

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

**Mississippi Rules of Professional Conduct
Rule 1.15**

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Rule 1.15
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A GUIDE FOR LAWYERS AND FINANCIAL INSTITUTIONS

THE MISSISSIPPI IOLTA PROGRAM

The Mississippi IOLTA (Interest on Lawyer Trust Accounts) was established in 1983 by order of the Mississippi Supreme Court. The Court's order allowed lawyers to voluntarily convert their general pooled trust checking accounts into NOW accounts with interest on the accounts being paid to the Mississippi Bar Foundation to fund law related public service projects and programs to improve the administration of justice. In 1993, the program converted from a voluntary to an opt-out program. Effective January 1, 2007, the Court approved the conversion of Mississippi's IOLTA program from an opt-out program to a mandatory program requiring Mississippi 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 accounts. Financial institutions remit the interest directly to the Mississippi Bar Foundation, Inc. ("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 mandatory.

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 Mississippi, have undergone or are currently undergoing conversions to mandatory 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.

IOLTA ELIGIBLE FUNDS

Not every lawyer's or law firm's trust account will be an IOLTA account. Funds that are to be held for a long period of time and/or are of sizable amount, thereby capable of earning interest for clients net of service charges and administrative fees, should not be placed into IOLTA accounts. Only those funds which are nominal in amount or held for such a short term that cannot earn income for the client in excess of the costs incurred to secure the income are considered IOLTA Eligible Funds. Lawyers and law firms are responsible for deciding (in compliance with Mississippi Supreme Court Rules of Professional Conduct, Rule 1.15) which accounts they must have and what client funds are deposited in each account.

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 FINANCIAL INSTITUTIONS

Pursuant to Rule 1.15, an IOLTA account may only be established with a financial institution (i) authorized by federal or state law to do business in Mississippi, (ii) the deposits of which are insured by the Federal Deposit Insurance Corporation or its equivalent, and (iii) which pay a rate of interest or dividends on IOLTA accounts that is no less than the highest rate generally available to its own non-IOLTA account depositors on accounts which meet the same minimum balance or other eligibility requirements.

ELIGIBLE ACCOUNTS

Appropriate federal bank regulatory agencies have determined that Negotiable Order of Withdrawal (NOW) (or similar type) accounts may be used for IOLTA accounts by any participating lawyer or law firm. These rulings are based on the fact that the Foundation, which is a 501(c) (3) organization, holds the entire “beneficial interest” in IOLTA accounts. Copies of all appropriate rulings are available from the Foundation.

In addition, IOLTA accounts may be maintained in an interest or dividend bearing account with check writing and a sweep feature which is tied to either a money market account insured by an agency of the federal government or a money market fund or daily overnight repurchase agreement invested solely in, or fully collateralized by, U.S. government securities (defined as U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any U.S. agency or instrumentality). There must be no impairment of the right to immediately withdraw and transfer the funds as soon as permitted by law and no risk to principal by reason of the withdrawal.

Financial institutions must pay a rate of interest or dividends on an IOLTA account that is no less than the highest rate generally available from the financial institution to its own non-IOLTA account depositors when the IOLTA account meets the same minimum balance or other eligibility requirements. Institutions may elect to pay higher interest or dividend rates and may waive any fees on IOLTA accounts if they so choose.

If you have questions concerning the type of account your institution can use for the IOLTA program, please contact the Foundation for assistance.

PROCEDURES TO ESTABLISH AN IOLTA ACCOUNT

It is important that both the financial institution and the Foundation know when a lawyer or law firm intends to set up or convert an existing account to an IOLTA account. To set up a new IOLTA account, the lawyer or law firm should satisfy the financial institution’s normal account opening requirements and complete a Notice to Financial Institution and Enrollment Form. The Notice should be given to the financial institution and a copy should be sent to the Foundation, by the lawyer/law firm. To convert an existing non-interest bearing account to an IOLTA account, the lawyer/law firm may simply send the completed Notice directly to the Foundation and the Foundation will contact the financial institution and send it a copy. In any event, it is the lawyer or law firm’s responsibility to make sure the Foundation receives notice of the establishment of the IOLTA account, although financial institutions may aid in the process such as by downloading the Notice from the Foundation’s website, having the lawyer/law firm complete it and by sending the Notice to the Foundation. The lawyer/law firm should retain a completed copy of the Notice. Other than the financial institution’s normal account opening requirements, no further action or operational changes are required by the lawyer or law firm.

