

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

INTEREST ON LAWYERS TRUST ACCOUNT BOARD [204 PA. CODE CH. 81] Regulations of IOLTA

These regulations are to be read and applied in connection with the Pennsylvania Rules of Professional Conduct. Nothing in these regulations shall be construed to relieve a lawyer of any provision of the Pennsylvania Rules of Professional Conduct. Where these regulations contain directives pertaining to the Interest on Lawyers Trust Account program which are more specific than those set forth in the Pennsylvania Rules of Professional Conduct, the provisions of these regulations shall control.

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QUESTIONS AND ANSWERS CONCERNING PENNSYLVANIA IOLTA

Statement of Purpose

The following is a representation of the questions most frequently asked of the Pennsylvania Interest on Lawyers Trust Account Board (the "IOLTA Board") and the answers given. Some of the answers paraphrase the actual Rules of Professional Conduct or Regulations of the IOLTA Board. Reference should be made to the Rules and to the Regulations when appropriate.

What is the Basic Concept of IOLTA?

Clients and others frequently transfer monies to lawyers to hold. When the amount is large or if the funds will be held for an extended period of time, lawyers invest them for the benefit of the owner. But when the funds are small or expected to be held for a short time, they cannot practically be invested to benefit the owner of the funds. These funds are "qualified funds."

Rule 1.15 of the Pennsylvania Rules of Professional Conduct, as amended on July 17, 1996, created a mandatory IOLTA program which requires lawyers to pool nominal and short term funds in interest-bearing IOLTA accounts. The result is that funds that would otherwise earn no interest can be put to constructive use.

The lawyer's bank transfers the interest earned on IOLTA accounts, no less frequently than quarterly, to the IOLTA Board. The Board distributes the IOLTA funds for the delivery of civil legal assistance to the poor and disadvantaged, educational legal clinical programs and internships administered by law schools, the administration of justice, and for the administration and development of the IOLTA program.

How do lawyers comply with the IOLTA requirements of Rule 1.15?

An "Enrollment Form for Lawyers and Law Firms" can be used to direct the financial institution to open or

convert all of the lawyer's pooled fiduciary trust accounts to interest-bearing IOLTA accounts. Submit the second copy of the enrollment form, along with a list of all the lawyers who use the IOLTA accounts in the regular course of their practice, to the IOLTA Board.

On an annual basis as part of the licensing process, lawyers are required to certify compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct regarding the handling of funds and other property of beneficial owners and others and the maintenance of their IOLTA accounts.

What will happen if a lawyer does not comply with Rule 1.15?

If a lawyer does not comply with the requirements outlined in Rule 1.15 of the Pennsylvania Rules of Professional Conduct, he or she will be subject to the same disciplinary penalties as any lawyer who does not comply with any of the other requirements for the practice of law in Pennsylvania.

Are any exemptions from IOLTA participation allowed?

Yes, but only upon exemption granted by the IOLTA Board. Write to the IOLTA Board if you believe any of the permitted exemptions apply. Exemptions will be granted if:

(A) the nature of the lawyer's practice does not require the routine maintenance of a trust account in Pennsylvania.

(B) the establishment of an IOLTA account would work an undue hardship on the lawyer or would be extremely impractical, such as the absence of an approved financial institution in the lawyer's geographical area; or

(C) the lawyer's historical annual trust account experience, based on information from the depository institution in which the lawyer deposits trust funds, demonstrates the service charges on the IOLTA account would significantly and routinely exceed any interest generated.

What fiduciary funds are qualified to be placed in IOLTA accounts?

Qualified funds are fiduciary monies received by a lawyer that in the good faith judgment of the lawyer, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of administering a segregated account.

A lawyer will not be liable for damages or held to have breached any fiduciary duty or responsibility because monies are deposited in an IOLTA account pursuant to the lawyer's judgment in good faith that the monies deposited were qualified funds for deposit in an IOLTA account.

Who pays taxes on the interest income earned on IOLTA accounts?

Nobody. The Internal Revenue Service (IRS) has ruled that there are no tax consequences to the beneficial owner, the lawyer or the IOLTA Board. Also, there is no IRS reporting requirement for the lawyer, financial institution or beneficial owner since all IOLTA accounts will use the Tax Identification Number of the IOLTA Board.

