

1 Rule 5-1001. IOLPPTA.

2 Effective: 11/1/2018

3 (a) A licensed paralegal practitioner or a licensed paralegal practitioner firm ~~shall~~must
4 create and maintain an interest or dividend-bearing trust account for client funds
5 ("IOLPPTA account"). All client funds ~~must~~shall be placed into this account except
6 those funds which can earn net income for the client in excess of the costs to secure such
7 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 licensed paralegal practitioner or
10 licensed paralegal practitioner firm ~~shall~~must 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-IOLPPTA accounts for the
17 client's benefit, including service charges, and the costs of preparing any tax reports
18 required for income accruing to the client's benefit; and

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

22 (c) The licensed paralegal practitioner, or the licensed paralegal practitioner firm, must
23 ~~shall~~ review each of its the IOLPPTA and non-IOLPPTA client trust accounts
24 (collectively, "client trust account") at reasonable intervals, but not less than annually,

25 to determine whether changed circumstances require further action with respect to the
26 funds of a particular client.

27 (d) The licensed paralegal practitioner~~7~~ or the licensed paralegal practitioner firm
28 mustshall:

29 (1) not allow earnings from a client trust ~~an IOLPPTA~~ account to be made available
30 to a licensed paralegal practitioner~~7~~ or licensed paralegal practitioner firm;

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

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

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

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

38 ~~(d)~~(3)(C) complies with Rule 1.15(a) of the Utah Rules of Licensed Paralegal
39 Practitioner Professional Conduct; and

40 ~~(d)~~(4) direct the depository institution where the IOLPPTA account is established:

41 ~~(d)~~(4)(A) to remit all interest or dividends, net of allowable reasonable service
42 charges or fees, if any, on the average monthly balance in the account, or as
43 otherwise computed in accordance with the institution's standard practice, at least
44 quarterly, solely to the Utah Bar Foundation ("Foundation"). When feasible, the
45 depository institution must shall remit the interest or dividends on all of its
46 IOLPPTA accounts in a lump sum, however, the depository institution must
47 provide, for each individual IOLPPTA account, the information to the Foundation
48 required by ~~sub~~paragraphs (d)(4)(B) and (d)(4)(C) of this rule;

49 ~~(d)~~(4)(B) to report in a form and through any manner of transmission approved by
50 the Foundation showing the name of the licensed paralegal practitioner, or

51 licensed paralegal practitioner firm, and the amount of the remittance attributable
52 to each, account number for each account, the rate and type of interest or dividend
53 applied, the amount and type of allowable reasonable service charges or fees
54 deducted, the average account balance for the reporting period and such other
55 information as is reasonably required by the Foundation;

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

58 ~~(d)(4)~~(D) that allowable reasonable service charges or fees in excess of the interest
59 earned on the account for any period mustshall not be taken from interest earned
60 on other IOLPPTA accounts or any principal balance of the accounts; and

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

63 (e) The determinations of whether an institution is an eligible institution and whether it
64 is meeting the requirements of this rule mustshall be made by the Utah Bar Foundation.
65 The Foundation mustshall maintain a list of participating eligible financial institutions,
66 and mustshall provide a copy of the list to any Utah licensed paralegal practitioner upon
67 request.

68 (f) Licensed paralegal practitioners may only maintain IOLPPTA accounts in eligible
69 financial institutions. Eligible financial institutions are those that voluntarily offer
70 IOLPPTA accounts and comply with the requirements of this rule, including maintaining
71 IOLPPTA accounts which pay the highest interest rate or dividend generally available
72 from the institution to its non-IOLPPTA account customers when IOLPPTA accounts
73 meet or exceed the same minimum balance or other account eligibility qualifications, if
74 any. In determining the highest interest rate or dividend generally available from the
75 institution to its non-IOLPPTA accounts, eligible institutions may consider factors, in
76 addition to the IOLPPTA account balance, customarily considered by the institution
77 when setting interest rates or dividends for its customers, provided that such factors do

78 not discriminate between IOLPPTA accounts and accounts of non-IOLPPTA customers,
79 and that these factors do not include that the account is an IOLPPTA account.

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

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

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

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

92 ~~(f)(1)~~(D) pay a yield rate specified by the Foundation, if the Foundation so chooses,
93 which is agreed to by the financial institution. The rate would be deemed to be
94 already net of allowable reasonable fees and would be in effect for and remain
95 unchanged during a period of no more than ~~twelve~~12 months from the inception
96 of the agreement between the financial institution and the Foundation.