GUIDANCE FOR FINANCIAL INSTITUTIONS

NOTICE TO FINANCIAL INSTITUTION AND ENROLLMENT FORM

The Notice to Financial Institution and Enrollment Form notifies both the financial institution and the Foundation that the account is established as an IOLTA account for the lawyer or law firm. The lawyer/law firm should complete a separate Notice form for each IOLTA account. The completed form should go to the financial institution and a copy to the Foundation. The financial institution may send a copy to the Foundation. The form instructs the financial institution to:

1. Set up (if new), or change the status of the existing (non-interest bearing) pooled account to, an interest bearing “NOW”, “SUPER NOW”, or other eligible type of account.
2. The Foundation’s tax identification number 64-6029087 must be assigned to all Mississippi IOLTA accounts. An attorney’s or law firm’s tax identification number SHOULD NOT be used.
3. Remit all interest for each IOLTA account, less reasonable service charges or fees, if any, at least quarterly (monthly is preferred) directly to the Mississippi Bar Foundation, or to the Foundation’s depository financial institution.
4. Send remittance advice to the Foundation on each IOLTA account on a form promulgated by the Foundation or an electronic form with similar information. (See “Interest Remittance Reports” below.)
5. Provide the lawyer/law firm with regular periodic statements of account activity.

A copy of the Notice to Financial Institution and Enrollment Form is included in this booklet and also available upon request from the Mississippi Bar Foundation or on the Foundation’s website, www.msbar.org. The Notice form should be completed even if the financial institution also requires the lawyer/law firm to sign new signature cards to convert an existing account. (See “Signature Cards and Corporate Resolutions” below.) While it is not necessary that the lawyer/law firm provide the Notice form to the Foundation before delivering it to the financial institution, it is extremely important that both the financial institution and the Foundation receive notice that the lawyer/law firm is establishing a new account as, or converting an existing account to, an IOLTA account. It is recommended that the lawyer/law firm keep a copy for the lawyer/law firm records.

SIGNATURE CARDS AND AUTHORIZING RESOLUTIONS

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

INTEREST

Mississippi Supreme Court Rule 1.15(d) (3) sets forth that lawyers must place IOLTA eligible funds in financial institutions that treat IOLTA accounts similarly to non-IOLTA accounts regarding the amount of interest that they pay. Specifically, the Rule states as follows:

“IOLTA Accounts shall be established only with financial institutions . . . which pay a rate of interest or dividend on IOLTA Accounts that is no less than the highest rate generally available to its own non-IOLTA Account depositors when the IOLTA Account meets the same minimum balance or other eligibility requirements, provided however that (a) IOLTA Accounts may be maintained in an interest-bearing checking account or an interest or dividend-bearing account with check-writing and with a sweep feature which is tied to either a money market account insured by an agency of the federal government or a money market fund or daily overnight

repurchase agreement invested solely in or fully collateralized by U.S. Government securities (defined as U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof) so long as there is no impairment of the right to immediately withdraw and transfer principal as soon as permitted by law; (b) institutions may choose to pay these rates on a qualifying IOLTA checking account instead of establishing the higher rate product; and (c) institutions may also elect to pay a higher interest or dividend rate and may waive any fees on IOLTA Accounts.”

