not hereby abrogated; therefore the Foundation 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.

- (11) The Foundation 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.
- (g) Every lawyer admitted to practice in this State shall annually certify to this Court, pursuant to Ind. Admis. Disc. R. 23(21), that all client funds which are nominal in amount or to be held for a short period of time by the lawyer or the lawyer's law firm so that they could not earn income for the client in excess of the costs incurred to secure such income are held in an IOLTA account, or that the lawyer is exempt because:
- (1) the lawyer or law firm's client trust account has been exempted and removed from the IOLTA program by the Foundation pursuant to subparagraph (f)(7) of this rule; or
 - (2) the lawyer:
 - (A) is not engaged in the private practice of law;
 - (B) does not have an office within the State of Indiana;
 - (C) is a judge, attorney general, public defender, U.S. attorney, district 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; or
 - (F) compliance with paragraph (f) would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographic distance between the lawyer's principal office and the closest depository institution which is participating in the IOLTA program, or on other compelling and necessitous factors.
- (h) In the exercise of a lawyer's good faith judgment in determining whether funds of a client can earn income in excess of costs, a lawyer shall take into consideration the following factors:
- (1) the amount of interest which the funds would earn during the period they are expected to be deposited;
 - (2) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;
 - (3) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients;
 - (4) any other circumstances that affect the ability of the client's funds to earn a net return for the client; and
 - (5) the nature of the transaction(s) involved. 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.
- (i) The Foundation is hereby designated as the entity to organize and administer the IOLTA program established by paragraph (f) of this rule in accordance with the following provisions:
- (1) The Board of Directors of the Foundation (the "Board") shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court.
 - (2) The Board shall receive the net earnings from IOLTA accounts established in accordance with paragraph (f) of this rule and shall make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.
 - (3) The Board 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 from time to time referenced in subparagraph (f)(9) of this rule.

- (4) The Board shall maintain proper records of all IOLTA program receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant selected by the Board. The Board shall annually cause to be presented to the Supreme Court a reviewed or audited financial statement of its IOLTA program receipts and expenditures for the prior year. The report shall not identify any clients of lawyers or law firms or reveal confidential information. The statement shall be filed with the Clerk of the Supreme Court and a summary thereof shall be published in the next available issue of one or more state-wide publications for attorneys, such as *Res Gestae* and *The Indiana Lawyer*.
- (5) The president and other members of the Board shall administer the IOLTA program without compensation, but may be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties, and shall be indemnified by the Foundation against any liability or expense arising directly or indirectly out of the good faith performance of their duties.
- (6) The Board shall monitor attorney compliance with the provisions of this rule and periodically report to the Supreme Court those attorneys not in compliance with the provisions of Rule 1.15.
- (7) In the event the IOLTA program or its administration by the Foundation 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 the Foundation; provided, such transfer shall be to an entity which will not violate the requirements the Foundation 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.



Notice to Financial Institutions

To Establish or Convert to an Interest on Lawyer Trust Account ("IOLTA")
(To be completed by lawyer/firm for each IOLTA account)

**INDIANA BAR
FOUNDATION**

TO FINANCIAL INSTITUTION:

FROM:

Lawyer/Law Firm

Address

City, State, Zip

Name on Account

Account Number

The undersigned is establishing an IOLTA account in compliance with the Indiana Rules of Professional Conduct, Rule 1.15, regulating lawyers. You are authorized to open an interest-bearing checking account meeting the requirements of Rule 1.15. The account shall pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers. The establishment of interest-bearing checking ("NOW") accounts for use in the IOLTA program by lawyers or law firms (including professional associations, corporations, and partnerships) has been approved by appropriate federal regulatory agencies. Copies of these rulings are available from the **Indiana Bar Foundation** (the "Foundation") or the Indiana Supreme Court.

The undersigned further authorizes you to disclose to the Foundation any and all information with respect to the IOLTA account being established by the undersigned as contemplated herein including all information designated by Indiana Professional Conduct Rule 1.15 authorizing the establishment of IOLTA accounts and designating the Foundation as the recipient of the interest on all such accounts.

The account should be/remain in my/our law firm's name. However, financial institutions should designate the account with the tax identification number of the Foundation, which will receive all interest from the account. ***The tax identification number of the Foundation is 35-6032377.*** My/Our law firm's tax identification number should ***not*** be used.

The Indiana Supreme Court has ordered that interest on the IOLTA account, less reasonable service charges, must be remitted at least quarterly (monthly is preferred) to the Foundation.

The Foundation is a not-for-profit corporation exempt from federal income tax. **No 1099 forms** are required for IOLTA accounts (Internal Revenue Code 6049), and IOLTA accounts are not subject to back-up withholding. Further, no W-9 form mailing is required (Treas. Reg. 35a.0000-1).

If you have questions about how IOLTA accounts are set up, please contact the Foundation at (317) 269-2415 for assistance.

BY (All IOLTA Account Signatories)

Date: _____

(Signature)

(Signature)

(Printed Name)

(Printed Name)

Attention Lawyers

Please return this form to:

Indiana Bar Foundation
615 N. Alabama Street, Suite 426
Indianapolis, IN 46204

Or

Fax to: (317) 536-2271

Please attach a list of all lawyers in the law firm to this form.