# IOLTA Guidelines July 1, 2009

The IOLTA Committee ("Committee") provided for by Mass. R. Prof. C., 1.15 (g) (4) (v) (Rule 3:07), adopts the following Guidelines, subject to the approval of the Court, to provide for the operation of the comprehensive IOLTA program set forth in amendments to SJC Rule 3:07 and 4:02 adopted by Orders of the Court dated September 26, 1989, October 1, 1992, April 6, 1993, July 26, 2006 and July 1, 2009.

A. Establishment and Maintenance of IOLTA Accounts

1. Method of establishing IOLTA accounts: A lawyer or law firm shall establish an IOLTA account by completing an Attorney's Notice of Enrollment, and mailing or delivering the original Notice to the financial institution where the account will be maintained and one copy of the Notice to the IOLTA Committee.

2. Considerations affecting deposit in IOLTA accounts:

   (a) All client funds shall be deposited promptly in an IOLTA account unless they are deposited (1) in an interest bearing account for the benefit of the client; (2) in a conveyancing account as defined in paragraph A(3); or (3) as otherwise required by law.

   (b) All client funds which in the judgment of the lawyer are nominal in amount, or are to be held for a short period of time, shall be deposited in an IOLTA account. In determining whether to deposit funds into an IOLTA account or into an individual client account, a lawyer shall consider the amount of interest likely to be earned during the period the funds are expected to be deposited, as well as the estimated cost of establishing and administering a separate client fund account, including reasonable imputed overhead costs, and the estimated cost of preparing any tax or other reports required for interest accruing to a client's benefit.

3. Conveyancing accounts: A conveyancing account is an account in the name of a lawyer in a lending bank used exclusively for depositing and disbursing funds in connection with that bank's loan transactions. A conveyancing account:

   (a) consists solely of funds which will be used in connection with transactions which the institution is financing; and

   (b) is used by the lawyer to disburse funds in connection with the institution's loan transactions; and

   (c) is used exclusively for the deposit and withdrawal of money related to the institution's loan transactions.

B. Characteristics of Accounts

Lawyers shall establish and maintain IOLTA accounts in eligible financial institutions which have the following characteristics:

1. Interest Rates: The financial institution pays interest comparable to the highest yield the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements.

   (a) Comparability Options

A financial institution shall pay on IOLTA accounts the highest yield available among the following product option types (if the product option is available from the financial institution to other non-IOLTA customers) by either using the identified account option as an IOLTA account or paying the equivalent yield on the existing IOLTA account in lieu of actually using the highest yield bank product:

1. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. government securities as described in Mass. R. Prof. C. 1.15 (g) (1).

2. A government (such as for municipal deposits) interest bearing checking account.

3. A checking account paying preferred interest rates, such as money market or indexed rates.

4. An interest bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.

5. Any other suitable interest bearing deposit account offered by the institution to its non-IOLTA customers.

   As an alternative, the financial institution may pay:

6. A "safe harbor" rate equal to 55% net yield of the Federal Funds Target Rate.[*]

   [*] The IOLTA Committee will review and may revise the safe harbor rate from time to time based on changing market conditions.[1]

7. A yield specified by the IOLTA Committee, if the Committee so chooses, which is agreed to by the financial institution. Such yield would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between the financial institution and IOLTA.

(b) Implementation of Comparability

The following considerations will apply to determinations of comparability: Accounts which have limited check writing capability required by law or government regulation may not be considered as comparable to IOLTA in Massachusetts. This, however, is distinguished from checking accounts which pay money market interest rates on account balances without the check writing limitations. Such accounts are included in the Option 3 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Massachusetts.

For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the IOLTA Committee the highest yield for each of the accounts they offer within the above listed account types. The IOLTA Committee will certify participating financial institutions compliance with these Guidelines on an annual basis.

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[1] *Comment: Effective February 1, 2009, the Safe Harbor rate was revised to equal the higher of 55% of the Federal Funds target rate, or 1.00%.*

(c) Definitions.

An “eligible financial institution” for IOLTA accounts is a financial institution that meets the requirements of Mass. R. Prof. C. 1.15 (g) (1), and has been certified by the Committee to be in compliance with these guidelines.

A “safe harbor” rate, as identified by the IOLTA Committee, is a rate which if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return, regardless of the highest yield available at the financial institution. Such yield shall be calculated based on 55% net yield of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.