For example, if a bank pays 1.5% on NOW accounts with a balance of \$25,000 or less and 2.5% on NOW accounts with a balance in excess of \$25,000, then it should pay the same rates of interest on IOLTA accounts that meet the same balance requirements. If a bank offers checking accounts with a sweep feature into a money market fund or overnight repurchase arrangement invested in U.S. Treasury securities which pays a higher rate, the bank should make the same type of account available for IOLTA accounts or, in the alternative, offer equivalent rates on an IOLTA deposit account which meets the same balance requirements. Banks may choose to pay a higher interest rate on IOLTA accounts than on comparable business accounts, which may be reported on their Community Reinvestment Act (CRA) statements (see page 8 of this handbook).

Interest should be calculated on the average monthly balance or as otherwise computed in accordance with the financial institution’s standard accounting practices.

Financial institutions are prohibited from using interest from one account to pay fees or charges in excess of interest earned on another IOLTA account. If not waived by the financial institution, any such fees are the responsibility of the lawyer or law firm. As a result, financial institutions may not aggregate interest earned and service charges on all IOLTA accounts and remit the balance, thereby causing positive net accounts to subsidize negative accounts.

SERVICE CHARGES

Financial institutions may recover the costs of operating IOLTA accounts in the customary way: through reasonable service charges. However, because the IOLTA program 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 reasonable service charges from the interest earned on IOLTA accounts. NSF charges, returned check charges, stop payment charges, account reconciliation charges, wire transfer fees, check printing costs, and fees for negative collected balances or other similar charges which are not regular maintenance fee are not the type of reasonable service charge that may be deducted from earned interest. These charges, if any, 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 waived. Otherwise, they are the responsibility of the lawyer or law firm. The Foundation may direct the exemption and removal of any account from the IOLTA program if the IOLTA account does not generate sufficient interest to cover the service fees regularly. Removal of an IOLTA account from the program revokes the permission to use the Foundation’s tax identification number for that account, and the account should be converted to a non-interest bearing account.

REMITTANCE TO THE FOUNDATION

Interest, net of reasonable service charges, if any, must be remitted to the Foundation, either monthly (preferred) or quarterly. 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.

As noted above, it is not permissible to aggregate interest earned and service charges on all IOLTA accounts and remit the balance, which would cause positive net accounts to subsidize negative accounts.

INTEREST REMITTANCE REPORTS

The Foundation will provide the financial institution with the form of a monthly remittance report listing by name and account number all of the IOLTA accounts known by the Foundation to be held by the financial institution. The form of the report may be provided to the financial institution by the Foundation either in writing, by fax or electronically, at the option of the financial institution. The financial institution must either complete and submit the form of the report supplied by the Foundation or prepare and submit its own remittance report covering all IOLTA accounts held by the financial institution, even if no interest is being paid for the remitting period. The remittance report must, pursuant to Rule 1.15, include the following information:

1. Name of the lawyer or law firm;
2. Account number;
3. Average account balance for the reporting period;
4. Interest or dividend rate paid;
5. Type and amount of interest or dividends;
6. Amount deducted for service charges; and
7. Net amount remitted to the Foundation;

Banks with a number of IOLTA accounts 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.

REMITTANCE ERRORS

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

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 need not be prepared or submitted to the IRS, or to the lawyer/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 by coding IOLTA accounts 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.

EXISTING IOLTA ACCOUNTS

Many lawyers and law firms in Mississippi have already established an IOLTA account and are already participating in the IOLTA program. As a practical matter, those existing IOLTA accounts should continue to operate as before and no action need be taken provided the IOLTA account complies with the interest, service charge, remittance and reporting requirements of Revised Rule 1.15 described above.

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 may want to 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.

BENEFITS TO BANKS

Participation in IOLTA is a great way for banks to demonstrate that they are concerned about the welfare of the members of their communities. IOLTA grant funds are used to provide civil legal services to persons of limited means and to provide other law related community services. They may report this on their CRA statements (see sample on page 10 of this handbook) and further demonstrate their commitment to the members of their community by waiving or reducing fees, and/or paying higher interest rates on IOLTA accounts than on comparable business accounts.

