

Subchapter B. RULES FOR INTEREST ON LAWYERS TRUST ACCOUNTS

Sec.

204 Pa Code, Chapter 81

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Source

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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 clients and third persons from the lawyer's own property, and by extension, not to profit by use of property belonging to clients or third persons. This provision of the Pa.R.P.C. for the protection of the client or third person, is designed to ensure the ethical conduct of lawyers, and may not be waived by the client or third person. Pa.R.P.C. 1.15 mandates the maintenance of IOLTA Accounts for certain funds received by a lawyer in connection with a client-lawyer relationship. In addition, Pa.R.P.C. mandates the maintenance of Trust Accounts (including IOLTA Accounts for Qualified Funds) if, under Pa.R.P.C. 5.7, the lawyer is subject to the Pa.R.P.C. and the lawyer receives funds in connection with services (legal or nonlegal) to the recipient of those services. 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.

§ 81.101. 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:

Board—The Pennsylvania Interest on Lawyer Trust Account Board.

Financial 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.”). A financial institution will be a bank, bank and trust company, trust company, savings and loan association, credit union, 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.

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

Interest on Lawyer Trust Account or IOLTA Account—An unsegregated Trust Account with an approved financial 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.

Nonqualified Funds—Rule 1.15 Funds, whether cash, check, money order, or other negotiable instrument received by a lawyer in a representative capacity, and which are not Qualified Funds.

Qualified Funds—Rule 1.15 Funds, whether cash, check, money order, or other negotiable instrument received by a lawyer in a representative 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 earning interest to benefit the client or third person owner of the funds. See Regulation Section 81.104(c) for further guidance.

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

Representative capacity—Received by a lawyer in connection with a client-lawyer relationship, or under circumstances such that the lawyer is subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed. See Regulation Section 81.104. A lawyer who receives funds while acting as a fiduciary for an estate, trust, guardianship, or conservatorship does not receive those funds in a representative capacity.

Rule 1.15 Funds—Funds which the lawyer receives in connection with a client-lawyer relationship, or under circumstances described in Pa.R.P.C. 5.7(a), (b), or (c), excluding funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship. Rule 1.15 Funds include all funds of a client or third person received by a lawyer, in a representative capacity, from any person.

Third Party Owner—The client or third person whose funds are in the custody of a lawyer.

Trust Account—An interest-bearing account maintained in a financial institution, as defined in Rule of Disciplinary Enforcement 221, in which or with respect to which a lawyer holds Rule 1.15 Funds, including but not limited to an IOLTA Account.

§ 81.102. Scope.

(a) All lawyers who maintain a place of practice in the Commonwealth of Pennsylvania and who receive Qualified Funds must comply with the requirement that Qualified Funds be placed in an IOLTA Account as provided in Pa.R.P.C. 1.15 unless and to the extent an exemption is granted pursuant to Pa.R.P.C. 1.15(h) and Section 81.108 of these regulations.

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

§ 81.103. Lawyers.

(a) If a lawyer is required to maintain a Trust Account, the lawyer shall comply with these regulations and participate in IOLTA if the lawyer meets either of the circumstances set forth in (i) or (ii):

(i) Practices law in Pennsylvania: The lawyer practices law from an office within the Commonwealth of Pennsylvania.

(ii) Practices law in and out of Pennsylvania: If a lawyer primarily practices outside of Pennsylvania but also has an office within the Commonwealth, then the lawyer must deposit Qualified Funds generated in Pennsylvania in a Pennsylvania IOLTA Account.

(b) Nothing herein shall be construed to require a lawyer who does not receive funds of a Third Party Owner to maintain an IOLTA Account.

(c) Law Firm Compliance: A lawyer may use an IOLTA Account 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 received by the lawyer.

(ii) Each lawyer using the IOLTA Account for the deposit of all Qualified Funds received by him or her will be in compliance with IOLTA.

(d) 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.

(e) 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 81.103 or is no longer required to maintain a Trust Account.

