

1 Rule 14-1001. IOLTA.

2 ~~Effective: 4/1/2008~~

3 **Article 10. IOLTA.**

4 (a) A lawyer or law firm ~~shall~~must create and maintain an interest or dividend-bearing
5 trust account for client funds ("IOLTA account"). All client funds ~~shall~~must be placed
6 into this account except those funds which can earn net income for the client in excess of
7 the costs to secure such income, except as provided in paragraph (g).

8 (b) In determining whether a client's funds can earn net income in excess of the costs of
9 securing that income for the benefit of the client, the lawyer or law firm ~~shall~~must
10 consider the following factors:

11 ~~(b)~~(1) the amount of the funds to be deposited;

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

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

16 ~~(b)~~(4) the costs of establishing and administering non-IOLTA accounts for the client's
17 benefit, including service charges, and the costs of preparing any tax reports required
18 for income accruing to the client's benefit; and

19 ~~(b)~~(5) the capability of financial institutions, lawyers, or law firms to calculate and pay
20 income to individual clients and any other circumstances that may affect the ability of
21 the client's funds to earn net income.

22 (c) The lawyer or law firm ~~shall~~must review its IOLTA ~~and non-IOLTA client trust~~
23 ~~account(s)~~ at reasonable intervals, but not less than annually, to determine whether
24 changed circumstances require further action with respect to the funds of a particular
25 client.

26 (d) The lawyer or law firm ~~shall~~must:

(d)(1) not allow earnings from ~~an IOLTA~~ a client trust account to be made available to a lawyer or law firm;

(d)(2) place in the IOLTA account all client funds which cannot earn net income for the client in excess of the costs of securing that income;

(d)(3) establish an IOLTA account with an eligible financial institution that has voluntarily chosen to offer and maintain IOLTA accounts, and:

(d)(3)(A) is authorized by federal or state law to do business in Utah and has a depository branch physically located in the state of Utah;

(d)(3)(B) is insured by the Federal Deposit Insurance Corporation or its equivalent;

(d)(3)(C) complies with Rule 1.15-(a) of the Utah Rules of Professional Conduct; and

(d)(4) direct the depository institution where the IOLTA account is established:

(d)(4)(A) to remit all interest or dividends, net of allowable 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 practice, at least quarterly, solely to the Utah Bar Foundation ("Foundation"). When feasible, the depository institution ~~shall~~ must remit the interest or dividends on all of its IOLTA accounts in a lump sum, however, the depository institution must provide, for each individual IOLTA account, the information to the Foundation required by ~~sub~~ paragraphs (d)(4)(B) and (d)(4)(C) of this rule;

(d)(4)(B) to report in a form and through any manner of transmission approved by the Foundation showing the name of the lawyer or law firm and the amount of the remittance attributable to each, account number for each account, the rate and type of interest or dividend applied, the amount and type of allowable reasonable service charges or fees deducted, the average account balance for the reporting period, and such other information as is reasonably required by the Foundation;

~~(d)(4)~~(C) to report in accordance with normal procedures for reporting to depositors;

~~(d)(4)~~(D) that allowable reasonable service charges or fees in excess of the interest earned on the account for any period shall-must not be taken from interest earned on other IOLTA accounts or any principal balance of the accounts; and

~~(d)(4)~~(E) to comply with all other administrative rules for IOLTA accounts as promulgated by the Foundation or the Supreme Court.

(e) The determination of whether or not an institution is an eligible institution and whether it is meeting the requirements of this rule shall-must be made by the ~~Utah Bar~~ Foundation. The Foundation shall-must maintain a list of participating eligible financial institutions, and shall-must provide a copy of the list to any Utah lawyer upon request.

(f) Lawyers may only maintain IOLTA accounts in eligible financial institutions. Eligible financial institutions are those that voluntarily offer IOLTA accounts and comply with the requirements of this rule, including maintaining IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

~~(f)~~(1) An eligible financial institution may satisfy these comparability requirements by electing one of the following options:

~~(f)(1)~~(A) establish the IOLTA account as the comparable rate product; or

~~(f)(1)~~(B) pay the comparable rate on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product;

~~(f)(1)~~(C) pay an amount on funds that would otherwise qualify for the investment options noted at (f)(3) equal to 70% of the federal funds targeted rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable reasonable service charges or fees. The safe harbor yield rate may be adjusted once per year by the Foundation, upon 90 days' written notice to financial institutions participating in the IOLTA program; or

~~(f)(1)~~(D) pay a yield rate specified by the Foundation, if the Foundation so chooses, which is agreed to by the financial institution. The rate would be deemed to be already net of allowable reasonable fees and would be in effect for and remain unchanged during a period of no more than twelve months from the inception of the agreement between financial institution and the Foundation.

