

## **MANDATORY IOLTA? WHAT DO I NEED TO KNOW?**

### **What is the basic concept of IOLTA?**

Funds that are placed in IOLTA accounts are small or expected to be held for a short period of time, and cannot earn interest for the client in excess of the costs incurred to collect that interest. The IOLTA program enables the attorneys who handle such nominal or short-term funds to place them in a single, pooled, interest-bearing trust account. The financial institution will send the interest earned on these accounts directly to the Mississippi Bar Foundation, Inc. which distributes the funds as grants to a variety of initiatives that support the justice system.

### **What will change with mandatory status?**

The rule amendments require all lawyers to place all IOLTA-eligible funds into an interest-bearing IOLTA account. The rule amendments are effective January 1, 2007.

### **How do I determine what are IOLTA-eligible funds?**

“Nominal” or “short-term” funds are those of a client or third party that the lawyer has determined cannot provide a positive net return, to the client or third party. An attorney shall exercise good faith judgment in determining whether or not funds belong in an IOLTA account. No lawyer shall be charged with ethical impropriety based on the exercise of good faith judgment.

### **How do I comply with the new Rule?**

Use the Notice to Financial Institution Form to direct your financial institution to convert all of your pooled fiduciary trust accounts to interest-bearing IOLTA accounts. Submit the copy of the form, along with a list of all lawyers who use the IOLTA accounts, to the Mississippi Bar Foundation. Each member will certify on their annual enrollment fee statement that they are in compliance with Rule 1.15, that they are excluded, or that they have been approved for exemption.

### **Who qualifies for exclusion?**

The following lawyers are excluded: lawyers who do not engage in the practice of law in Mississippi; those employed in a corporate capacity; those employed by local, state or federal government; law clerks, professors or members of, the judiciary; retired attorneys; lawyers whose practices do not require the maintenance of trust escrow accounts and those who do not have an office or maintain funds in depository institutions in the state. Exclusions shall be noted on the annual Mississippi Bar enrollment fee statement.

### **Who is exempt?**

An IOLTA account that 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 Mississippi Bar Foundation, be exempted from the IOLTA program.

Lawyers may also request exemption if participation would work an undue hardship or would be extremely impractical. Attorneys desiring exemption due to hardship should make their request in writing to the Mississippi Bar Foundation Board of Trustees.

### Are there any tax consequences?

No! Mississippi's IOLTA Program is designed to avoid any tax consequences. No participating attorney, law firm or client is required to report IOLTA interest as taxable income.

### How will my clients be affected?

They won't from the clients' perspective. Placement of funds is irrelevant because the program only involves funds which an attorney would not otherwise invest on the clients' behalf.

### Can I still open a separate account for clients' funds?

Certainly. In the past, lawyers have exercised discretion to determine whether a given trust deposit was of sufficient size or duration to justify placement in a separate interest-bearing account. The Rule 1.15 amendments do not affect the lawyer's discretion in this matter. Indeed, the Rule amendments require lawyers to decide whether a separate interest-bearing account should be established to benefit the client or owner of the funds. If they are, they can't be placed in IOLTA.

### How does a mandatory program affect financial institutions?

Financial institutions may choose not to participate in IOLTA. However, the Foundation is available to work with banks on establishing the program at their institutions. Currently, many financial institutions in Mississippi participate in the IOLTA program. If your bank chooses not to participate, the Foundation can assist you in locating a bank that does offer IOLTA accounts.

### Does IOLTA affect current trust account practices?

No. Once you open your IOLTA account, you will go about your client trust business as usual. The confidential, fiduciary relationship between you and your clients remains unchanged, and there are no new records to keep.

### What about service charges and handling fees?

Fees for wire transfer, insufficient funds, bad checks, stop payment, account reconciliation, negative collected balances and check printing are not considered customary account maintenance charges and may not be assessed against an IOLTA account. Such non-routine fees must be brought to the attention of the lawyer or law firm, who in turn may absorb these specific costs or pass along those fees to the client(s) being served by the transaction (in accordance with attorney/client agreements).

Negative interest earnings resulting from service charges which exceed interest earned are prohibited on IOLTA accounts. The lawyers absorb fees.

## How much of my time will this involve?

Virtually no additional time is required. The mechanics of converting an account are simple and, once that is done, there is no additional effort on your part. The process of determining where to place client funds is the same. The only difference is that eligible funds should be placed into an IOLTA account as opposed to a non-interest bearing trust account.

## Do IOLTA programs operate elsewhere?

Yes! Fifty states and the District of Columbia operate IOLTA programs in addition to a number of British and Canadian jurisdictions. With this conversion, Mississippi becomes the 32<sup>nd</sup> state to adopt a mandatory IOLTA program.

## What should I do if I change firms or go into private practice?

If you join a firm, you may participate through their IOLTA account(s) and should indicate your change on the Change of Status form. If you are opening your own practice, you should complete a Notice to Financial Institution Form and refer to the above procedures on compliance with the Rule amendment.

## More questions? Contact:

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