(f) Subsequent eligibility: Any lawyer not having met the requirements of subsections (a)(i)—(ii) of this Section 81.103, who subsequently meets the requirements of subsections (a)(i)—(ii) and who must maintain a Trust Account must comply with these regulations within sixty (60) days of subsequent eligibility.

§ 81.104. Rule 1.15 Funds.

(a) Rule 1.15 Funds are funds received by a lawyer in a representative capacity from or on behalf of a Third Party Owner. Pa.R.P.C. 1.15 requires the lawyer to maintain funds of a Third Party Owner separate from the lawyer’s own property, and to safeguard the funds appropriately. A lawyer may not personally profit from Rule 1.15 Funds.

(i) Received in connection with a client-lawyer relationship: Rule 1.15 Funds are funds received in connection with a client-lawyer relationship.

(ii) Funds received while acting as a fiduciary: Pa.R.P.C.1.15(d) specifically excludes from its application funds received by the lawyer while acting as fiduciary for an estate, trust, guardianship, or conservatorship. However, if these funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify maintaining a segregated account, these funds may be deposited in an IOLTA Account.

(iii) Received in connection with nonlegal services: Under Rule 5.7 of the Pennsylvania Rules of Professional Conduct, there are three situations involving the provision of nonlegal services by a lawyer which trigger the applicability of the Pennsylvania Rules of Professional Conduct. These include: (A) if a lawyer provides nonlegal services that are not distinct from legal services, (B) if the lawyer provides nonlegal services that are distinct from legal services, but the lawyer knows or reasonably should know that the recipient might believe that the recipient of the services is receiving the protection of a client-lawyer relationship, and (C) if the lawyer is a owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services and the lawyer knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship. In each of these three cases, the lawyer will be subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed with the recipient of the services. If a lawyer receives funds in connection with a relationship described in any of these situations, the funds are Rule 1.15 Funds and must be deposited either in an IOLTA Account or in a Trust Account for the benefit of the Third Party Owner.

Factors which should be used to determine whether, under the tests of Pa.R.P.C. 5.7, the nonlegal services (and funds received in connection therewith) are subject to the Pa.R.P.C. include:

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

(2) whether the lawyer has advised the Third Party Owner in clear, unambiguous terms that the lawyer is acting in a nonlegal capacity, and is not receiving funds in connection with a client-lawyer relationship;

(3) whether the Third Party 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 nonlegal services from the same office; and

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

(iv) Certain funds handled routinely by a lawyer may not be Rule 1.15 Funds. Rule 1.15 Funds are received by the lawyer in connection with a client-lawyer relationship. Rule 1.15 Funds are also funds received by the lawyer in connection with the provision of nonlegal services under any of the circumstances described in Section 81.104(a)(iii) of these Regulations. These Rule 1.15 Funds must be deposited in an IOLTA Account or a Trust Account for the benefit of the Third Party Owner.

For example, if the lawyer as an agent for a title insurance company handles title insurance and real estate matters in connection with a client-lawyer relationship, or if the provision of title insurance and other services in connection with the real estate matter is not distinct from legal services provided to that recipient, or if the lawyer knows or has reason to know that the recipient of the services believes the relationship to be that of client-lawyer, funds received by the lawyer in connection with the relationship are Rule 1.15 Funds and must be placed in a Trust Account. If the Rule 1.15 Funds are Qualified Funds, the funds must be deposited in an IOLTA Account. The lawyer as title insurance agent may be required to maintain a separate settlement account for each underwriter to process funds handled by that lawyer in connection with acting as a title insurance agent. If the funds deposited in the settlement account are Qualified Funds, each settlement account must be an IOLTA Account.

(b) Subaccounting refers to a process whereby Nonqualified Funds are segregated by the lawyer or the lawyer's financial institution by Third Party Owner, and interest on each subaccount is separately calculated, reported, and paid to the Third Party Owner. Subaccounting attributes all of the interest earned on the Rule 1.15 Funds to the Third Party Owner.