May lawyers still open a separate account for beneficial owners' funds?

Certainly. In the past, lawyers have soundly exercised their discretion in determining whether a given trust deposit was of sufficient size or duration to justify its placement in a separate interest-bearing account, with the interest payable to the owner. Rule 1.15 does not affect the lawyer's discretion in this matter. Indeed, the Rule amendment requires lawyers to decide whether a separate interest-bearing account should be established to benefit the beneficial owner of the funds.

How does the IOLTA program affect financial institutions?

Financial institutions are not mandated to participate in IOLTA. However, financial institutions that wish to be depositories into which lawyers can deposit fiduciary funds, must be approved by the Supreme Court of Pennsylvania. A list of approved financial institutions can be obtained from the IOLTA Board. It is anticipated that all approved financial institutions will offer IOLTA accounts.

IOLTA accounts are interest-bearing checking accounts with interest paid at no less than the financial institution's rate paid on negotiable order of withdrawal (NOW) or super-negotiable order of withdrawal (Super NOW) accounts. The financial institutions remit the interest at least quarterly to the IOLTA Board. The financial institutions must also notify the lawyer of the service charges or fees deducted, and the amount remitted from the lawyer's IOLTA account.

Where do IOLTA funds go?

Interest earned on IOLTA accounts may be used only for the following purposes:

- (1) delivery of civil legal assistance to the poor and disadvantaged;
- (2) educational legal clinical programs and internships administered by law schools;
- (3) the administration of justice; and
- (4) the administration and development of the IOLTA program.

All disbursements and allocations of IOLTA funds are subject to the prior approval of the Supreme Court of Pennsylvania.

Who is the IOLTA Board?

The IOLTA Board is the Pennsylvania Interest on Lawyers Trust Account Board composed of nine members appointed by the Supreme Court of Pennsylvania. The members are selected exclusively from a list provided to the Court by the Pennsylvania Bar Association. Three names are submitted on the list for each vacancy on the IOLTA Board.

What if a lawyer mistakenly deposits funds which are not qualified funds into an IOLTA account?

As long as the lawyer used good faith judgment, the lawyer will not be liable for placing non-qualified funds into an IOLTA account.

May all lawyers in a law firm use the same IOLTA account?

Yes. If a law firm established an IOLTA account, each lawyer who deposits all qualified funds in that account will be deemed to comply with IOLTA. This account must

be set up according to IOLTA regulations. However, each lawyer is ultimately responsible to ensure that he or she is in compliance with IOLTA.

Can a lawyer deposit qualified funds into a credit union or brokerage account?

Generally no. Most IOLTA accounts, if maintained at credit unions and brokerages, would not be insured. Since all IOLTA accounts must be insured, only those approved depository institutions which insure IOLTA accounts can be used as depositories for qualified funds.

What if a lawyer only practices law for part of the year?

The lawyer must comply with the IOLTA rules, even if he or she only practices law for part of the year.

What types of legal employment are excluded from IOLTA?

A lawyer whose employment does not result in the handling of fiduciary funds will generally be excluded from IOLTA. Examples include corporate or governmental lawyers, judges, and law school professors as long as they do not maintain a private practice.

What are some factors which should be used to determine whether funds are qualified funds?

Factors which can be used to determine which funds are qualified funds include: (1) the cost to the lawyer of establishing and maintaining account(s) benefiting beneficial owners; (2) the depository institution service charges; (3) the minimum deposit requirements; (4) the accounting fees; (5) the tax reporting requirements; (6) the nature of the transaction(s) or proceedings(s) involved; and (7) the likelihood of delay in the relevant transaction(s) or proceeding(s).

Is a lawyer responsible for establishing interest-bearing accounts for funds held for non-legal services provided by the lawyer?

If lawyer-provided non-legal services are not distinct from legal services offered, then the lawyer must place all funds held in a fiduciary capacity in interest-bearing accounts, regardless of whether the funds resulted from legal or non-legal services.

What happens if a lawyer violates the rules of IOLTA?

The Board will refer to the Office of Disciplinary Counsel the names of attorneys who do not comply with IOLTA.

Who pays the service charges for IOLTA accounts?

