

## **Tennessee IOLTA Program FREQUENTLY ASKED QUESTIONS**

### **1. WHAT DO THE IOLTA RULES [Rule 8, Rule of Professional Conduct 1.15 and Supreme Court Rule 43] ADDRESS?**

The Rules make participation in IOLTA mandatory for lawyers and law firms holding IOLTA-eligible funds.

The Rules define institutions “eligible” to hold IOLTA accounts. They are only those which pay IOLTA accounts the highest interest rate or dividend generally available at that institution to similarly situated, non-IOLTA accounts and meet other requirements of the Rules.

Finally, the Rules describe and define the operation and administration of the IOLTA program.

### **2. WHAT IS THE PURPOSE OF THE IOLTA RULES?**

The Rules maximize the revenue available for the charitable purposes of the IOLTA program. The Rules insure that all appropriate funds are maintained in IOLTA accounts and that those accounts earn competitive interest rates.

The charitable purposes of the IOLTA program, as established by the Tennessee Supreme Court in 1984 are:

- (a) To provide legal assistance to the poor;
- (b) To provide student loans, grants, and/or scholarships to deserving law students;
- (c) To improve the administration of justice; and
- (d) For such other programs for the benefit of the public as are specifically approved by the Tennessee Supreme Court.

### **3. IS LAWYER COMPLIANCE WITH THE RULES MANDATORY?**

Yes. As of January 1, 2010, all lawyers holding IOLTA-eligible funds must comply with Rule 8, Rule of Professional Conduct 1.15, by placing those funds in an IOLTA-participating trust checking account at an eligible financial institution.

### **4. WHAT ARE “IOLTA-ELIGIBLE” FUNDS?**

Funds of a client or third person are “IOLTA-eligible” and shall be deposited by a lawyer or law firm in an IOLTA-participating trust checking account unless the funds can earn income for the benefit of the client or third person in excess of the costs incurred to secure and distribute such income to the client or third person.

**5. HOW DO LAWYERS WHO PRACTICE IN A FIRM SETTING COMPLY?**

While each lawyer is required to comply with the IOLTA provisions of the Rules, lawyers who practice in a firm may meet those requirements using a shared, law firm IOLTA account(s). Each lawyer at a firm is not required to maintain a separate account solely for his or her own clients.

**6. MAY A POOLED TRUST CHECKING ACCOUNT BE MAINTAINED THAT IS NOT ENROLLED IN IOLTA?**

No. A lawyer engaged in the private practice of law who receives IOLTA-eligible client funds (those that cannot earn income for the benefit of the client in excess of the costs incurred to secure and distribute that income to the client), must use a pooled IOLTA account either for him or herself or through a law firm. In addition, that account must be held at a financial institution certified as eligible by the Tennessee Bar Foundation.

**7. HOW IS A NEW IOLTA-PARTICIPATING TRUST CHECKING ACCOUNT OPENED?**

Lawyers/law firms that wish to open an account should complete a “Notice to Financial Institution” (available on the Foundation’s website, [www.tnbarfoundation.org](http://www.tnbarfoundation.org)) and transmit it to the selected financial institution to enroll the new account in IOLTA. A copy of the completed form should be forwarded to the Tennessee Bar Foundation once the account is established.

**8. HOW IS THIS BEST HANDLED AT A LAW FIRM?**

Similar to individual lawyers, if a law firm opens a new, pooled, client trust account, the “Notice to Financial Institution” (available on the Foundation’s website, [www.tnbarfoundation.org](http://www.tnbarfoundation.org)) should be used to enroll that account in IOLTA. Firm administrators should insure that all IOLTA-eligible funds accepted by the firm’s lawyers are properly maintained.

**9. MAY LAWYERS DEPOSIT INDIVIDUAL CLIENT OR THIRD PERSON FUNDS IN SEPARATE ACCOUNTS WHICH PAY INTEREST TO BE PASSED ON TO THE CLIENT?**

Yes. In fact, lawyers are expected to establish separate, interest-bearing accounts for individual client or third person funds when the sum is large enough and/or the duration is long enough to justify the cost of opening, administering and closing the account. Any interest accrued becomes the property of the client or third person. However, if the client or third person funds are not large enough or their expected duration is not long enough to earn income net of the costs associated with the account, then the funds must be placed in an IOLTA account at an eligible financial institution.