(i) Nothing in these regulations shall be construed to prohibit a lawyer from maintaining and administering a separate subaccount for each Third Party Owner from whom Rule 1.15 Funds are received.

(ii) A lawyer who directly maintains a subaccounting system for Rule 1.15 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 financial institution the responsibility for maintaining and administering a separate subaccount for each Third Party Owner from whom the lawyer receives Rule 1.15 Funds.

(c) Qualified Funds: The lawyer should apply an economic benefits test to determine whether Rule 1.15 Funds are Qualified Funds. Rule 1.15 Funds are not Qualified Funds if

the lawyer will hold the funds for such a length of time, or if the Rule 1.15 Funds are of sufficient amount that the interest generated on the funds will exceed the cost of earning and conveying the interest to Third Party Owner.

(i) Law firm compliance v. lawyer responsibility: A lawyer who is an employee or member of a law firm that maintains an 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 Rule 1.15 Funds are Qualified Funds. A lawyer will not be liable for damages or be held to have breached a fiduciary duty or responsibility because the lawyer deposited funds into an IOLTA Account pursuant to the lawyer's judgment in good faith that the funds were Qualified Funds.

(iii) Nominal Rule 1.15 Funds: Funds that when considered alone are not large enough to earn net interest for the Third Party 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 net interest for the Third Party Owner are Qualified Funds.

(v) Factors which should be used to determine whether funds can reasonably be expected to generate net interest for the Third Party Owner include:

(1) the cost to the lawyer of establishing and maintaining account(s) benefiting Third Party Owners;

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

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

(4) accounting fees likely to be incurred by the lawyer in connection with the funds;

(5) the lawyer's anticipated 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) Examples of Rule 1.15 Funds and Qualified Funds:

(i) Estates, trusts, guardianships, etc.: Funds held by a lawyer as a personal representative, trustee, guardian, attorney-in-fact or the like are specifically excluded from the definition of Rule 1.15 Funds. However, if these funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify the expense of earning interest for the client or third person, these funds may be deposited in an IOLTA Account.

(ii) Conveying accounts/real estate closings: Funds generated from real estate closings will be Qualified Funds, if the lawyer receives the funds in connection with a client-lawyer relationship or if Pa.R.P.C. 5.7(a), (b), or (c) apply. Generally, these funds are held for a short period of time and are not expected to provide interest for the Third Party 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 in amount or held for a short period of time. If settlement proceeds are not Qualified Funds, they must be placed in a Trust Account or other investment vehicle specifically agreed upon by the lawyer and the Third Party Owner.

§ 81.105. Approved Financial Institutions.

(a) The Supreme Court of Pennsylvania approves financial institutions in which a lawyer may maintain a Trust Account. This list of approved financial institutions is published from time to time pursuant to Pa.R.D.E. 221.

(b) All lawyers must deposit Rule 1.15 Funds which are not Qualified Funds in a Trust Account with an approved financial institution, unless an agreement exists between the Third Party Owner and the lawyer to use another investment vehicle.

(c) All lawyers must deposit Rule 1.15 Funds which are Qualified Funds in an IOLTA Account with an approved financial institution. Moreover, each financial institution must send a report to the lawyer showing the interest and account service charges concerning the IOLTA Account. The financial institution must report this same information to the IOLTA Board, and must also report the average daily balance in the account during the remittance period, if that information is available.

(d) 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.

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

(f) Credit unions: IOLTA Accounts maintained in credit unions may not be insured. Therefore, IOLTA Accounts must not be established in a credit union unless only Rule 1.15 Funds of owners who are or are eligible to be members of the credit union are deposited into the account.

§ 81.106. Interest on IOLTA Accounts.

(a) The rate of interest paid on IOLTA Accounts shall be not less than the highest rate of interest generally available from the financial institution to depositors generally for accounts with the same minimum balance and other account eligibility requirements.

(b) A financial institution shall be deemed to have satisfied the requirements of subsection (a) of this regulation if the rate of interest offered by the financial institution on IOLTA

Accounts is not less than the rate of interest identified from time to time by the Board as the "safe harbor" rate in the Board's "Guidelines for Financial Institutions."

(c) Under no circumstances may the rate of interest payable on an IOLTA Account be less than the rate paid by the depository institution on negotiable order of withdrawal accounts or super negotiable order of withdrawal accounts.

(d) Remittance of interest: Any interest earned under the IOLTA program must be remitted to the Board at least every quarter. The following information must be provided to the Board and to the lawyer who maintains the IOLTA Account at the time of each remittance:

- (i) The name of the account;
- (ii) The service charges or fees deducted, if any;
- (iii) The amount of interest remitted from the account; and
- (iv) If available, the average daily balance in the IOLTA Account.

§ 81.107. Service Charges on IOLTA Accounts.

(a) Financial institutions may impose reasonable service charges for the administration of IOLTA Accounts. A financial institution may not deduct service charges from the principal balance in an IOLTA Account. Reasonable service charges, as well as regular account maintenance fees and transaction charges, can be deducted against the total amount of interest to be paid on the IOLTA Account to which the service charges apply.

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

(c) 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 principal balance in or interest earned on an IOLTA Account. The lawyer or the beneficial owner shall be responsible for these costs.

§ 81.108. Exclusion and Exemptions from IOLTA Participation.

(a) Certain lawyers, because of their employment, are excluded from Pa.R.P.C. 1.15(g). A lawyer who does not receive Rule 1.15 Funds 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 receive Rule 1.15 Funds in a representative capacity from Third Party Owners in the Commonwealth, and who is not otherwise required to maintain Rule 1.15 Funds in a Trust Account in the Commonwealth is excluded from Pa.R.P.C. 1.15 (g). A lawyer who is retired or no longer practices law need not maintain an IOLTA account.

(b) Pa.R.P.C. 1.15(h) permits limited exemptions from the requirement that all Qualified Funds must be maintained in an IOLTA Account. 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.

(c) Nonqualified Funds are to be deposited in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and Third Party Owner, and the Board is without power to grant an exemption from this requirement. If a lawyer is exempt from the requirement of maintaining an IOLTA Account, the lawyer must still deposit Qualified Funds in a Trust Account.

(d) Under the following circumstances, the Board will routinely grant an exemption from the requirement that a lawyer maintains all Qualified Funds in an IOLTA Account:

(i) Low balance account: Any Trust 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 (or such other amount as the Board announces from time to time) 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.

(ii) Account service charges routinely exceed interest: Some Trust 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 financial institution, the charges would routinely exceed interest earned on the Trust 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.

(iii) Extreme impracticality or undue hardship: Under limited circumstances it would be unduly burdensome for a lawyer to maintain a Trust Account as an IOLTA Account. When claiming extreme impracticality or undue hardship, the lawyer should provide appropriate details demonstrating undue hardship. An example includes the lack of an approved financial institution that offers IOLTA Accounts in the lawyer's geographical location.

(iv) Other compelling and necessitous reasons: There may be compelling and necessitous reasons justifying an exemption from the requirement that the lawyer maintain a Trust Account as an IOLTA Account. A lawyer who demonstrates a compelling and necessitous reason for not complying with IOLTA may request an exemption. A philosophical objection to IOLTA does not constitute a compelling and necessitous reason for an exemption.

(e) Interest waived by a Third Party Owner: An exemption from the requirement that a Trust Account be maintained as an IOLTA Account will not be granted based on an agreement between a lawyer and Third Party Owner purportedly waiving the Third Party Owner's right to interest or granting the lawyer the power to direct interest earned on Rule 1.15 Funds to the lawyer or to another person of the lawyer's choice.

§ 81.109. Requests for Exemptions and 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 81.109 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 delegate to its staff or to a committee of the Board the authority to determine exemptions from IOLTA or to reconsider exemption denials or determinations.

§ 81.110. 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 in regards to handling funds, maintaining IOLTA Accounts and Pa.R.D.E. 221. Each lawyer is directed to Pa.R.D.E. 219(d).

§ 81.111. Refunds.

(a) The Board may return interest paid to IOLTA under certain circumstances. If a lawyer mistakenly places Nonqualified Funds in an IOLTA Account, or if the lawyer reasonably believed that Rule 1.15 Funds were Qualified Funds, but the Rule 1.15 Funds were in fact not Qualified Funds, then the lawyer may apply for a refund of interest paid to IOLTA.

(b) The following guidelines apply to applications for return of interest:

(i) The lawyer must make the application in writing on firm letterhead.

(ii) The application must be accompanied by verification from the financial institution in which the IOLTA Account is maintained of the interest earned on the Rule 1.15 Funds for which a refund is sought. As needed for auditing purposes, the Board may request additional documentation.

(iii) The application must be received by the Board within six months after the Rule 1.15 Funds have been disbursed from the IOLTA Account.

(iv) The refund will be remitted to the lawyer for his/her distribution to the Third Party Owner. The Board will issue an IRS (Internal Revenue Service) form 1099 to the lawyer who, in turn, is responsible for issuing an IRS form 1099 to the Third Party Owner.

(v) If the financial institution has imposed a service charge with respect to the deposit, only the net amount of interest paid to IOLTA (reduced by applicable service charges) will be refunded.

- (vi) The IOLTA program may deduct a processing charge from the refund.

§ 81.112. Violations.

(a) 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 the IOLTA provisions of Pa.R.P.C. 1.15 and these regulations.

(b) The Board may reconsider its determination of IOLTA compliance based upon information obtained by the Office of Disciplinary Counsel during its investigation of a referral from the Board for non-compliance.

Appendix A

**The Pennsylvania Interest on Lawyers
Trust Account Board**

*Promulgated by the Pennsylvania Interest
on Lawyers Trust Account Board and
Approved by the Supreme Court of
Pennsylvania*

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.

**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 third persons frequently transfer monies to lawyers to hold. Rule 1.15 of the Pennsylvania Rules of Professional Conduct generally requires the lawyer to deposit all monies of clients and third persons ("Rule 1.15 Funds") in a Trust Account. 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. These funds are known as Nonqualified Funds. But when the funds are nominal in amount 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 requires a lawyer to deposit Qualified Funds in a particular type of Trust Account: an interest-bearing IOLTA Account. 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 ("IOLTA Funds"), 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 one or more of the lawyer's Trust Account(s) 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 Account 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 clients or third persons ("Third Party Owners") 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.

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

Are any exemptions from IOLTA participation allowed?

Yes, a lawyer may apply for an exemption from the requirement that all Qualified Funds be placed in an IOLTA Account. However, the exemption will be granted by the IOLTA Board only for one of the reasons specified in Rule 1.15. 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, based either on the geographical distance between the lawyer's principal office and the closest approved financial institution or on other compelling and necessitous factors;

(C) the lawyer's historical annual Trust Account experience, based on information from the financial institution in which the lawyer deposits Rule 1.15 Funds, demonstrates the service charges on the Trust Account would significantly and routinely exceed any interest generated.

What funds are to be placed in IOLTA Accounts?

Qualified Funds are monies of a client or third person received by a lawyer, that in the good faith judgment of the lawyer, are nominal in amount or which the lawyer reasonably expects to be held for such a short period of time, such that sufficient interest income will not be generated to justify the expense of earning interest to benefit the client or third person.

A lawyer will not be liable for damages or held to have breached his or her professional responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer's judgment in good faith that the monies are Qualified Funds.

However, the lawyer should review the funds held in his/her IOLTA Account at reasonable intervals to determine whether circumstances have changed that require changes with respect to the Rule 1.15 Funds held in the IOLTA Account. {hang} *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 Third Party Owner, the lawyer or the IOLTA Board. Also, there is no IRS reporting requirement for the lawyer, financial institution or Third Party Owner since all IOLTA accounts will use the Tax Identification Number of the IOLTA Board.

May a lawyers still open a separate account for funds of Third Party Owners?

Certainly. A lawyer must determine whether funds of Third Party Owners are Qualified Funds or Nonqualified Funds. Nonqualified Funds shall be placed in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and the Third Party Owner.

How does the IOLTA program affect financial institutions?

Financial institutions are not mandated to participate in IOLTA. However, financial institutions that wish to offer Trust Accounts into which lawyers can deposit Rule 1.15 Funds (whether Qualified or Nonqualified Funds) must be approved by the Supreme Court of Pennsylvania. A list of approved financial institutions can be obtained from the Disciplinary Board.

An IOLTA Account is an unsegregated Trust Account for the deposit of Qualified Funds by a lawyer. The rate of interest payable on an IOLTA Account cannot be less than the highest rate or dividend generally available from the financial institution to its non-IOLTA Account customers when the IOLTA Account meets or exceeds the same minimum balance and other account eligibility qualifications. Financial institutions remit the interest at least quarterly to the IOLTA Board.

Financial institutions must transmit to the IOLTA Board and to the lawyer who maintains the IOLTA Account a statement showing certain information. This includes, at a minimum, the name of the account, the service charges or fees deducted, if any, and the amount remitted from the lawyer's IOLTA Account. If available, the financial institution shall also provide information regarding the average daily balance in the 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 in Pennsylvania by non-profit corporations which are tax-exempt under the Internal Revenue Code;
- (2) educational legal clinical programs and internships administered by law schools located in Pennsylvania;
- (3) the administration of justice in Pennsylvania; and
- (4) the administration and development of the IOLTA program in Pennsylvania.

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.

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 in damages for placing Nonqualified Funds into an IOLTA Account, nor will the lawyer be held to have breached any fiduciary duty or responsibility because monies were deposited into an IOLTA Account. Additionally, if timely requested, a refund of IOLTA interest received by the Board attributable to the mistaken deposit, net of an administrative charge, will be made to the lawyer for distribution to the Third Party Owner.

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 be in compliance 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?

Rule 1.15 Funds in IOLTA Accounts, if maintained at credit unions and brokerages, may not be insured. Since all IOLTA Accounts must be insured, only those approved financial institutions which insure IOLTA Accounts can be used as depositories for Qualified Funds. The owner of the Rule 1.15 Funds must qualify for membership in the credit union in order for the funds to be insured.

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 funds of a client or third person 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 monies are Qualified Funds?

Factors which can be used to determine which monies are Qualified Funds include: (1) the cost to the lawyer of establishing and maintaining account(s) benefiting the client or third person; (2) the financial institution's 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).

Must a lawyer who receives funds while acting as a fiduciary deposit those funds into an IOLTA Account?

Rule 1.15(d), as amended in April 2005, specifically excludes funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship. However, Comment 7 to the Rule, as amended in April, 2005, does state that funds received by a lawyer while serving as an executor or trustee, if nominal in amount or expected to be held for such a short period of time that sufficient interest will not be generated to justify maintaining a segregated account may, in the discretion of the lawyer, be deposited into an IOLTA Account, although such deposit is not required.

Must a lawyer who receives funds of clients or third persons other than in connection with a client-lawyer relationship deposit those funds in a Trust Account, including an IOLTA Account?

Rule of Professional Conduct 5.7 provides that a lawyer is subject to the Pennsylvania Rules of Professional Conduct with respect to the provision of both legal and nonlegal services: (i) if a lawyer provides nonlegal services that are not distinct from legal services, (ii) if the lawyer provides nonlegal services that are distinct from legal services, but the lawyer knows or reasonably should know that the recipient might believe that the recipient of the services is receiving the protection of a client-lawyer relationship, or (iii) if the lawyer is a owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services and the lawyer knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship. In each of these three cases, the lawyer will be subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed with the recipient of the services. The lawyer then must deposit all funds of the client or a third person which are received in connection with that relationship in a Trust Account, regardless of whether the funds resulted from legal or nonlegal services. If the funds are Qualified Funds, those funds are to be placed in an IOLTA Account.

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.

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.

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