Account service charges on an IOLTA account will be paid by offsetting the service charges against interest earned on that account. If service charges exceed the interest earned, then the excess service charge will be offset against interest earned on other IOLTA accounts maintained at the same depository institution. Bank charges pertaining to the lawyer's practice (e.g. check printing charges, overdraft charges, charges for temporary extensions of credit, etc.) and costs billable to others (e.g. overdraft charges on deposited items, certified checks, wire transfers, etc.), will be the responsibility of the lawyer.

How can I find out more about IOLTA?

For additional information concerning IOLTA, contact the office of the IOLTA Board by calling (717) 238-2001. The Board's fax number is (717) 238-2003.

Annex A

TITLE 204. JUDICIAL SYSTEM

GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. PROFESSIONAL CONDUCT

Subchapter B. RULES FOR INTEREST ON LAWYERS TRUST ACCOUNTS

Preamble: Statement of Purpose

Rule 1.15 of the Pennsylvania Rules of Professional Conduct ("Pa.R.P.C.") has, since the adoption of the Rules of Professional Conduct, required lawyers to segregate property of beneficial owners from the lawyer's own property, and by extension, not to profit by use of property belonging to beneficial owners. This provision of the Pa.R.P.C. is for the protection of beneficial owners, designed to ensure the ethical conduct of lawyers, and may not be waived by the beneficial owner. Recent amendments to Pa.R.P.C. 1.15 mandate the maintenance of IOLTA accounts for certain funds received by a lawyer in a fiduciary capacity. IOLTA generates income where formerly there was none; this income will aid the citizens of the Commonwealth of Pennsylvania by improving access to the civil legal system by those who otherwise could not afford legal representation, improving the legal educational system in Pennsylvania via funding for legal clinical programs and internships, and assisting in the general administration of justice in Pennsylvania.

Section 1. Definitions.

The following words and phrases when used in these regulations shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Beneficial Owner—The client or third party whose funds are in the custody of a lawyer.

Board—The Pennsylvania Interest on Lawyer Trust Account Board.

Depository institution—A financial institution approved by the Supreme Court of Pennsylvania pursuant to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."). Generally, a depository institution will be a bank, bank and trust company, savings and loan association, savings bank or foreign banking institution authorized to do business in the Commonwealth of Pennsylvania, whose deposits are insured by the Federal Deposit Insurance Corporation or an alternate share insurer, and who has been specifically approved as a financial institution within the meaning of Pa.R.D.E. 221.

Fiduciary account—Any account maintained in a financial institution in which or with respect to which a lawyer holds the funds of a beneficial owner, including, but not limited to an IOLTA account, in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or as an escrow agent or other fiduciary, having been selected as a result of a client-lawyer relationship.

Fiduciary capacity—In a representative capacity; not beneficially owned by the holder thereof.

Fiduciary funds—Funds received by a lawyer in a fiduciary capacity from or on behalf of a beneficial owner.

Good faith—Honesty in fact in the conduct or transaction concerned.

Interest on Lawyer Trust Account or IOLTA Account—An unsegregated interest-bearing checking account with a depository institution for the deposit of qualified funds by a lawyer.

Lawyer—A member in good standing of the bar of the Supreme Court of Pennsylvania, who is not an active or senior member of the judiciary. The term "lawyer" also includes a partnership of lawyers, a professional association of lawyers, and a professional corporation or other organization whose members or shareholders are engaged in the practice of law.

Member of the Judiciary—An individual who has been admitted to the Pennsylvania Bar and who has been appointed or elected and is serving as a judicial official of any state or of the United States of America and whose position prohibits the individual from the practice of law within the territorial jurisdiction when the individual serves as a judge. This term shall not include a lawyer who is permitted to and who voluntarily chooses to maintain active lawyer status in Pennsylvania so long as the judicial position does not prevent him or her from practicing law in Pennsylvania.

Qualified Funds—Funds, whether cash, check, money order, or other negotiable instrument received by a lawyer in a fiduciary capacity which, in the good faith judgment of the lawyer, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of administering a segregated account. Qualified funds include funds received by a lawyer, as a lawyer, from any person.

Regulations—These regulations adopted by the Board, and approved by the Supreme Court of Pennsylvania, as they may be amended from time to time.

Section 2. Scope.

