

1 **Article 10. IOLTA.**

2 Rule 14-1001. IOLTA.

3 (a) A lawyer or law firm shall create and maintain an interest or dividend-bearing
4 trust account for client funds ("IOLTA account"). All client funds shall be placed into this
5 account except those funds which can earn net income for the client- in excess of the
6 costs to secure such income, ~~(income in excess of costs associated with the account)~~
7 ~~for the client or~~ except as provided in paragraph (ig). ~~All interest and dividends from the~~
8 ~~IOLTA account shall be remitted to the Utah Bar Foundation ("Foundation") as provided~~
9 ~~herein.~~

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

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

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

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

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

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

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

27 (d) The lawyer or law firm shall:

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

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

32 (d)(3) establish an IOLTA account with ~~any~~ an eligible financial institution that has
33 voluntarily chosen to offer and maintain IOLTA accounts, and;

34 (d)(3)(A) is authorized by federal or state law to do business in Utah_;

35 (d)(3)(B) is insured by the Federal Deposit Insurance Corporation or its equivalent_;
36 ~~and~~

37 (d)(3)(C) ~~that~~ complies with Rule 1.15 (a) of the Utah Rules of Professional Conduct;
38 and

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

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

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

55 ~~(d)(4)(C) to transmit to the depositing lawyer or law firm a periodic account~~
56 ~~statement for their IOLTA account reflecting the amount of interest paid to the~~
57 ~~Foundation, the rate of interest applied, the average account balance for the period for~~
58 ~~which the interest was earned, and such other information as is reasonably required by~~

59 ~~the Foundation~~ a report in accordance with normal procedures for reporting to
60 depositors;

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

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

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

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

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

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

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

Draft: January 29, 2008

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

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

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

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

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

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

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

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

113 (f)(3) A daily financial institution repurchase agreement shall be fully collateralized by
114 the United States Government Securities and may be established only with an eligible
115 institution that is "well capitalized" or "adequately capitalized" as those terms are
116 defined by applicable federal statutes and regulations. An open-end money-market
117 fund shall be invested solely in the United States Government Securities or repurchase

118 agreements fully collateralized by United States Government Securities, shall hold itself
119 out as a "money-market fund" as that term is defined by federal statutes and regulations
120 under the Investment Company Act of 1940 and, at the time of the investment, shall
121 have total assets of at least two hundred fifty million dollars (\$250,000,000).

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

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

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

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

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

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

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

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

155 (hi) On or before September 1 of each year, any lawyer admitted to practice in Utah
156 shall certify to the Foundation, in such form as the Foundation shall provide ("IOLTA
157 Certification Form"), that the member is in compliance with, or is exempt from, the
158 provisions of this rule. If the lawyer or law firm maintains an IOLTA account, the lawyer
159 shall certify the manner in which the lawyer accounts for the interest on clients' trust
160 accounts. The IOLTA Certification Form shall include the financial institution, account
161 numbers, name of accounts and such other information as the Foundation shall require.
162 If the lawyer is exempt from the IOLTA program, the lawyer must still submit an IOLTA
163 Certification Form annual to certify to the Foundation that they are exempt from the
164 provisions in this Rule. Each lawyer shall keep and maintain records supporting the
165 information submitted in the IOLTA Certification Form. The lawyer shall maintain these
166 records for a period of five years from the end of the period for which the IOLTA
167 Certification Form is filed, and these records shall be submitted to the Foundation upon
168 written request. Failure by the lawyer to produce such records within thirty days after
169 written request by the Foundation constitutes a rebuttable presumption that the lawyer
170 has not complied with these rules.

171 (i)(1) If the IOLTA Certification Form is timely filed, indicating compliance, there will
172 be no acknowledgement. Should an IOLTA Certification Form filed by a lawyer fail to
173 evidence compliance, the Foundation shall contact the lawyer and attempt to resolve
174 the non-compliance administratively.

175 (i)(2) The Foundation shall furnish annually to the Utah Supreme Court a list of all
176 licensed Utah lawyers who have not timely filed an IOLTA Certification Form and any
177 lawyers with whom the Foundation has been unable to administratively resolve an

178 impediment to the proper filing of an IOLTA Certification Form or the proper compliance
179 with Rule 14-1001. IOLTA.

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

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

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

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

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

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

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

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

206 (j)(3) the lawyer or law firm petitions for and receives a written exemption from the
207 Foundation that compliance with this rule would create an undue hardship on the lawyer

208 and would be extremely impractical, based on geographic distance between the
209 lawyer's principal office and the closest depository institution which is participating in the
210 IOLTA program.

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

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

216 (j)(1) The Foundation shall have general supervisory authority over the
217 administration of the IOLTA funds, subject to the continuing jurisdiction of the Supreme
218 Court.

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

226 (j)(3) The Foundation shall be responsible to present annually to the Supreme Court
227 a status report on activities of the Foundation and compliance with these rules.

228 (j)(4) The Foundation shall be responsible to make disbursements from the IOLTA
229 program funds, including current and accumulated net earnings, by grants,
230 appropriations and other appropriate measures, as outlined in the articles and by-laws
231 for the organization.

232 (j)(5) The Foundation shall promulgate such other rules, procedures, reports and
233 forms that are necessary or advisable for the proper implementation of the foregoing
234 rules.

235 (km) All lawyers who maintain accounts provided for in this rule must convert their
236 client trust account(s) to interest-bearing account(s) with the interest paid to the
237 Foundation no later than six months from the date of order adopting this rule, unless the

Draft: January 29, 2008

238 lawyer has been granted exemption from this Court as allowed in paragraphs (fg) or (hj)
239 of this rule. Every lawyer practicing or admitted to practice in Utah shall, as a condition
240 thereof, be conclusively deemed to have consented to the reporting requirements
241 mandated by this rule.
242