97 ~~(f)~~(2) IOLPPTA accounts may be established as:

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

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

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

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

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

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

121 ~~(f)(4)~~ Nothing in this rule ~~shall~~ precludes a participating financial institution from
122 paying a higher interest rate or dividend than described above or electing to waive
123 any service charges or fees on IOLPPTA accounts.

124 ~~(f)(5)~~ Interest and dividends ~~must~~shall be calculated in accordance with the
125 participating financial institution's standard practice for non-IOLPPTA customers.

126 ~~(f)(6)~~ "Allowable reasonable service charges or fees" for IOLPPTA accounts are
127 defined as per check charges, per deposit charges, a fee in lieu of minimum balances,

128 sweep fees, FDIC insurance fees, and a reasonable IOLPPTA account administrative
129 fee.

130 ~~(f)~~(7) Allowable reasonable service charges or fees may be deducted from interest or
131 dividends on an IOLPPTA account only at the rates and in accordance with the
132 customary practices of the eligible institution for non-IOLPPTA customers. No fees or
133 service charges other than allowable reasonable fees may be assessed against the
134 accrued interest or dividends on an IOLPPTA account. Any fees and service charges
135 other than allowable reasonable fees must shall be the sole responsibility of, and may
136 be charged to, the licensed paralegal practitioner or licensed paralegal practitioner
137 firm maintaining the IOLPPTA account.

138 (g) Any IOLPPTA account which has or may have the net effect of costing the IOLPPTA
139 program more in fees than earned in interest over any time a period ~~of any time~~, may at
140 the discretion of the Foundation, be exempted from and removed from the IOLPPTA
141 program. Exemption of an IOLPPTA account from the IOLPPTA program revokes the
142 permission to use the Foundation's tax identification number for that account.
143 Exemption of such account from the IOLPPTA program will shall not relieve the licensed
144 paralegal practitioner and/or licensed paralegal practitioner firm from the obligation to
145 maintain the property of client funds separately, as required above, in a non-interest
146 bearing account and also will not relieve the licensed paralegal practitioner of the annual
147 IOLPPTA certification.

148 (h) In the event a licensed paralegal practitioner determines that funds placed in an
149 IOLPPTA account should have been placed in an interest bearing account for the benefit
150 of the client, the licensed paralegal practitioner, or licensed paralegal practitioner firm
151 must shall:

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

155 ~~(h)~~(2) provide verification from the financial institution of the interest amount. In no
156 event will the Foundation refund more than the amount of net interest it received;
157 remittance ~~must shall~~ be made to the financial institution for transmittal to the
158 licensed paralegal practitioner~~7~~ or licensed paralegal practitioner firm~~7~~ after
159 appropriate accounting and reporting.

160 (i) On or before September 1 of each year, any licensed paralegal practitioner licensed in
161 Utah ~~shall~~must certify to the Foundation, in such form as the Foundation ~~shall~~provides
162 ("IOLPPTA Certification Form"), that the licensed paralegal practitioner is in
163 compliance with, or is exempt from, the provisions of this rule. If the licensed paralegal
164 practitioner~~7~~ or licensed paralegal practitioner firm~~7~~ maintains an IOLPPTA account, the
165 licensed paralegal practitioner ~~must~~shall certify the manner in which the licensed
166 paralegal practitioner accounts for the interest on clients'~~1~~ trust accounts. The IOLPPTA
167 Certification Form ~~must~~shall include the financial institution, account numbers, name of
168 accounts and such other information as the Foundation ~~shall~~requires. If the licensed
169 paralegal practitioner is exempt from the IOLPPTA program, the licensed paralegal
170 practitioner must still submit an IOLPPTA Certification Form annually to certify to the
171 Foundation that he or she is exempt from the provisions in this Rule. Each licensed
172 paralegal practitioner ~~must~~shall keep and maintain records supporting the information
173 submitted in the IOLPPTA Certification Form. The licensed paralegal practitioner must
174 ~~shall~~ maintain these records for a period of five years from the end of the period for which
175 the IOLPPTA Certification Form is filed, and these records ~~must shall~~ be submitted to the
176 Foundation upon written request. Failure by the licensed paralegal practitioner to
177 produce such records within ~~30~~thirty days after written request by the Foundation
178 constitutes a rebuttable presumption that the licensed paralegal practitioner has not
179 complied with these rules.