From time to time, the Foundation will publicize on its website, www.msbar.org, and in various legal and bank magazines (such as *The Mississippi Lawyer* and *The Mississippi Banker*) a listing of IOLTA participating banks and may publicize other aspects of the IOLTA program such as by reporting an honor roll of banks who pay higher effective yields on IOLTA accounts. Publicity about the IOLTA program, the benefits to the public it provides and the financial institution’s participation in the program may assist a financial institution in enjoying good public relations with no additional marketing costs.

SAMPLE CRA STATEMENT

A sample CRA Statement (for use under the Community Reinvestment Act of 1977, as amended (12 U.S.C. §2901)) 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 report 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 Mississippi IOLTA Handbook, IOLTA forms, and relevant United States Supreme Court rulings are available upon request or on the Foundation's website, www.msbar.org.

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GUIDANCE FOR LAWYERS

MANDATORY PARTICIPATION/EXEMPTIONS

Unless exempt, every lawyer or law firm must establish an IOLTA account with an eligible financial institution. A lawyer is exempt if he or she:

- (1) is not engaged in the private practice of law;
- (2) does not have an office within the State of Mississippi;
- (3) 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;
- (4) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;
- (5) has been exempted by the Foundation pursuant to Rule 1.15(e) (see "Foundation Exemptions" below); or
- (6) has been exempted by an order of general or special application of the Mississippi Supreme Court.

DETERMINATION OF IOLTA ELIGIBLE FUNDS

All funds which are nominal or short term funds that cannot earn income for the client or third party in excess of the costs incurred to secure the income shall be deposited in a lawyer's or law firm's IOLTA Account. If, in the lawyer's judgment, the funds can earn income for the client or third party in excess of the costs incurred to secure such income, then those funds should not be placed in an IOLTA account. No earnings from an IOLTA or other client funds account shall be made available to a lawyer or law firm.

The determination of whether funds are nominal or short-term so that they can not earn income in excess of costs rests in the sound judgment of the lawyer or law firm. In determining whether funds can earn income in excess of costs, a lawyer may take into consideration all reasonable factors including, without limitation:

- (1) the amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (3) the rates of interest or yield at the financial institutions where the funds are to be deposited;
- (4) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;
- (5) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients; and
- (6) any other circumstances that affect the ability of the funds to earn a net return for the client.

Rule 1.15 requires lawyers to review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client.

No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of his or her judgment in determining whether or not funds should be deposited in an IOLTA account or a separate account.

SERVICE CHARGES

Financial institutions may impose reasonable service charges for maintenance of the IOLTA account and deduct those service charges from the interest earned on IOLTA accounts. If total reasonable service charges exceed the interest on any single IOLTA account, the excess service charges may be waived by the financial institution.

NSF charges, returned check charges, stop payment charges, account reconciliation charges, wire transfer fees, check printing costs, and fees for negative collected balances or other similar charges which are not regular maintenance fees are not the type of reasonable service charge that may be deducted from earned interest. Otherwise, these charges, if any, are the responsibility of the lawyer/law firm and must be billed to the lawyer/law firm directly.

FOUNDATION APPROVED EXEMPTIONS

Any IOLTA Account which costs or may cost the IOLTA program more in fees than in earned interest over a period of time may, at the Foundation's discretion, be exempted and removed from the IOLTA program. Exemption of an IOLTA Account by the Foundation revokes the permission to use the Foundation's tax identification number for that account. The Foundation will notify the lawyer/law firm and financial institution of any exemption approved by the Foundation. Exemption from the IOLTA program does not relieve the lawyer/law firm from the obligation to maintain the nominal or short term funds of clients and third persons separate and apart from the lawyer's/law firm's own funds as required by Rule 1.15.

ANNUAL CERTIFICATION

Every lawyer admitted to practice in this State must certify annually to the Mississippi Supreme Court either that all eligible IOLTA funds are held in an IOLTA account or that the lawyer is exempt from the IOLTA program for one of the reasons stated above (see "Mandatory Participation/Exemptions" above). This certification will be required with the lawyer's annual enrollment fee payment, and a form of certification will be included with the annual statement sent by the Mississippi Bar.