~~(f)(2)~~ IOLTA accounts may be established as:

~~(f)(2)~~(A) a business checking account with an automated investment feature, such as an overnight and investment in repurchase agreements or money market funds invested solely in or fully collateralized by U.S. government securities, including U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrument thereof;

~~(f)(2)~~(B) a checking account paying preferred interest rates, such as money market or indexed rates;

~~(f)(2)~~(C) a government interest-bearing checking account such as accounts used for municipal deposits;

~~(f)(2)~~(D) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

~~(f)(2)~~(E) any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers.

106 (3) A daily financial institution repurchase agreement ~~shall~~must be fully
107 collateralized by the United States Government Securities and may be established
108 only with an eligible institution that is "well capitalized" or "adequately
109 capitalized" as those terms are defined by applicable federal statutes and regulations.
110 An open-end money-market fund ~~shall~~must be invested solely in the United States
111 Government Securities or repurchase agreements fully collateralized by United States
112 Government Securities, ~~shall~~must hold itself out as a "money-market fund" as that
113 term is defined by federal statutes and regulations under the Investment Company
114 Act of 1940 and, at the time of the investment, ~~shall~~must have total assets of at least
115 two hundred fifty million dollars (\$250,000,000).

116 (4) Nothing in this rule ~~shall preclude~~precludes a participating financial institution
117 from paying a higher interest rate or dividend than described above or electing to
118 waive any service charges or fees on IOLTA accounts.

119 (5) Interest and dividends ~~shall~~must be calculated in accordance with the
120 participating financial institution's standard practice for non-IOLTA customers.

121 (6) "Allowable reasonable service charges or fees" for IOLTA accounts are defined
122 as per check charges, per deposit charges, a fee in lieu of minimum balances, sweep
123 fees, FDIC insurance fees, and a reasonable IOLTA account administrative fee.

124 (7) Allowable reasonable service charges or fees may be deducted from interest or
125 dividends on an IOLTA account only at the rates and in accordance with the
126 customary practices of the eligible institution for non-IOLTA customers. No fees or
127 service charges other than allowable reasonable fees may be assessed against the
128 accrued interest or dividends on an IOLTA account. Any fees and service charges
129 other than allowable reasonable fees ~~shall~~must be the sole responsibility of, and may
130 be charged to, the lawyer or law firm maintaining the IOLTA account.

131 (g) Any IOLTA account which has or may have the net effect of costing the IOLTA
132 program more in fees than earned in interest over a period of any 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~~will not relieve the lawyer and/or law firm from the obligation to maintain the property of client funds separately, as required above, in a non-interest bearing account and also will not relieve the lawyer of the annual IOLTA certification.

(h) In the event a lawyer determines that funds placed in an IOLTA account should have been placed in an interest bearing account for the benefit of the client, the lawyer or law firm ~~shall~~must:

~~(h)~~(1) make a request for a refund in writing, in a timely manner, to the Foundation on firm letterhead within a reasonable period of time after the interest was remitted to the Foundation; and

~~(h)~~(2) provide verification from the financial institution of the interest amount. In no event will the Foundation refund more than the amount of net interest it received; remittance ~~shall~~must be made to the financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.

(i) On or before September 1 of each year, any lawyer admitted to practice in Utah ~~shall~~must certify to the Foundation, in such form as the Foundation ~~shall provide~~provides ("IOLTA Certification Form"), that the member is in compliance with, or is exempt from, the provisions of this rule. If the lawyer or law firm maintains an IOLTA account, the lawyer ~~shall~~must certify the manner in which the lawyer accounts for the interest on clients' trust accounts. The IOLTA Certification Form ~~shall~~must include the financial institution, account numbers, name of accounts and such other information as the Foundation ~~requires~~shall require. If the lawyer is exempt from the IOLTA program, the lawyer must still submit an IOLTA Certification Form annually to certify to the Foundation that he or she is exempt from the provisions in this Rule. Each lawyer ~~shall~~must keep and maintain records supporting the information submitted in the IOLTA

161 Certification Form. The lawyer ~~shall~~must maintain these records for a period of five years
162 from the end of the period for which the IOLTA Certification Form is filed, and these
163 records ~~shall~~must be submitted to the Foundation upon written request. Failure by the
164 lawyer to produce such records within thirty days after written request by the
165 Foundation constitutes a rebuttable presumption that the lawyer has not complied with
166 these rules.

167 (f)(1) If the IOLTA Certification Form is timely filed, indicating compliance, there will
168 be no acknowledgement. Should an IOLTA Certification Form filed by a lawyer fail
169 to evidence compliance, the Foundation ~~shall~~must contact the lawyer and attempt to
170 resolve the non-compliance administratively.