180 ~~(i)~~(1) If the IOLPPTA Certification Form is timely filed, indicating compliance, there
181 will be no acknowledgement. Should an IOLPPTA Certification Form filed by a
182 licensed paralegal practitioner fail to evidence compliance, the Foundation ~~shall~~must

183 contact the licensed paralegal practitioner and attempt to resolve the non-compliance
184 administratively.

185 ~~(f)~~(2) The Foundation ~~must~~shall furnish annually to the Utah Supreme Court a list of
186 all licensed paralegal practitioners who have not timely filed an IOLPPTA
187 Certification Form and any licensed paralegal practitioners with whom the
188 Foundation has been unable to administratively resolve an impediment to the proper
189 filing of an IOLPPTA Certification Form or the proper compliance with ~~Rule 15-1001,~~
190 ~~IOLPPTA.~~this rule.

191 ~~(f)~~(3) Any licensed paralegal practitioner who is not in compliance with IOLPPTA or
192 who has failed to complete the IOLPPTA Certification Form by September 1 will be
193 sent, by certified mail, return receipt requested, a non-compliance notice. Should the
194 licensed paralegal practitioner fail or refuse to rectify the situation within ~~thirty (30)~~
195 days of such notice, the Foundation ~~must~~shall petition the Utah Supreme Court for
196 the licensed paralegal practitioner's suspension from the practice of law.

197 ~~(f)~~(4) A licensed paralegal practitioner suspended by the Utah Supreme Court under
198 the provisions of this rule may be reinstated by the Court upon motion of the
199 Foundation showing that the licensed paralegal practitioner ~~has~~has been cured the
200 noncompliance issue for which the licensed paralegal practitioner ~~has been~~was
201 suspended. If a licensed paralegal practitioner ~~has been~~was suspended by the Utah
202 Supreme Court for non-compliance with these rules, the licensed paralegal
203 practitioner must then comply with all applicable rules to be eligible to return to active
204 or inactive status.

205 (j) A licensed paralegal practitioner may be exempt from having to maintain an IOLPPTA
206 account for the following reasons:

207 ~~(f)~~(1) the licensed paralegal practitioner, or licensed paralegal practitioner ~~aw~~-firm's
208 client trust account has been exempted and removed from the IOLPPTA program by
209 the Foundation pursuant to paragraph (g) ~~of this rule~~; or

210 ~~(f)~~(2) the licensed paralegal practitioner ~~has~~ certified in his or her most recent annual
211 IOLPPTA Certification Form that the licensed paralegal practitioner:

212 ~~(f)~~(2)(A) is not engaged in the private practice of law or does not manage or handle
213 client trust funds and does not have a client trust account;

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

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

218 ~~(f)~~(3) the licensed paralegal practitioner, or licensed paralegal practitioner firm
219 petitions for and receives a written exemption from the Foundation that compliance
220 with this rule would create an undue hardship on the licensed paralegal practitioner
221 and would be extremely impractical, based on geographic distance between the
222 licensed paralegal practitioner's principal office and the closest depository institution
223 which is participating in the IOLPPTA program.

224 (k) Licensed paralegal practitioners must notify the Foundation in writing within ~~thirty~~
225 ~~(30)~~ days of any change in IOLPPTA status, including the opening or closing of any
226 IOLPPTA accounts.

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

229 ~~(f)~~(1) The Foundation ~~shall have~~has general supervisory authority over the
230 administration of the IOLPPTA funds, subject to the continuing jurisdiction of the
231 Supreme Court.

232 ~~(f)~~(2) The Foundation ~~shall~~receives the net earnings from all IOLPPTA accounts and
233 must~~shall~~ make appropriate investments of IOLPPTA funds. The Foundation ~~shall~~
234 must maintain proper records of all IOLPPTA receipts and disbursements, which
235 records ~~shall~~may be audited or reviewed annually by a certified public accountant.

236 The Foundation ~~shall~~must annually present to the Supreme Court a reviewed or
237 audited financial statement of the IOLPPTA receipts and expenditures for the prior
238 year and a summary thereof ~~shall~~must be made available to anyone requesting
239 copies.

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

242 (4) The Foundation ~~shall be responsible to~~must make disbursements from the
243 IOLPPTA program funds, including current and accumulated net earnings, by grants,
244 appropriations and other appropriate measures, as outlined in the articles and by-
245 laws for the organization.

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

249 (m) Unclaimed funds in IOLTA or non-IOLTA client trust accounts.