EFFECTIVE DATE/ACTION TO BE TAKEN

Revised Rule 1.15 has an effective date of January 1, 2007. All lawyers admitted to practice in the State should be in compliance immediately upon the rule becoming effective. A lawyer or law firm that has an existing IOLTA account (and is otherwise in compliance with Rule 1.15) need take no additional action other than to make sure that all IOLTA eligible funds are maintained in the existing IOLTA account, to monitor continuing compliance with the Rule and to provide the annual certification at the appropriate time. Unless exempt, all non-participating lawyers admitted to practice in Mississippi should take prompt action to make sure the lawyer or law firm is in compliance upon the effective date by either opening a new IOLTA account or converting an existing account to an IOLTA account and notifying the Foundation of the establishment of the IOLTA account.

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 help fulfill this obligation. 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.

GENERAL TRUST ACCOUNT PRACTICES

The rules governing IOLTA accounts are just a part of the requirements of revised Rule 1.15. Participation in, or exemption from, the IOLTA program does not otherwise change or affect a lawyer's ethical responsibilities for receiving, holding separately and disbursing funds of clients or third parties and maintaining records in compliance with all applicable requirements of Rule 1.15.

FOR MORE INFORMATION

The Foundation is available to answer questions and help lawyers and financial institutions with their IOLTA accounts. For more information, contact:

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[First printing of this Handbook provided compliments of Butler, Snow, O'Mara, Stevens & Cannada, PLLC]

SAMPLE CRA STATEMENT RE: IOLTA

REMINDER TO FINANCIAL INSTITUTION:

All financial institutions are keenly aware of the ongoing requirements of the Community Reinvestment Act. Federally insured financial institutions 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 may 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 Mississippi Interest on Lawyer Trust Accounts (IOLTA) program which is administered by the Mississippi 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 Mississippi Bar Foundation to support law-related charitable purposes, primarily pro bono civil legal services to low income persons.

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 including low or moderate income geographies, 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 Mississippi.

_____ [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 Mississippi 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
Effective from and after January 1, 2007

(a) A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust 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 trust account funds and other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.

(b) 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 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.

(c) When a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests. If a dispute arises concerning their respective interests, the lawyer shall disburse the portion not in dispute, and keep separate the portion in dispute until the dispute is resolved.

(d) Except as provided in paragraph (f) of this rule, a lawyer or law firm shall create and maintain an interest- or dividend-bearing trust account (IOLTA Account) for all funds which are nominal or short term funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income (IOLTA eligible Funds), pursuant to the following:

(1) All trust Funds shall be deposited in a lawyer's or law firm's IOLTA Account unless in the lawyer's judgment the funds can earn income for the client or third party in excess of the costs incurred to secure such income.

(2) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.

(3) IOLTA Accounts shall be established only with financial institutions:

- i. authorized by federal or state law to do business in Mississippi;
- ii. the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any successors thereof;
- iii. which pay a rate of interest or dividend on IOLTA Accounts that is no less than the highest rate generally available to its own non-IOLTA Account depositors when the IOLTA Account meets the same minimum balance or other eligibility requirements, provided however that: (a) IOLTA Accounts may be maintained in an interest-bearing checking account or an interest or dividend-bearing account with check-writing and with a sweep feature which is tied to either a money market account insured by an agency of the federal government or a money market fund or daily overnight repurchase agreement invested solely in or fully collateralized by U.S. Government securities (defined as U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof) so long as there is no impairment of the right to immediately withdraw and transfer principal as soon as permitted by law; (b) institutions may choose to pay these rates on a qualifying IOLTA checking account instead of establishing the higher rate product; and (c) institutions may also elect to pay a higher interest or dividend rate and may waive any fees on IOLTA Accounts.

(4) Financial institutions are prohibited from using interest from one IOLTA Account to pay fees or charges in excess of the interest earned on another IOLTA Account. If not waived by the financial institution, such fees, if any, are the responsibility of the lawyer or the law firm.

