

Lon A. Jenkins (Utah State Bar No. 4060)
President, Utah Bar Foundation
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
Email: ljenkins@rqn.com

IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:

UTAH BAR FOUNDATION,

Petitioner.

**PETITION TO MODIFY RULE
GOVERNING THE UTAH
IOLTA PROGRAM**

In 1983, this Court created the Utah IOLTA Program (Interest On Lawyers' Trust Accounts), In the Matter of Interest on Lawyers' Trust Accounts, 672 P.2d 406 (Utah 1983). The IOLTA program allows lawyers holding client funds to place such funds, under certain circumstances, in an interest-bearing account. The interest earned is directed to the IOLTA Program which is administered by the Utah Bar Foundation ("Foundation").

The Foundation was incorporated on December 27, 1963. It received 501(c)(3)(not for profit designation) status in March of 1965. When the Court issued its opinion in 1983, the Court identified the Foundation as the administrator of the IOLTA program and the Foundation has administered the program since that time. The IOLTA Program is a member of the National Association of IOLTA Programs, an association that has been instrumental in developing rules and procedures for adoption and use by individual state IOLTA Programs.

As the Court is aware, the circumstances in which such funds can earn interest payable to the IOLTA Program are limited. If the funds are nominal in amount or expected to be held for only a short period of time, the funds should be placed in an interest-bearing account with the interest delivered to the IOLTA Program. If the funds are of sufficient amount, or held for a longer period of time such that the lawyer can foresee that net interest (interest after reduction for transaction costs) will be generated, the funds should be kept in a separate interest-bearing account and the interest should be delivered to the client.

On June 27, 2005, the Court adopted a rule to supplement the administration of the Utah IOLTA Program. Prior to that time, Utah lawyers could affirmatively "opt out" of the Utah IOLTA Program. After June 27, 2005, the program became mandatory: all Utah attorneys who are not exempt from Utah IOLTA Program (those exemptions are identified in the rule), must be enrolled in the program. In addition, the June 2005 supplement to the rule provided a specific definition of when net income might be derived on behalf of the client and therefore not available to be administered as part of the IOLTA Program. Moreover, the June 2005 supplement to the rule imposed an affirmative obligation on attorneys to timely review the status of their IOLTA accounts to determine if circumstantial changes have occurred. Finally, the June 2005 supplement to the rule mandated that attorneys deposit IOLTA funds only in financial institutions that satisfy certain enumerated requirements respecting reporting, interest rates, insurance and account administration.

Since June 2005, the Utah Bar Foundation has worked diligently to educate attorneys, law firms, law firm administrators and financial institution personnel regarding compliance with

the IOLTA Rule. In addition, the Foundation staff has worked tirelessly to assist attorneys and law firms in coming into compliance with the mandatory provisions of the IOLTA Rule.

As part of its continuing effort to make the IOLTA Rule an effective means of carrying out the mandate and mission of the Utah IOLTA Program, the Utah Bar Foundation, pursuant to this Petition, seeks to further modify the rule to add an enforcement provision to compel compliance with the rule by non-compliant attorneys. In addition, the Foundation seeks to add provisions to the rule to require that financial institutions which voluntarily choose to offer IOLTA accounts comply with, among other things, the interest rate comparability provision of the rule as supplemented in June 2005.

The proposed modification to the rule is attached to this Petition as Exhibit A. The modifications include:

1. A procedure and stated guidelines to be employed by the Foundation to petition the Court to administratively suspend attorneys who are not in compliance with the IOLTA Rule;
2. Identification of permissible products that can be used for deposit of IOLTA funds and of allowable reasonable service fees on IOLTA accounts for those financial institutions which choose to offer IOLTA accounts;
3. A definition of what constitutes a comparable rate on IOLTA checking accounts and an option to pay a "safe harbor" rate of 70% of the Federal Funds Reserve Rate on funds that otherwise qualify for the investment options; and
4. A specific provision clarifying that the Utah Bar Foundation can determine (i) which financial institutions are eligible for the deposit of IOLTA funds and (ii) whether financial

institutions, on an ongoing basis, are satisfying the IOLTA account requirements set forth by the Foundation, if a financial institution chooses to offer IOLTA accounts.

The proposed modifications have been reviewed by the National Association of IOLTA Programs Technical Assistance Committee as well as the Commission Counsel for the American Bar Association's Commission on Interest on Lawyers' Trust Accounts Program. These groups provided helpful insight and assistance in the drafting of the proposed modifications and believe that the proposed rule modifications will provide substantial benefit in the administration of the Utah IOLTA Program.

CONCLUSION

For the foregoing reasons, the Utah Bar Foundation respectfully requests the Court to adopt the proposed modifications to the IOLTA Rule attached hereto as Exhibit A.

DATED this 7th day of January, 2008.



Lon A. Jenkins (Utah Bar No. 4060)
President, Utah Bar Foundation
Ray, Quinney & Nebeker, P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543