



**RHODE ISLAND BAR FOUNDATION
INTEREST ON LAWYERS' TRUST ACCOUNTS
(IOLTA)**

INTRODUCTION

Created by the Rhode Island Supreme Court in 1985, the Rhode Island Interest on Lawyers' Trust Accounts (IOLTA) program generates interest that helps fund civil legal services for the poor, legal education for the public and improvements in the administration of justice.

On December 11, 2008, the Supreme Court approved a request (petition), filed by the Rhode Island Bar Foundation and Rhode Island Bar Association, to convert Rhode Island's IOLTA program from opt-out to mandatory. Mandatory IOLTA requires that all lawyers who hold client funds establish IOLTA accounts for the deposit of those funds that cannot earn net interest for the client.

There are now 47 jurisdictions that have adopted mandatory IOLTA and 32 that have adopted rate comparability in their rule. Rate comparability requires attorneys to place their IOLTA funds in a financial institution that pays those accounts the highest interest rate generally available at that institution to other customers when IOLTA accounts meet the same minimum balance or other account qualifications, if any.

IOLTA Directors, in states that have already implemented comparability, report nearly all financial institutions have cooperated because they do not want law firms to move their trust accounts elsewhere.

Currently IOLTA programs are operating in 50 states, the District of Columbia, and the U.S. Virgin Islands. IOLTA programs are methods of raising money for charitable purposes, with most of the money going to organizations that provide civil legal services to indigent persons. States and other jurisdictions in the United States have been developing IOLTA programs since 1981, when Congress changed the banking laws to allow some checking accounts to bear interest.

In 1984, the Rhode Island Supreme Court adopted the "IOLTA rule" to permit lawyers and law firms to deposit clients' funds in interest-bearing accounts. Rhode Island Rules of Professional Conduct - **Rule 1.15 Safekeeping Property has been amended to require attorneys to participate in the IOLTA Program. (Exhibit A)** The interest on these pooled client trust

accounts is paid to the Rhode Island Bar Foundation. The Rhode Island Bar Foundation is a tax-exempt not-for-profit organization that administers the IOLTA program. The Foundation uses the interest generated by IOLTA accounts to make charitable contributions to not-for-profit agencies that provide legal services to the poor.

Lawyers often hold funds in trust or escrow for their clients. When the funds the lawyer holds for a particular client are substantial in amount or will be held for a long period of time, clients are entitled to the interest on these funds.

Lawyers often hold client funds that are so small in amount and/or will be held for such a short period of time that the administrative costs of establishing and maintaining the account for an individual client would exceed the interest earned.

Historically, lawyers have combined these nominal and/or short-term funds in a pooled client trust account. Prior to the implementation of the IOLTA program, these funds were deposited in non-interest bearing accounts. These trust funds earned no interest because it is unethical for attorneys to derive any financial benefit from funds that belong to their clients. Now, by virtue of IOLTA, attorneys who handle nominal or short-term client funds can place these funds in a single, pooled, interest-bearing trust account. Under the IOLTA rule, these pooled client trust accounts ("IOLTA accounts") must earn interest and the interest must be paid to the Rhode Island Bar Foundation.

Most banks treat IOLTA accounts as Negotiable Order of Withdrawal ("NOW") or other Business Interest Checking accounts. Banking regulations hold that attorneys can set up the accounts as NOW accounts even though the attorney-depositor may be a for-profit corporation, because the interest goes to a not-for-profit charitable entity. Financial institutions have no obligation to monitor lawyer compliance with the IOLTA program.

WHAT IS AN IOLTA ACCOUNT?

An IOLTA account is a corporate/business checking account (such as a NOW account) for pooled client funds that pays all interest earned to the Rhode Island Bar Foundation, a tax-exempt, not-for-profit organization.

An IOLTA account is operationally different because:

- ▶ The taxpayer identification number (TIN) on the account is the Rhode Island Bar Foundation's, not that of the attorney or law firm; and
- ▶ The bank collects the interest earned on the IOLTA account and sends it, along with a remittance report, to the Rhode Island Bar Foundation.

Funds which are qualified for deposit by attorneys are those which are nominal in amount or which will be held for such a short term that sufficient interest income will not be generated to justify the expense of administering a segregated account. Qualified funds include monies that

are received from any client or beneficial owner which are too small in amount or are expected to be held for too short a period of time to generate net economic benefit for the client or beneficial owner.

HOW WILL ATTORNEYS ESTABLISH IOLTA ACCOUNTS?

All attorneys licensed to practice in Rhode Island will receive information about the IOLTA program and their duty to establish IOLTA accounts. It is not necessary for each attorney in a law firm to establish his or her own IOLTA account. Attorneys can establish IOLTA accounts at financial institutions either by converting an existing unsegregated, non-interest-bearing client escrow account to an interest-bearing IOLTA account or opening a new interest-bearing IOLTA account for this purpose using the enrollment form provided by the Rhode Island Bar Foundation. (Notice and Certification of Compliance Form attached) **(Exhibit B)**

HOW SHOULD IOLTA ACCOUNTS BE REGISTERED?

Use the attorney or law firm's name on the account. The account name and checks may be designated as "Client Trust Account or "Client Escrow Account." Please note that the IOLTA account and the checks printed for the account CANNOT identify the Rhode Island Bar Foundation as designee, trustee or owner. The term "IOLTA" need not be placed on checks or deposit slips.

MAY IOLTA ACCOUNTS BE ASSESSED SERVICE CHARGES?

Financial institutions are permitted to impose reasonable service charges for administration of IOLTA accounts but such service charges must be offset against IOLTA interest earnings, not the principal maintained in IOLTA accounts. The Board wishes to note that institutions may choose to waive service charges and many have done so in the interest of public service.

WHAT ABOUT NON-ROUTINE CHARGES OR FEES?

Fees for services such as stop payments, certified checks, insufficient funds, and wire transfers should not be assessed against IOLTA interest nor deducted from the principal of the IOLTA account. Instead, such charges should be brought to the attention of the attorney for payment or by agreement with the attorney, charged to the attorney's business account.

HOW SHOULD THE FOUNDATION BE NOTIFIED OF AN ACCOUNT OPENING?

The Rhode Island Bar Foundation wishes to have in its records a confirmation that an attorney or law firm has opened an account with a given financial institution. A copy of the enrollment form used to open an IOLTA account should be mailed by the financial institution and/or attorney to the Rhode Island Bar Foundation for its records.

TO WHOM IS IOLTA INTEREST PAID?

Interest on IOLTA accounts, net any service or other charges or fees, should be remitted to the Rhode Island Bar Foundation, 41 Sharpe Drive, Cranston, RI 02920. The Foundation is a non-profit corporation and qualifies as a charitable organization under Section 501 (c)(3) of the Internal Revenue Code.

The Internal Revenue Service has concluded that the IOLTA Fund is the beneficial owner of the interest accrued and that as a non-profit organization under section 501 (c)(3) of the Internal Revenue Code, there is no tax liability to the Fund. Therefore, it is not necessary that either Forms W-9 or 1099 be used in connection with IOLTA accounts. If your institution's system requires the entry of a TIN, please use the TIN assigned to the Rhode Island Bar Foundation (05-6009376), not the TIN of the attorney or firm which established the account nor that of a client. If your system cannot suppress issuance of Form 1099's, then please send the forms issued to the Rhode Island Bar Foundation, not to the participating attorney or law firm.

For more information about the IOLTA program, contact:

Theresa Gallo, Program Director
Rhode Island Bar Foundation
41 Sharpe Drive, Cranston RI 02920
Phone: 401-421-6541
Fax: 401-421-2703
Email: tgallo@ribar.com.

Information is also available on the RI Bar Association website: www.ribar.com

Rhode Island Rules of Professional Conduct

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 seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(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 a 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) A lawyer or law firm shall deposit clients' funds, which are nominal in amount or to be held for a short period of time, in one or more interest bearing trust accounts in accordance with the following provisions. For purposes of this rule, such accounts are referred to as Interest on Lawyers' Trust Accounts (IOLTA):

(1) Earnings from such IOLTA accounts shall not be available to a lawyer or law firm.

(2) Whether clients' funds are nominal in amount or to be held for a short period of time shall be determined solely by each attorney or law firm.

(3) Notification to clients whose funds are deposited in IOLTA accounts shall not be necessary.

(4) Such IOLTA accounts may be established with any financial institution authorized by federal or state law to do business in Rhode Island, the deposits in which are insured by insurance entities regulated by the United States and/or the State of Rhode Island or any agency or instrumentality

thereof. Funds deposited in such accounts shall be available for withdrawal immediately upon demand.

(5) The rate of interest payable on any IOLTA account shall not be less than the highest interest rate or dividend available from the financial institution to its non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. Lawyers or law firms making such deposits shall direct the depository institution:

(i) To remit interest or dividends on such deposits, net of any service or fees, at least quarterly, to the Rhode Island Bar Foundation (the "Foundation").

(ii) To transmit to the Foundation and the depositor with each remittance statements showing the name of the depositor, the amount remitted, and the rate(s) at which the interest was computed.

(g)(1) If, after the exercise of reasonable diligence, a lawyer is unable to identify or locate the owner(s) of funds deposited in that lawyer's IOLTA account, the lawyer shall remit those funds to the Foundation to be used consistent with the purposes listed in Rule 1.15(h). Provided the lawyer has exercised reasonable diligence, the lawyer's act of remitting IOLTA account funds that have remained unclaimed or the owner(s) unidentified shall not be deemed a violation of the Rules of Professional Conduct. Upon remission of such funds, the lawyer shall provide to the Foundation a statement of the last known address of the owner(s) of the funds, if known to the lawyer; the amount remitted; a description of the efforts taken by the lawyer to find the owner(s) of the remitted funds; and, if the lawyer is unable to determine and identify the owner of the funds, a description of the efforts taken by the lawyer to identify the owner of the remitted funds.

(2) In the event an attorney is suspended, disbarred, or deceased and another attorney or Disciplinary Counsel is appointed pursuant to Supreme Court Rules, Art. III, Rule 18, as substitute counsel or other similar designation to inventory the files and accounts of the suspended or disbarred attorney, and such substitute counsel discovers an existing IOLTA account in the name of the suspended or disbarred attorney, the substitute counsel shall exercise reasonable diligence to identify or locate the owner(s) of funds deposited in the suspended or disbarred attorney's IOLTA account. If, after the exercise of reasonable diligence, the substitute counsel is unable to identify or locate the owner(s) of funds deposited in the suspended or disbarred lawyer's IOLTA account, the substitute counsel shall remit those funds to the Foundation to be used consistent with the purposes listed in Rule 1.15(h). With the remission of the funds to the Foundation, the substitute counsel shall provide the information set forth in (g)(1), to the extent such information is known to the substitute counsel.

(3) If the personal representative (executor, administrator, trustee, guardian) of the estate or trust of a deceased attorney or the attorney for the personal representative, discovers an open IOLTA trust account in the name of the deceased attorney:

(i) The personal representative of the deceased lawyer or the attorney for the personal representative shall hold the account in the personal representative's name and capacity or in the name of the attorney for the personal representative for the purposes of this rule only and only for

such time as the personal representative shall reasonably take to comply with this rule. The funds in such account are not the property of the estate or trust of the deceased lawyer.

(ii) The personal representative of the deceased lawyer or the attorney for the personal representative shall exercise reasonable diligence to identify the owner(s) of the funds held in the IOLTA account. If, after the exercise of reasonable diligence, the personal representative or the attorney is unable to identify the owner(s) of the funds held in the IOLTA account, those funds shall be remitted to the Foundation by the personal representative or the attorney to be used consistent with the purposes listed in Rule 1.15(h). With the remission of the funds to the Foundation, the personal representative or the attorney shall provide the information set forth in (g)(1), to the extent such information is known to the personal representative.

(4) The Foundation shall maintain a record of each remittance received pursuant to this rule for at least three years.

(i) If, within three years of the remission of the funds to the Foundation, the lawyer who remitted the funds learns of the original owner of the funds or a claim to the funds is made to the lawyer, and the lawyer believes the claimant is the original owner of the funds, the lawyer shall notify the Foundation and shall provide to the Foundation the name of such claimant and the amount being claimed. The lawyer shall notify the claimant that the funds have been remitted to the Foundation and the claimant's right to seek repayment from the Foundation. The lawyer, on behalf of the claimant, or the claimant may make a claim for return of the amount of the remitted funds.

(ii) If, within three years of the remission of the funds to the Foundation, the personal representative of a deceased lawyer or the attorney representing the personal representative learns of the original owner of the funds or a claim to the funds is made to the personal representative or the attorney, and the personal representative or the attorney believes the claimant is the original owner of the funds, the personal representative or the attorney shall notify the Foundation and shall provide to the Foundation the name of such claimant and the amount being claimed. The personal representative shall also notify the claimant that the funds have been remitted to the Foundation and the claimant's right to seek repayment from the Foundation. The personal representative or the attorney, on behalf of the claimant, or the claimant may make a claim for return of the amount of the remitted funds.

(iii) If, within three years of the remission of the funds to the Foundation, the substitute counsel who remitted the funds learns of the original owner of the funds or a claim to the funds is made to the substitute counsel, and the substitute counsel believes the claimant is the original owner of the funds, the substitute counsel shall notify the Foundation and shall provide to the Foundation the name of such claimant and the amount being claimed. The substitute counsel shall also notify the claimant that the funds have been remitted to the Foundation and the claimant's right to seek repayment from the Foundation. The substitute counsel, on behalf of the claimant, or the claimant may make a claim for return of the amount of the remitted funds.

(iv) Within three years of the remission of the funds to the Foundation, a putative owner may make a direct claim against the Foundation for return of the amount of the remitted funds.

(5) Upon receipt of a claim from the lawyer, substitute counsel, the personal representative or the attorney for the personal representative, or a direct-claimant:

(i) The President of the Board of Directors of the Foundation shall appoint one or more members of the Board of Directors of the Foundation to review the claim and report to the board whether the claim should be accepted or rejected, in whole or in part. Upon receiving the report, the board shall consider the report and determine whether to accept or reject the claim, in whole or in part.

(A) If the claim is accepted, the lawyer, substitute counsel, the personal representative or the personal representative's attorney, or a direct-claimant shall be notified and, unless the lawyer, substitute counsel, the personal representative or the attorney, or a direct claimant rejects the Foundation's proposal for resolution, within a reasonable period of time not to exceed 45 days, the Foundation shall pay over to the lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant the amount so determined.

(B) If the claim is rejected or the lawyer, substitute counsel, the personal representative, or a direct-claimant disputes the amount of the claim proposed by the Foundation, the lawyer, substitute counsel, personal representative, or direct-claimant may make a request to initiate an arbitration.

(ii) If the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant requests to arbitrate the claim, the President shall appoint an arbitrator to hold a hearing, evaluate the claim, and determine whether the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant has adequately established the owner(s) of the funds. The lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant shall bear the burden of establishing entitlement to the remitted funds. If the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant establishes to the satisfaction of the arbitrator that the lawyer, substitute counsel, the personal representative or attorney, or a direct-claimant is the owner of the funds and the amount of the funds belonging to that lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant, the Foundation shall pay over to the lawyer, substitute counsel, the personal representative or the attorney, or a direct-claimant the amount of such funds, without interest or attorney fees, within a reasonable period of time not to exceed 45 days.

(6) If no claim is made to the remitted funds within three years of the funds having been remitted to the Foundation, the Foundation may treat the remission as final and shall not be obligated to arbitrate such claim or to pay over any amount to any claimant.

(h) Interest paid to the Foundation shall be used for any of the following purposes: providing legal services to the poor of Rhode Island; improving the delivery of legal services; promoting knowledge and awareness of the law; improving the administration of justice; and for the reasonable costs of administration of IOLTA accounts under this Rule.

(i) Nothing in this Rule shall preclude a lawyer or law firm from depositing any funds of a client other than those funds described in paragraph (f) of this Rule in an interest bearing account and accounting for the interest to such client.

Notice and Certification of Compliance
Rhode Island Bar Foundation Interest on Lawyers' Trust Accounts Program

Complete Part I or Part II and sign at the bottom.

To open a new IOLTA, have your bank fill out Part I and send a copy to the Bar Foundation.

PART I - To be filled out by bank - The undersigned is establishing an IOLTA account in compliance with Rhode Island Rules of Professional Conduct, Rule 1.15, regulating lawyers.

1. The depositor's IOLTA account is to be established and governed by Rhode Island Supreme Court Rule 1.15. This means that interest will be accrued and paid in the same manner and at the same interest rate(s) applied to accounts with the same minimum balances or other requirements.

2. Depositor - Open a lawyer's trust account:

The account should be in the 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 RI Bar Foundation Tax Identification Number is 05-6009376. THE BAR FOUNDATION SHOULD NOT BE SENT BANK STATEMENTS, DISCHARGES, ETC. THOSE SHOULD BE SENT TO THE ATTORNEY OR LAW FIRM THAT HAS OPENED OR CONVERTED THE TRUST ACCOUNT.

Attorney Name: _____

Firm Name: _____

If you are a member of a firm of two or more, attach a listing of all lawyers and their bar numbers.

Trust Account Number (s): _____

Financial Institution, Branch & Address: _____

Attorney(s) Authorized to sign IOLTA Checks _____

To file to be exempt from the program, complete Part II and send to the Bar Foundation

PART II - I have not established an interest bearing trust account because I am exempt due to the following provisions (check one):

[] 1. I do not receive, maintain, or disburse client funds in Rhode Island.

Explain: _____

or

[] 2. I am on "inactive" status or a full-time judge, government attorney, or military attorney, and have no client funds requiring an IOLTA trust account.

I attest and certify that the above information is true and correct. I am aware that the original or a copy of this Certification will be provided to the Office of Disciplinary Counsel. I further attest and certify below that I will notify the Rhode Island Bar Foundation at such time in the future that I establish, join, or change an existing trust account containing nominal or short term client funds that are subject to the IOLTA rule.

NAME: _____ BAR NUMBER _____

SIGNATURE _____ DATE _____

PHONE _____ EMAIL _____

Please return completed form to
The Rhode Island Bar Foundation 41 Sharpe Drive, Cranston, RI 02920 or Fax: (401) 421-2703
For additional assistance, call (401) 421-6541 or email: tgallo@ribar.com