250 (1) A licensed paralegal practitioner or a licensed paralegal practitioner firm with
251 unclaimed funds in a client trust account must make a good faith effort to locate the
252 owner of the funds. Unclaimed funds are monies which a licensed paralegal
253 practitioner or a licensed paralegal practitioner firm is holding in a client trust account
254 that should be distributed to a client, former client, or third party, but there has been
255 no response to the licensed paralegal practitioner's or a licensed paralegal practitioner
256 firm's reasonable efforts to encourage the party to claim their rightful funds. If the
257 owner is unable to be located or does not claim their funds, the licensed paralegal
258 practitioner or a licensed paralegal practitioner firm must transfer all unclaimed client
259 funds to the Utah Unclaimed Property Division.

260 (2) The representative for the estate of a deceased or incapacitated licensed paralegal
261 practitioner must notify the Office of Professional Conduct if there are unclaimed

262 funds held in a client trust account prior to the estate remitting those funds to the Utah
263 Unclaimed Property Division.

264 (3) The Foundation may not receive or hold unclaimed client funds.

265 (n) Unidentified funds in IOLTA or non-IOLTA client trust accounts.

266 (1) The Foundation will receive all unidentified funds that come from a client trust
267 account. Unidentified funds are accumulated funds in a client trust account that
268 cannot be reasonably documented as belonging to a client, former client, third party,
269 or the licensed paralegal practitioner or a licensed paralegal practitioner firm.

270 (2) A licensed paralegal practitioner, licensed paralegal practitioner firm, or
271 representative for the estate of a deceased or incapacitated licensed paralegal
272 practitioner that learns of unidentified funds in their client trust account must make
273 periodic efforts to identify and return the funds to the rightful owner. If after 12
274 months from the discovery of the unidentified funds, it is determined that further
275 efforts to ascertain the ownership of the funds will not succeed, the licensed paralegal
276 practitioner, licensed paralegal practitioner firm, or representative must remit the
277 funds to the Foundation. A licensed paralegal practitioner, firm, or representative that
278 remits funds in error or subsequently identifies the owner of the remitted funds may
279 make a claim for a refund to the Foundation within three years of the date of
280 remittance. The Foundation will return the funds to the licensed paralegal
281 practitioner, firm, or representative after verifying the claim. A licensed paralegal
282 practitioner or a licensed paralegal practitioner firm's remittance to the Foundation
283 under this paragraph will not constitute misconduct or grounds for discipline if the
284 licensed paralegal practitioner or the licensed paralegal practitioner firm exercised
285 reasonable efforts to identify the owner of the funds and remitted the funds to the
286 Foundation in good faith.

287 (3) If any unidentified funds from a licensed paralegal practitioner lawyer or licensed
288 paralegal practitioner firm's client trust account are remitted to the Utah Unclaimed

289 Property Division, the Division will notify the Foundation and transfer collected
290 funds along with any identifying information regarding the account to the
291 Foundation for further investigation.

292 (4) If a financial institution identifies that a licensed paralegal practitioner or licensed
293 paralegal practitioner firm's client trust account owner is deceased or has abandoned
294 funds maintained in an IOLTA or non-IOLTA client trust account, the financial
295 institution should notify the Foundation about the account balance and all relevant
296 account ownership information. Financial institutions may remit funds to the Utah
297 Unclaimed Property Division which will transfer the funds to the Foundation or funds
298 may be directly remitted to the Foundation for further investigation.

299 (5) The Foundation will administer all unidentified funds remitted from an IOLTA or
300 non-IOLTA client trust account. The Foundation will:

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

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

304 (C) within 30 days of receiving the funds, provide notice to the Office of
305 Professional Conduct and the Fund for Client Protection of funds, any identifying
306 information received about the account, and the total amount of the funds
307 received;

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

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

315 (F) send written notification to the Office of Professional Conduct and the Fund
316 for Client Protection when unidentified funds have been held for more than three
317 years by the Foundation to confirm that ownership is unable to be determined and
318 no case has been opened by OPC or the Fund for Client Protection. Upon
319 confirmation from those entities, those funds will escheat to the Foundation for
320 use consistent with their charitable mission.

321 (o) Upon written request from the Utah Office of Professional Conduct or the Fund for
322 Client Protection at the Utah State Bar, the Foundation will provide client trust account
323 status and related information on a licensed paralegal practitioner or licensed paralegal
324 practitioner's firm.

325 (~~pm~~) Every licensed paralegal practitioner, ~~is~~shall, as a condition thereof, ~~be~~conclusively
326 deemed to have consented to the reporting requirements mandated by this rule.

327 Effective: