

# **Michigan State Bar Foundation**

## **ATTORNEY IOLTA GUIDELINES BROCHURE**

**Michigan Rules of Professional Conduct 1.15, as amended February 4, 2015**

### **IOLTA Brochure**

**The content for this brochure has been approved by the Michigan Supreme Court.** It is designed to assist with compliance with IOLTA under Michigan Rules of Professional Conduct 1.15 (“the Rule”), as amended (February 4, 2015).

### **What is IOLTA?**

IOLTA (Interest on Lawyers Trust Accounts) allows lawyers to deposit nominal and short-term client or third party funds into pooled interest- or dividend-bearing trust accounts when the deposits could not earn net income (income over costs) for the client or third party. (References in this brochure to “client” include “client or third party” and references to “lawyer” include “lawyer or law firm or other organization with which the lawyer is professionally associated.”) Before IOLTA, these funds were idle in non-interest bearing accounts.

The net interest or dividends generated on IOLTA funds is forwarded to the Michigan State Bar Foundation (“the Foundation”), an IRS tax-exempt charity. It employs the income to support civil legal services for the poor and improvements in the administration of justice. All fifty states have IOLTA programs.

### **What about larger trust deposits?**

If a deposit is large enough or held long enough to earn net income, it must be deposited for the benefit of the client. Such monies cannot be placed in an IOLTA account.

### **How does IOLTA affect how client funds are deposited?**

The money goes either to an IOLTA account or to a trust account benefiting the client. It has

long been prohibited to mix lawyer funds with client funds, but the Rule permits a lawyer’s own funds to be placed in a trust account only in an amount needed to pay or prevent financial institution fees.

As between the two types of trust accounts, lawyers will continue to make the fiduciary decision whether a given trust deposit is of sufficient size or duration to be invested for the benefit of the client.

### **How does a lawyer know when to place trust funds in an IOLTA account?**

MRPC 1.15(a)(3) states: “An IOLTA account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held.” In determining whether client or third person funds should be deposited to an IOLTA account or a non-IOLTA account, a lawyer shall base the decision solely on whether the funds could be invested to provide a positive net return for the client or third person. A short list of factors provided in the Rule which the lawyer should use in making this determination follows:

- (i) the amount of interest or dividends the funds would earn during the period they are expected to be deposited in light of (a) the amount of the funds to be deposited; (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
- (ii) the cost of establishing and administering non-IOLTA accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports or other associated costs;

(iii) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and

(iv) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.

The rule also provides that a lawyer's good faith decision to deposit or hold such funds in an IOLTA account is not reviewable by a disciplinary body. However, lawyers should periodically review IOLTA deposits to determine if changed circumstances warrant moving the funds from the IOLTA account to invest them prospectively in a non-IOLTA trust account for the client.

### **What effect does IOLTA have on clients?**

None. IOLTA only involves funds that a lawyer would not otherwise invest on the client's behalf because those funds would not produce net income over the cost of investing them.

### **How does IOLTA affect financial institutions?**

Most Michigan financial institutions that offer commercial accounts to their lawyer customers participate. A lawyer cannot keep a pooled client trust account at a financial institution that chooses not to participate or does not meet the Rule's requirements. (As used in this brochure, the term "financial institution" includes banks, credit unions, savings and loan associations and open-end investment companies.)

### **What effect will IOLTA have on lawyers?**

Very little lawyer time is needed. The mechanics of establishing an IOLTA account are simple. (See "How Do I Comply with IOLTA?" below). Nothing changes in the lawyer's handling of client trust funds. The financial institution calculates interest on IOLTA accounts, remits the interest to the Foundation and sends all

required reports to the lawyer and the Foundation.

### **Which financial institutions are eligible to offer IOLTA accounts?**

Lawyers must keep IOLTA accounts at banks, credit unions, savings and loan associations, or open-end investment companies which qualify as "Eligible Institutions." Banks, credit unions, and savings and loan associations must be authorized to do business in Michigan, with their deposits insured by an agency of the federal government. Open-end investment companies must be registered with the Securities and Exchange Commission and meet certain capital guidelines defined in the next section. All must pay IOLTA accounts no less than the highest rate they pay to their own non-IOLTA customers. Funds must be subject to withdrawal upon request and without delay as soon as permitted by law.

### **What type of accounts are IOLTA accounts?**

Under MRPC 1.15(a)(3), an IOLTA account is an "interest- or dividend-bearing account as defined by the Michigan State Bar Foundation." The Foundation's definitions related to IOLTA accounts follow.

An IOLTA account is: 1) an interest-bearing checking account; 2) a money market account with or tied to check-writing; 3) a sweep account which is a money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or 4) an open-end money market fund solely invested in or fully collateralized by U.S. Government securities. A financial institution may choose to pay the higher sweep or money market account rates on a qualifying IOLTA checking account. Financial institutions that do not offer the higher rate products to non-IOLTA customers do not have to do so for IOLTA accounts.

Additional definitions related to IOLTA accounts include: (i) A daily overnight financial

institution repurchase agreement may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. (ii) An eligible institution is not required to offer sweep products for IOLTA accounts if it does not offer them to non-IOLTA customers or if the institution elects to pay its sweep account rate or a higher rate on IOLTA checking accounts which meet relevant minimum balance and other requirements. (iii) An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000. (iv) "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

### **Does the rule require lawyers to contact their financial institutions to assure proper rates are being paid?**

No. The Foundation attends to implementation by financial institutions. If there is an issue, the Foundation will contact the lawyers affected and provide assistance and information to them.

### **Who calculates and remits the interest on IOLTA accounts?**

The financial institution does. Instructions on how to calculate, remit and report the interest are included in the "Financial Institutions IOLTA Handbook," available at [www.msbf.org/iolta](http://www.msbf.org/iolta).

### **Who pays the IOLTA account fees and service charges?**

Financial institutions may deduct only those reasonable service charges specified in the rule. Many waive all fees and charges on IOLTA accounts to benefit the charitable purposes. Any fees they choose to charge may be deducted only from interest earned by the IOLTA account. The lawyer is responsible for all other fees, e.g.

check-printing, wire-transfer and NSF charges. Financial institutions may bill lawyers for charges in excess of interest earned on a particular account for a particular remitting period, but may waive such charges.

### **Who pays taxes on the IOLTA account interest?**

Nobody. The Internal Revenue Service has concluded that interest income from IOLTA accounts payable to a tax-exempt organization, such as the Foundation, is not taxable to (or deductible by) the client or the lawyer. Also, there are no IRS reporting requirements for the lawyer or the client because all IOLTA accounts will use the Foundation's tax identification number (38-1459016).

### **How do I comply with IOLTA?**

Opening a new IOLTA account is simple:

1. Fill out the "Notice to Eligible Financial Institution" form, available at [www.msbf.org/iolta](http://www.msbf.org/iolta).
2. Take the completed Notice to your financial institution.
3. After the financial institution accepts the Notice (indicated by an authorized signature), distribute copies of the completed form as follows:
  - A. Give one copy to the financial institution.
  - B. Send a second copy (with a list of all attorneys in law firm attached) to the Foundation;
  - C. Keep a third copy for law firm records.

Complete these steps even if your financial institution also requires you to sign its own signature cards.

If your existing account is eligible for a higher rate, you may be asked to sign the financial institution's standard form for payment of higher rates. However, because higher interest rate

products generally require a high minimum balance, most IOLTA accounts will be interest-bearing checking accounts.

### **What do IOLTA funds benefit?**

The benefit goes to nonprofit civil legal assistance programs that help low-income families and to improvements in the administration of justice. This helps foster stable communities. It promotes access to justice for those with nowhere else to turn and facilitates education of citizens about the justice system. Since IOLTA began in Michigan in 1990, over \$31 million has been distributed to support such purposes. Information on grant applications and projects assisted appears on the Foundation's web site at [www.msbf.org](http://www.msbf.org).

### **Additional IOLTA Questions?**

Call the Michigan State Bar Foundation at 517-346-6403, or email [iolta@msbf.org](mailto:iolta@msbf.org). See the Foundation website [www.msbf.org](http://www.msbf.org) for IOLTA forms and additional information.

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### **Note: TAON (Trust Account Overdraft Notification) Rule**

Before an institution may offer any lawyer trust accounts (IOLTA or non-IOLTA accounts), the requirements of MRPC 1.15A must be met. Under TAON, financial institutions must first obtain approval from the State Bar of Michigan to serve as a depository for lawyer trust accounts by submitting a signed agreement that they will provide overdraft reports to the account holder and to the Attorney Grievance Commission. For more information about TAON, see <http://www.michbar.org/opinions/TAON>.



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