(5) Lawyers or law firms depositing funds in an IOLTA Account established pursuant to this rule shall direct the depository institution:

- i. to remit all interest, 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, to the Mississippi Bar Foundation, Inc. For the purposes of this paragraph, reasonable services charges or fees shall not include fees for wire transfers,

insufficient funds, bad checks, stop payments, account reconciliation, negative collected balances and check printing;

ii. to transmit with each remittance to the Foundation a report showing the following information for each IOLTA Account: the name of the lawyer or law firm, the amount of interest or dividends earned, the rate and type of interest or dividend applied, the amount of any services charges or fees assessed during the remittance period, the net amount of interest or dividends remitted for the period, the average account balance for the period for which the interest was earned and such other information as is reasonably required by the Foundation;

iii. to transmit to the depositing lawyer or law firm a periodic account statement in accordance with normal procedures for reporting to depositors.

(e) 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 nominal or short term funds of clients and third persons separately, as required above, in a non-interest bearing account.

(f) Every lawyer admitted to practice in this State shall annually certify to this Court that all IOLTA eligible Funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer:

(1) is not engaged in the private practice of law;

(2) does not have an office within the State of Mississippi;

(3) 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;

(4) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(5) has been exempted pursuant to Section (e) above; or

(6) has been exempted by an order of general or special application of this Court which is cited in the certification.

(g) In the exercise of a lawyer's good faith judgment in determining whether funds can earn income in excess of costs, a lawyer may take into consideration all reasonable factors including, without limitation:

(1) the amount of the funds to be deposited;

(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) the rates of interest or yield at the financial institutions where the funds are to be deposited;

(4) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;

(5) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients; and

(6) any other circumstances that affect the ability of the funds to earn a net return for the client.

(h) A lawyer shall review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client.

(i) The determination of whether funds are nominal or short-term so that they can 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.

(j) A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph (1) below, a lawyer may not disburse funds held in trust unless the funds are collected funds.

For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account.

(1) Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Provided the lawyer has other sources of funds available at the time of disbursement (other than client or third party funds) sufficient to replace any uncollected funds, notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances:

(i) when the deposit is made by certified check or cashier's check;

(ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;

(iii) when the deposit is made by a check issued by the United States, the State of Mississippi, or any agency or political subdivision of the State of Mississippi; or

(iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the State of Mississippi.

In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered guilty of professional misconduct based upon the disbursement of uncollected funds.

(2) A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

[Amended effective January 1, 2007, to provide for mandatory IOLTA participation.]

Notice to Financial Institutions and Enrollment Form
MISSISSIPPI BAR FOUNDATION IOLTA PROGRAM
To Establish or Convert to an Interest on Lawyer Trust Account ("IOLTA")
(To be completed by lawyer/firm for each IOLTA account)

TO FINANCIAL INSTITUTION:

FROM:

Lawyer/Law Firm
Address
City, State, Zip
Phone

The undersigned is establishing an IOLTA account in compliance with the Mississippi Rules of Professional Conduct, Rule 1.15, regulating lawyers.

Under the IOLTA program you are authorized to open (if new), or change the status of my/our law firm's existing trust account (Name on Account _____ Account Number _____) to an IOLTA eligible interest-bearing account.

The undersigned further authorizes you to disclose to the Mississippi Bar Foundation any and all information with respect to the IOLTA account being established by the undersigned as contemplated herein including all information designated by Mississippi 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 64-6029087.*** My/Our law firm's tax identification number should ***not*** be used.

The Mississippi 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 601-948-5234 or email Angie Cook at acook@msbar.org for assistance.

BY (Authorized IOLTA Account Signatory(ies))

Date: _____

(Signature)

(Signature)

(Printed Name)

(Printed Name)

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

Attention Lawyers: Please keep a copy for your records and return a copy to:

**Mississippi Bar Foundation
IOLTA Program
P O Box 2168 Jackson MS 39225-2168
Fax # 601-510-9264**

Thank you for your cooperation. For additional information or assistance in completing this form, contact the IOLTA Coordinator at **601-948-5234**. You can also visit www.msbar.org for more information.