171 (f)(2) The Foundation ~~shall~~must furnish annually to the Utah Supreme Court a list of
172 all licensed Utah lawyers who have not timely filed an IOLTA Certification Form and
173 any lawyers with whom the Foundation has been unable to administratively resolve
174 an impediment to the proper filing of an IOLTA Certification Form or the proper
175 compliance with ~~Rule 14-1001~~this rule, IOLTA.

176 (f)(3) Any lawyer who is not in compliance with IOLTA or who has failed to complete
177 the IOLTA Certification Form by September 1 will be sent, by certified mail, return
178 receipt requested, a non-compliance notice. Should the attorney fail or refuse to rectify
179 the situation within thirty (30) days of such notice, the Foundation ~~shall~~must petition
180 the Utah Supreme Court for the lawyer's suspension from the practice of law.

181 (f)(4) A lawyer suspended by the Utah Supreme Court under the provisions of this rule
182 may be reinstated by the Court upon motion of the Foundation showing that the lawyer
183 ~~has~~ cured the noncompliance issue for which the lawyer ~~has been~~was suspended. If a
184 lawyer ~~has been~~was suspended by the Utah Supreme Court for non-compliance with
185 these rules, the lawyer must then comply with all applicable rules to be eligible to return
186 to active or inactive status.

(j) A lawyer may be exempt from having to maintain an IOLTA account for the following reasons:

(1) the lawyer or law firm's client trust account has been exempted and removed from the IOLTA program by the Foundation pursuant to paragraph (g) of this rule; or

(2) the lawyer ~~has~~ certified in his or her most recent annual IOLTA Certification Form that the lawyer:

(2)(A) is not engaged in the private practice of law or does not manage or handle client trust funds and does not have a client trust account (e.g., corporate counsel, judge, employed by local, state or federal government who does not handle client trust funds, or in private practice but does not handle client monies and has no client trust account);

(2)(B) does not have an office within Utah and has the client's permission to hold the funds out of state; or

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

(3) the lawyer or law firm petitions for and receives a written exemption from the Foundation that compliance with this rule would create an undue hardship on the lawyer and would be extremely impractical, based on geographic distance between the lawyer's principal office and the closest depository institution which is participating in the IOLTA program.

(k) Lawyers licensed in Utah must notify the Foundation in writing within thirty (30) days of any change in IOLTA status, including the opening or closing of any IOLTA accounts.

(l) The Foundation is the only entity authorized to receive and administer IOLTA funds in Utah.

212 (1) The Foundation ~~shall have~~ has general supervisory authority over the
213 administration of the IOLTA funds, subject to the continuing jurisdiction of the
214 Supreme Court.

215 (2) The Foundation ~~shall receive~~ receives the net earnings from all IOLTA accounts
216 and ~~shall must~~ make appropriate investments of IOLTA funds. The Foundation ~~shall~~
217 must maintain proper records of all IOLTA receipts and disbursements, which
218 records ~~shall may~~ be audited or reviewed annually by a certified public accountant.
219 The Foundation ~~shall must~~ annually present to the Supreme Court a reviewed or
220 audited financial statement of the IOLTA receipts and expenditures for the prior year
221 and a summary thereof ~~shall must~~ be made available to anyone requesting copies.

222 (3) The Foundation ~~shall be responsible to~~ must present annually to the Supreme
223 Court a status report on activities of the Foundation and compliance with these rules.

224 (4) The Foundation ~~shall be responsible to~~ must make disbursements from the
225 IOLTA program funds, including current and accumulated net earnings, by grants,
226 appropriations, and other appropriate measures, as outlined in the articles and by-
227 laws for the organization.

228 (5) The Foundation ~~shall may~~ promulgate such other rules, procedures, reports, and
229 forms that are necessary or advisable for the proper implementation of the foregoing
230 rules.

231 **(m) Unclaimed Funds in IOLTA or non-IOLTA Client Trust Accounts.**

232 (1) A lawyer or law firm with unclaimed funds in a client trust account must make a
233 good faith effort to locate the owner of the funds. Unclaimed funds are monies which
234 a lawyer or law firm is holding in a client trust account that should be distributed to
235 a client, former client, or third party, but there has been no response to the lawyer's
236 or law firm's reasonable efforts to encourage the party to claim their rightful funds. If
237 the owner is unable to be located or does not claim their funds, the lawyer or law firm
238 must transfer all unclaimed client funds to the Utah Unclaimed Property Division.

239 (2) The representative for the estate of a deceased or incapacitated lawyer must notify
240 the Office of Professional Conduct if there are unclaimed funds held in a client trust
241 account prior to the estate remitting those funds to the Utah Unclaimed Property
242 Division.