(a) All lawyers who maintain a place of practice in the Commonwealth of Pennsylvania and who handle fiduciary funds must comply with Pa. R.P.C. 1.15(d) unless and to the extent an exemption is granted pursuant to Pa.R.P.C. 1.15(e) and Section 6 of these regulations.

(b) Each lawyer must register his or her IOLTA account with the Disciplinary Board of the Supreme Court of Pennsylvania annually.

Section 3. Lawyers.

(a) A lawyer shall comply with these regulations and participate in IOLTA if the lawyer is actively licensed and meets one or both of the requirements set forth in (i) or (ii) of this Section 3(a):

(i) Practices law in Pennsylvania: The lawyer practices law from an office within the Commonwealth of Pennsylvania. If a lawyer primarily practices outside of Pennsylvania but also has an office within the Commonwealth, then the lawyer must maintain qualified funds generated in Pennsylvania within the Commonwealth unless an exemption is granted.

(ii) Maintains a fiduciary account for the practice of law: The lawyer holds funds of a beneficial owner in connection with his or her professional practice. If the lawyer provides services of a non-legal nature which are not distinct from his or her legal services, then the lawyer must maintain funds received in connection with non-legal services as fiduciary funds.

Nothing herein shall be construed to require a lawyer who does not receive funds of a beneficial owner to maintain an IOLTA account.

(b) Law Firm Compliance: A lawyer may use an IOLTA in common with other lawyers in his or her firm, whether organized as a partnership, professional association, professional corporation, limited liability company or partnership, or other form of organization. However, each lawyer has an individual duty to comply with Pa.R.P.C. and these regulations.

(i) A law firm may register its IOLTA account and submit a list of all lawyers in the firm who use the IOLTA account for the maintenance of all qualified funds entrusted to the attorney. Each lawyer using the IOLTA account for the deposit of all qualified funds entrusted to him or her will be in compliance with IOLTA.

(c) Newly admitted lawyer: A lawyer newly admitted to the bar of the Supreme Court of Pennsylvania must comply with these regulations within sixty (60) days of admission to the bar.

(d) Change of employment: A lawyer who changes employment status must comply with these regulations within sixty (60) days of the change, unless the lawyer no longer meets the requirements of subsections (a)(i)—(ii) of this Section 3.

(e) Subsequent eligibility: Any lawyer not having met the requirements of subsections (a)(i)—(ii) of this Section 3, who subsequently meets the requirements of subsections (a)(i)—(ii) must comply with these regulations within sixty (60) days of subsequent eligibility.

Section 4. Fiduciary Funds.

(a) Fiduciary funds are funds received by a lawyer in a fiduciary capacity from or on behalf of a beneficial owner. Pa.R.P.C. 1.15 requires the lawyer to maintain funds of a beneficial owner separate from the lawyer's own property, and to safeguard the funds appropriately. A lawyer may not personally profit from fiduciary funds. Fiduciary funds subject to these regulations arise from the practice of law or from an activity described in Pa.R.P.C. 5.7.

(i) Arising from the practice of law: Fiduciary funds subject to these regulations are generated in connection with the lawyer's professional practice. Pa.R.P.C. 5.7 provides that all non-legal services which are not distinct from legal services are subject to Pa.R.P.C. Funds received in connection with non-legal services described in Pa.R.P.C. 5.7(a) are subject to Pa.R.P.C. 1.15(d). Factors which should be used to determine whether non-legal services are distinct from legal services include:

(1) whether funds received in connection with the non-legal services are maintained completely separate from funds received in connection with legal services;

(2) whether the attorney has advised the beneficial owner in clear, unambiguous terms that the attorney is acting in a non-legal capacity, and holding funds in a capacity other than as an attorney;

(3) whether the beneficial owner can reasonably expect to have the protection of the client-lawyer relationship cover the entire matter;

(4) whether the lawyer performs both legal and non-legal services from the same office; and

(5) whether the lawyer uses different letterhead in connection with legal and non-legal services.

(ii) Not arising from the practice of law: Some funds handled routinely by a lawyer, such as title insurance premiums or loan proceeds of a beneficial owner received by the lawyer in a non-lawyer capacity for immediate disbursement are not fiduciary funds, so long as the lawyer discharges his or her duty under Pa.R.P.C. 5.7 and

distinguishes funds received in a non-lawyer capacity from those received in the lawyer's capacity as such.