## **10. WHAT IS AN “ELIGIBLE” FINANCIAL INSTITUTION?**

Eligible financial institutions are those banks and credit unions that voluntarily offer IOLTA accounts and comply with the requirements of the Rules. The requirements include paying the highest rate of interest or dividends generally available from the institution to its non-IOLTA customers on the IOLTA account -- when that account meets or exceeds the same minimum balance or other account eligibility qualifications, if any. The Foundation will certify financial institutions as “eligible.”

## **11. HOW DO I FIND AN ELIGIBLE FINANCIAL INSTITUTION?**

The Foundation maintains an alphabetical list of eligible financial institutions on its website <http://www.tnbarfoundation.org/eligible-financial-institutions/>.

## **12. HOW ARE SERVICE CHARGES AND FEES PAID ON IOLTA ACCOUNTS?**

Rule 43 of the Rules of the Supreme Court defines allowable reasonable service charges that may be netted against the interest earned on IOLTA accounts. They are “(a) per check or electronic debit charges; (b) per deposit or electronic credit charges; (c) a fee in lieu of minimum balance; (d) FDIC insurance fees or FDIC account guarantee fees and/or NCUA insurance fees or NCUA account guarantee fees; (e) a sweep fee; and (f) a reasonable IOLTA account administrative fee.” Check printing charges, wire transfer fees, bank or certified checks, cash management fees and overdraft costs, etc., are the responsibility of and may be charged to the lawyer or law firm maintaining the account. Lawyers with questions regarding applicable account fees should contact the financial institution to request a service charge disclosure.

## **13. DOES THE IOLTA PROGRAM CREATE ADDITIONAL ADMINISTRATIVE BURDENS AND COSTS FOR LAWYERS, PARTICULARLY SOLE PRACTITIONERS?**

No. The Rules regarding the holding of client or third party funds have always required a lawyer/law firm to maintain a trust account. This is true regardless of the size of the firm. In addition, lawyers have always made a good faith judgment about whether those funds belong in a pooled trust account or one set up solely for the benefit of that party. Supreme Court Rule 43 and Rule of Professional Conduct 1.15 simply require that the pooled trust account participate in the IOLTA program.

## **14. HOW DO THE RULES AFFECT LAWYERS NOT IN PRIVATE PRACTICE?**

Lawyers not in private practice are “exempt” from participation in IOLTA and must certify that status on the Board of Professional Responsibility annual Registration Statement. Additionally, if a lawyer is serving as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, in-house counsel, teacher of law, are on active duty in the armed forces or employed

by state, local or federal government and are not otherwise engaged in the private practice of law, he or she is exempt from participation and must certify that status on the Board of Professional Responsibility annual Registration Statement.

**15. HOW IS MANDATORY PARTICIPATION HANDLED FOR TENNESSEE LAW LICENSE HOLDERS WHO PRACTICE OUT-OF-STATE?**

A lawyer who does not maintain a law office in Tennessee, as defined in Rule 43, Section 14(c), is exempt from the IOLTA provisions and is only required to certify that status on the Board of Professional Responsibility annual Registration Statement.

**16. WHAT IS THE PROCEDURE FOR LAWYERS IN PRIVATE PRACTICE WHO DO NOT HOLD TRUST FUNDS?**

If the nature of a lawyer's practice is such that he/she does not hold "IOLTA-eligible" funds of any client or third person, he/she is not required to establish an IOLTA-participating trust checking account. He/she is only required to certify that status on the Board of Professional Responsibility annual Registration Statement.

**17. ARE THERE DISCIPLINARY CONSEQUENCES FOR LAWYERS WHO DO NOT MEET THE REQUIREMENTS OF THE MANDATORY IOLTA RULE?**

Yes. Compliance is enforced by the Board of Professional Responsibility. The Rules have monetary penalties and license suspension provisions similar to those for non-compliance with mandatory Continuing Legal Education (CLE).