243 (3) After EFFECTIVE DATE, the ~~Utah Bar~~ Foundation may not receive or hold
244 unclaimed client funds. Within sixty days after the EFFECTIVE DATE, the
245 Foundation must transfer all unclaimed client funds and identifying information
246 about the funds currently held by the Foundation to the Utah Unclaimed Property
247 Division and maintain a record of the transfer for five years.

248 (n) ~~Unidentified f~~Funds in IOLTA or non-IOLTA ~~c~~Client ~~t~~Trust ~~a~~Accounts.

249 (1) The ~~Utah Bar~~ Foundation will receive all unidentified funds that come from a client
250 trust account. Unidentified funds are accumulated funds in a client trust account that
251 cannot be reasonably documented as belonging to a client, former client, third party,
252 or the lawyer or law firm.

253 (2) A lawyer, law firm, or representative for the estate of a deceased or incapacitated
254 lawyer that learns of unidentified funds in their client trust account must make
255 periodic efforts to identify and return the funds to the rightful owner. If after 12
256 months from the discovery of the unidentified funds, it is determined that further
257 efforts to ascertain the ownership of the funds will not succeed, the lawyer, law firm,
258 or representative must remit the funds to the ~~Utah Bar~~ Foundation. A lawyer that
259 remits funds in error or subsequently identifies the owner of the remitted funds may
260 make a claim for a refund to the ~~Utah Bar~~ Foundation within three years of the date
261 of remittance. The ~~Utah Bar~~ Foundation will return the funds to the lawyer after
262 verifying the claim. A lawyer or law firm's remittance to the ~~Utah Bar~~ Foundation
263 under this paragraph (n) will not constitute misconduct or grounds for discipline if
264 the lawyer or law firm exercised reasonable efforts to identify the owner of the funds
265 and remitted the funds to the ~~Utah Bar~~ Foundation in good faith.

266 (3) If any unidentified funds from a lawyer or law firm's client trust account are
267 remitted to the Utah Unclaimed Property Division, the Division will notify the ~~Utah~~
268 ~~Bar~~ Foundation and transfer collected funds along with any identifying information
269 regarding the account to the ~~Utah Bar~~ Foundation for further investigation.

270 (4) If a financial institution identifies that a lawyer's client trust account owner is
271 deceased or has abandoned funds maintained in an IOLTA or non-IOLTA client trust
272 account, the financial institution should notify the ~~Utah Bar~~ Foundation about the
273 account balance and all relevant account ownership information. Financial
274 institutions may remit funds to the Utah Unclaimed Property Division which will
275 transfer the funds to the ~~Utah Bar~~ Foundation or funds may be directly remitted to
276 the ~~Utah Bar~~ Foundation for further investigation.

277 (5) The ~~Utah Bar~~ Foundation will administer all unidentified funds remitted from an
278 IOLTA or non-IOLTA client trust account. The Foundation will:

279 (A) receive and hold all funds from any person or entity with unidentified client
280 trust account funds;

281 (B) maintain all relevant records relating to the funds;

282 (C) within thirty days of receiving the funds, provide notice to the Office of
283 Professional Conduct and the Fund for Client Protection ~~concerning the receipt of~~
284 funds, ~~and~~ any identifying information received about the account, and the total
285 amount of the funds received;

286 (D) request in writing that the Office of Professional Conduct attempt to identify
287 the owner of any unidentified funds with a balance of \$1,000 or greater; ~~and~~

288 (E) act in accordance with written direction from the Office of Professional
289 Conduct and/or the Fund for Client Protection to transfer the principal balance of
290 funds to the Utah State Bar when ownership of funds has been established so that
291 the funds can be returned to the client or used to reimburse a claim approved by
292 the Fund for Client Protection; ~~and~~.

293 (F) send written notification to the Office of Professional Conduct and the Fund
294 for Client Protection when unidentified funds have been held for more than three
295 years by the ~~Utah Bar~~ Foundation to confirm that ownership is unable to be
296 determined and no case has been opened by OPC or the Fund for Client Protection.
297 Upon confirmation from those entities, those funds will escheat to the ~~Utah Bar~~
298 Foundation for use consistent with their charitable mission.

299 (o) Upon written request from the Utah Office of Professional Conduct or the Fund for
300 Client Protection at the Utah State Bar, the Foundation will provide client trust account
301 status and related information on a lawyer or law firm.

302 ~~(m) All lawyers who maintain accounts provided for in this rule must convert their client~~
303 ~~trust account(s) to interest bearing account(s) with the interest paid to the Foundation no~~
304 ~~later than six months from the date of order adopting this rule, unless the lawyer has~~
305 ~~been granted exemption from this Court as allowed in paragraphs (g) or (j) of this rule.~~
306 ~~Every lawyer practicing or admitted to practice in Utah shall~~will~~, as a condition thereof,~~
307 ~~be conclusively deemed to have consented to the reporting requirements mandated by~~
308 ~~this rule.~~