(b) Subaccounting refers to a process whereby fiduciary funds are segregated by the lawyer or the lawyer's depository institution by beneficial owner, and interest on each subaccount is separately calculated, reported, and paid to the beneficial owner. Subaccounting attributes all of the interest earned on the fiduciary account to the beneficial owners.

(i) Nothing in these regulations shall be construed to prohibit a lawyer from maintaining and administering a separate subaccount for each beneficial owner from whom fiduciary funds are received.

(ii) A lawyer who directly maintains a subaccounting system for fiduciary funds must comply not only with Pa.R.P.C. regarding such funds, but must also comply with applicable laws and regulations of the United States and of the Internal Revenue Service in particular.

(iii) Nothing in these regulations shall be construed to prohibit a lawyer from delegating to a depository institution the responsibility for maintaining and administering a separate subaccount for each beneficial owner from whom the lawyer receives fiduciary funds.

(c) Qualified funds: The lawyer should apply an economic benefits test to determine whether fiduciary funds are qualified funds. Fiduciary funds are not qualified funds if the lawyer will hold the funds for such a length of time, or if the fiduciary funds are of sufficient amount that the interest generated on the funds will exceed the cost of administering a segregated account for the benefit of the beneficial owner.

(i) Law firm compliance v. lawyer responsibility: A lawyer who is an employee or member of a law firm that maintains an approved IOLTA account is presumed to be in compliance with IOLTA regulations when the lawyer uses only the law firm approved IOLTA account for the deposit of all qualified funds entrusted to him or her. However, the lawyer is ultimately responsible to assure that he or she is in compliance with Pa. R.P.C. 1.15 and these regulations.

(ii) Good faith judgment: A lawyer must use good faith judgment in determining whether fiduciary funds are qualified funds. A lawyer will not be liable for damages or be held to have breached a fiduciary duty because of funds deposited into an IOLTA account pursuant to the lawyer's judgment in good faith that the funds were qualified funds.

(iii) Nominal fiduciary funds: Funds that when considered alone are not large enough to earn interest for the beneficial owner thereof are qualified funds.

(iv) Funds held for a short time: Funds which are not expected to be held for sufficient time to provide interest for the beneficial owner are qualified funds.

(v) Factors which should be used to determine whether funds can reasonably be expected to generate interest for the beneficial owner include:

(1) the cost to the lawyer of establishing and maintaining account(s) benefitting beneficial owners;

(2) the account and bank service charges of the depository institution in which the account is maintained;

(3) the minimum deposit requirements of the depository institution in which the account is maintained;

(4) accounting fees incurred in connection with the funds;

(5) tax reporting requirement costs incurred in connection with the funds;

(6) the nature of the transaction(s) or proceeding(s) involved; and

(7) the likelihood of delay in the relevant transaction(s) or proceeding(s).

(d) Generally, a pooled fiduciary account which has a daily average balance of less than \$3,500 will be exempt from IOLTA.

(e) Examples of fiduciary funds and qualified funds:

(i) Estates, trusts, guardianships, etc.: Not all fiduciary funds are qualified funds. Generally speaking, fiduciary funds held by a lawyer as a personal representative, trustee, guardian, attorney-in-fact or the like will not be qualified funds because the funds will either be in such an amount or held for such a period of time that interest generated on the funds will justify the expense of administering a segregated account.

(ii) Conveying accounts/real estate closings: Funds generated from real estate closings may be qualified funds, depending on whom the lawyer represents and whether the funds are nominal or held for a short period of time. Generally, these funds are held for a short period of time and are not expected to provide interest for the beneficial owner.

(iii) Advanced costs, fees, and refundable retainer accounts: Such advances are qualified funds when they are nominal or held for a short period of time, and will remain qualified funds until earned/expended by the lawyer and thereby removed from the IOLTA account.

(iv) Proceeds from dispute settlements/lawsuits: Generally settlement funds are qualified funds if the settlement proceeds are nominal or held for a short period of time. If settlement proceeds are not qualified funds, they must be placed in interest-bearing status for the beneficial owner of the funds.

Section 5. Approved Depository Institutions.

The Supreme Court of Pennsylvania, pursuant to Pa.R.D.E. 221 publishes a list of approved depository institutions. All lawyers must deposit fiduciary funds in an account with an approved depository institution, unless the funds are not qualified funds and an agreement exists between the beneficial owner and the lawyer to use another investment vehicle. Any interest earned under the IOLTA program must be remitted to the Board at least every quarter. Moreover, each depository institution must send a report to the Board as well as to the lawyer showing the interest and account service charges concerning the IOLTA account.

(a) Depository institutions without IOLTA accounts: All qualified funds must be deposited into an approved depository institution which offers IOLTA accounts.

(b) Acceptable account title: The lawyer must specifically identify an IOLTA account with the words "IOLTA Trust Account" or "IOLTA Escrow Account" and the name of the lawyer or the law firm who maintains the account in the main title of the account.

(c) Acceptable title on checks/deposit slips: The word "IOLTA" need not be placed on checks or deposit slips.

(d) Interest rates: The rate of interest payable on an IOLTA account shall not be less than the rate paid by the depository institution on negotiable order of withdrawal accounts (NOW) or super negotiable order of withdrawal (Super NOW) accounts.

(e) Credit unions: IOLTA accounts maintained in credit unions are generally not insured. Therefore, IOLTA accounts must not be established in a credit union unless only funds of members of the credit union are deposited into the account.

Section 6. Exclusion and Exemptions from IOLTA Participation.

Certain lawyers, because of their employment, are excluded from Pa.R.P.C. 1.15. A lawyer who does not receive funds of a beneficial owner is excluded from IOLTA. Examples include lawyers employed full time in a corporate capacity, by local, state or federal government, as a law clerk, professor, or as a member of the judiciary. A lawyer who does not have an office in Pennsylvania, does not maintain fiduciary funds in depository institutions in the Commonwealth, and who is not otherwise required to maintain fiduciary funds in the Commonwealth is excluded from Pa.R.P.C. 1.15. A lawyer who is retired or no longer practices law need not maintain an IOLTA account.

Pa.R.P.C. 1.15(e) permits limited exemptions from the requirements of Pa.R.P.C. 1.15(d). No exemption is automatic, although exemptions will be routinely granted under specified circumstances. The Board may declare a lawyer exempt from the requirement of maintaining an IOLTA account; alternatively, a lawyer may submit a written request for exemption. Exemptions may be granted only with respect to the maintenance of an IOLTA account for qualified funds; no other exemptions from Pa.R.P.C. 1.15(d) will be granted.

(a) Low balance account: Any pooled fiduciary account which historically, generally based upon 12 consecutive months of activity, has an average daily balance of Three Thousand Five Hundred (\$3,500) Dollars or less will be exempt from being an IOLTA account. The Board may exempt from IOLTA, without application, a low balance account. A lawyer requesting an exemption based on a low balance account must, as a part of the written request for exemption, include an account analysis or written statement that demonstrates the amount of the average daily balance.

(b) Account service charges routinely exceed interest: Some fiduciary accounts may have an average daily balance of more than \$3,500, but because of the account service charges or the interest rates of the depository institution, the charges will exceed interest earned on the account. In these cases, an exemption may be requested. A lawyer requesting an exemption based on these circumstances must, as part of the written request for exemption, include an account analysis or written statement that clearly shows the interest earned, or the interest that would have been earned, on the account each month for the past 12 months, plus the account service charges imposed on the account for each of the last 12 months.

(c) Extreme impracticality: Under limited circumstances it would be unduly burdensome for a lawyer to maintain an IOLTA account. When claiming undue hardship, the lawyer should provide appropriate details demonstrating undue hardship. An example includes the lack of an approved depository institution that offers IOLTA accounts in the lawyer's geographical location.

(d) Interest waived by beneficial owner: An exemption from IOLTA will not be granted based on an agreement between a lawyer and beneficial owner purportedly waiving the beneficial owner's right to interest or granting the lawyer the power to direct interest earned on fiduciary accounts to the lawyer or to another person of the

lawyer's choice. A beneficial owner may direct the lawyer to remit interest earned on fiduciary funds of that beneficial owner to a third party of the beneficial owner's choice, but interest earned under these circumstances would not be considered earned on qualified funds, and would create tax reporting responsibilities on the part of the lawyer.

(e) Other compelling and necessitous reasons: A lawyer who demonstrates a compelling and necessitous reason for not complying with IOLTA may request an exemption.