“Net yield” is defined as the effective interest rate earned on the IOLTA account after considering any fees assessed by the financial institution against the interest earned. Allowable fees are defined at IOLTA Guidelines, B (3) (a) and (b).

2. Minimum Balance: The financial institution pays interest on all funds in the account. If a lawyer chooses to use for IOLTA purposes an account which requires a minimum balance to pay interest, the lawyer must maintain at least the minimum balance in the account at all times, even if to do so requires the deposit of the lawyer’s own funds.

3. Bank Charges: The financial institution either waives all administrative and service charges on IOLTA accounts, or imposes reasonable fees and charges as follows:

   (a) IOLTA Fees: The only fees deducted from IOLTA interest are the reasonable costs of complying with the reporting requirements of the Guidelines.

   (b) Normal Service Charges: The financial institution does not assess against the interest earned on an IOLTA account, fees and expenses which are normally imposed on business accounts. Such fees and expenses include but are not limited to check withdrawal and deposit fees, fees for wiring funds, costs of printing checks, charges for insufficient funds or check returns and a monthly service charge. Such fees and expenses are the responsibility of the lawyer or firm maintaining the account.

4. Interest Remittance: The financial institution complies with the following interest transmittal and reporting provisions:

   (a) The financial institution remits all net interest monthly or quarterly to the IOLTA Committee. The financial institution deducts IOLTA fees from the interest earned on individual IOLTA accounts or aggregates all interest paid and deducts from the total interest earned for each interest remittance period the IOLTA fees imposed on all accounts. IOLTA fees which exceed the interest earned in one remittance period may be carried forward to succeeding remittance periods but may not be billed directly to the Committee, the lawyer or the firm maintaining the account or deducted from the principal in the account.

   (b) Each remittance is accompanied by the information required by the Interest Remittance Report for each IOLTA account maintained in the financial institution whether or not any interest was earned on the account. The financial institution reports interest remittance information in any format it chooses so long as the information required is conveyed in a reasonable manner.

   (c) Remittances for multiple accounts are submitted through a single check or other payment and are accompanied by a single report containing the required information for each IOLTA account included in the report. The financial institution makes

payments of interest (by check or otherwise) in the manner and to the address specified by the Committee.

(d) The financial institution mails or delivers interest remittance reports to the Massachusetts IOLTA Committee, 7 Winthrop Square, 3rd Floor, Boston, MA 02110-1245

(e) In addition, the financial institution submits a copy of each interest remittance report at the time of remittance to the depositor.

(f) The financial institution either does not prepare W-9 forms and reports of income and IRS Forms 1099, or if the forms are prepared they reflect the Committee, not the lawyer or client, as the recipient and are forwarded to the Committee.

C. The Committee

1. Budgets: Annually or more often, the Committee shall, in consultation with the charities, adopt a budget for the operation of the Committee which shall be funded by deducting from the amount received by the Committee on behalf of each charity that charity's proportionate share of the budget.

2. Staff: Staffing and general operational support for the Committee shall be provided by staff hired by the Committee for that purpose or by contract with one or more of the charities.

D. The Charities

1. Definition: The charities shall be those organizations which are named by the Court as designated charitable entities from time to time to receive and disburse funds earned on IOLTA accounts.

2. Additional Charities: [At the direction of the Court, the Committee recommends the following criteria to the Court for use when considering the application of an organization for designation as a charity.] An organization applying to the Court for designation as a charity ("applicant"), shall demonstrate that it has satisfied the following criteria. An applicant must:

   (a) be organized in Massachusetts as a non-profit corporation or trust, have §501(c)(3) status under the Internal Revenue Code, and include among its purposes providing funds for delivering civil legal services to those who cannot afford them and/or for improving the administration of justice;

   (b) have adopted and demonstrated its ability to administer competently a grants program including grant-making guidelines, proposal criteria, an appropriate grant selection process and the capacity to monitor the quality of the services delivered and the financial systems used by recipients; and,

   (c) agree to adhere to these Guidelines and to cooperate with the Committee and the charities to ensure the smooth operation of the program.

3. Expenses of Charities: There shall be two permissible categories of IOLTA-related expenses which a charity may pay with or from IOLTA funds; (a) Committee expenses and (b) compliance and operating expenses.

   (a) Committee expenses shall mean and include only the recipient's share of the Committee's expenses, as determined by the Committee from time to time. The

Committee's expenses shall be shared according to the proportion of net IOLTA income received by the Committee on behalf of each charity.

(b) Compliance and operating expenses shall mean and include only the costs, including overhead, reasonably attributable to accounting for IOLTA funds, processing and evaluating grant requests, monitoring the quality of the services delivered and the financial systems used by recipients, preparing the reports required by Mass. R. Prof. C. 1.15(g)(6) or by the Committee, and handling and expending IOLTA funds for the charitable purposes of the IOLTA program.

(c) The maximum amount of compliance and operating expenses for which IOLTA funds may be used by any charity during or with respect to any calendar year shall be 5% of the IOLTA funds received by that recipient during that year; provided that, expenses in excess of such 5% limit may be authorized by the Committee with respect to any calendar year upon application and good cause shown by a charity.

4. Record Keeping: Each charity directly or by contract with another entity shall:

(a) Have its records of IOLTA receipts and disbursements audited annually by a Certified Public Accountant and file a copy of the audit report and the charity's last annual report with the annual report required by Mass R. Prof. C. 1.15(g);

(b) Prepare its IOLTA reports based on the charity's fiscal year and

(c) Prepare annual financial statements in which all IOLTA funds (including interest, returns and prior year IOLTA receipts) are accounted for separately. This accounting shall report the entity's IOLTA fund balance at the end of its fiscal year as its "reserve" for that fiscal year.

5. Stabilization Funds: A charity may, in its discretion, reserve IOLTA funds from current distribution to stabilize the amounts available for distribution in future years.

(a) All reserved funds must be invested in, or fully collateralized by, United States Government securities including United States treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, or, deposited in fully insured bank accounts;

(b) Consistent with the preceding paragraph, reserved funds must be invested at competitive rates providing reasonable investment yield.

(c) Income from investment of reserved funds may be used only for the purposes approved by the Court for IOLTA funds.

(d) No more than 25% of the IOLTA income received by a charity during that charity's fiscal year may be added to that charity's reserve, provided however that in no event may the total reserve maintained by the charity exceed 50% of the average of the current fiscal year's IOLTA revenue to the entity (including interest) and the prior fiscal year's IOLTA revenue to the entity (including interest). Each charity has two years to comply with fluctuations that may occur as the average figure changes.

(e) If an entity's IOLTA reserve exceeds the amount allowed by these guidelines, the IOLTA Committee may withhold the distribution of further IOLTA revenue to the entity by the amount of the excess fund balance;

(f) The IOLTA Committee, in its sole discretion, may waive the provisions of sections (d) or (e) above if it determines that special circumstances warrant a waiver; and

(g) A charity establishing a stabilization fund shall adopt criteria regarding the amounts to be reserved and the uses of the reserve funds including the circumstances under which the reserve may be expended.

E. Disclosure of Confidential Information Prohibited

The IOLTA Committee, the Board of Bar Overseers and the charities collect and retain confidential information on lawyers who have established IOLTA accounts. This information includes the name of the lawyer, the name of the client fund account established by or on behalf of the lawyer, the account number, the name of the bank in which the account is located and the amount of interest earned on each such account. Such confidential information, except as required by law or order of a court of competent jurisdiction, shall not be disclosed by any person who serves on or is employed by the IOLTA Committee, the charities and their governing boards. The governing bodies of the three charities shall adopt personnel policies and other policies and procedures which will effectuate this non-disclosure policy. The Board of Bar Overseers is requested to take such steps as it deems necessary and appropriate to insure the confidentiality of information received under the IOLTA program.

F. Annual Reports

The Committee shall annually, within 90 days following the end of each calendar year, submit to the Court a report containing the information required of the charities by Mass. R. Prof. C. 1.15(g)(6) and based on the information supplied to the Committee by the charities.

G. Interpretive Rulings

The Committee may from time to time issue rulings interpreting and explaining Court Rules Mass. R. Prof. C. 1.15 (3:07) and 4:02 and these Guidelines.

H. Recommendations to the Board of Bar Overseers

Upon the request of a lawyer or the Board of Bar Overseers (Board), the Committee may make such recommendations to the Board as the Committee deems appropriate upon the facts presented including a recommendation that the Board take no action. Recommendations may be requested on any issue concerning the establishment or maintenance of an IOLTA account.