Lawyers exempt from maintenance of an IOLTA account are reminded that all other provisions of Pa.R.P.C. regarding property of beneficial owners, as well as all provisions of Pa. R.D.E. remain applicable to the lawyer.

Section 7. Requests for Reconsideration.

(a) If the Board denies a lawyer's request for an exemption from maintenance of an IOLTA account, the lawyer may, within 30 days of written notice of denial from the Board, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail additional facts, if any, not brought before the Board in the request for exemption, as well as the reasons, if any, why an exemption should be granted.

(b) If the Board has determined that a lawyer is exempt from the requirement of maintaining an IOLTA account, the lawyer may, within 30 days of written notice from the Board that the lawyer is exempt, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail facts, if any, why the lawyer should maintain an IOLTA account, and the manner, if any, in which the Board and the purposes of the IOLTA program will be furthered by the lawyer's maintenance of an IOLTA account.

(c) Notice shall be deemed to have been given to a lawyer under the provisions of subsections (a) and (b) of this Section 7 upon the deposit by the Board, postage prepaid, with the United States Postal Service of its written determination regarding the exemption, if any, of the lawyer from IOLTA.

(d) The Board may form a committee to determine exemptions from IOLTA or to reconsider exemption denials or determinations.

Section 8. Annual Certification of Compliance with Pa.R.P.C. 1.15.

On or before July 1 of each year, each lawyer who is required by Pa.R.D.E 219 to pay an annual fee must also file with the Administrative Office a signed statement on the prescribed form stating his or her familiarity and compliance with Pa.R.P.C. 1.15 of the Pennsylvania Rules of Professional Conduct in regards to handling funds, maintaining IOLTA accounts and Pa.R.D.E. 221.

(a) Generally: This statement should include:

- (i) The name of the account;
- (ii) The account number of each account;
- (iii) The identification of all IOLTA accounts and IOLTA-exempted accounts; and;
- (iv) A certification as follows:

[1996-1997 language] "I am familiar and in compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct regarding the handling of funds and other property of clients and others. I certify that all fiduciary accounts that I maintain in Pennsylvania are in financial institutions that have been approved by the Supreme Court of Pennsylvania for the maintenance of such accounts pursuant to Pa.R.D.E. 221 (relating to mandatory overdraft notification). I further certify the information provided is true. If any statements are false, I realize I am subject to discipline by the Supreme Court."

[1997-1998 language] "I am familiar and in compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct regarding the handling of funds and other property of clients and others and the maintenance of IOLTA accounts and with Rule 221 Pa.R.D.E. regarding the mandatory reporting of overdraft on fiduciary accounts. I further certify the information provided is true. If any statements are false, I realize I am subject to discipline by the Supreme Court."

Section 9. Service Charges on IOLTA Accounts.

Depository institutions may impose reasonable service charges for the administration of IOLTA accounts. A depository institution may not deduct service charges from the principal balance in an IOLTA account.

(a) IOLTA account service charges: Depository institutions may assess reasonable service charges for IOLTA accounts. Such charges, as well as regular account maintenance fees and transaction charges, can be deducted against the total amount of interest to be paid on all IOLTA accounts maintained in that depository institution, (i.e., if IOLTA account of lawyer "A" earns \$8.00 in interest for the period and service charges are \$10.00 for the same period, the depository institution must report \$8.00 of interest earned and \$8.00 of service charges imposed against lawyer "A's" account interest. The remaining \$2.00 may be paid from interest accrued on other IOLTA accounts).

(b) Business costs: All costs associated with check printing, overdraft charges, charges for a temporary extension of credit and similar bank charges shall not be assessed against any accrued interest earned on an IOLTA account. The lawyer maintaining the account shall be responsible for these costs.

(c) Costs billable to others: All costs for services such as overdrafts on deposited items, stopped payments, certified checks, and wire transfers at the request of the lawyer or a beneficial owner shall not be assessed against interest earned on an IOLTA account. The lawyer or the beneficial owner shall be responsible for these costs.

Section 10. Violations.

The Board will refer to the Office of Disciplinary Counsel the name, address and circumstances surrounding any lawyer who, not being exempted from the maintenance of an IOLTA account, fails or refuses to comply with Pa.R.P.C. 1.15(d) and these regulations.

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