

**Interest
on
Lawyers
Trust
Account
Board**

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Alfred J. Azen, *Executive Director*

Legal Authorization:

Supreme Court Order No. 252 (Disciplinary Docket No. 3, July 17, 1996)
Rule 1.15, Pennsylvania Rules of Professional Conduct

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History/Background

The Interest on Lawyers Trust Account (IOLTA) program was first established in 1988 as a voluntary means to raise money to provide civil legal services to the poor and disadvantaged of Pennsylvania. With the issue of Supreme Court Order 252, Disciplinary Docket No. 3 on July 17, 1996, this program became mandatory.

The program works as follows: clients often ask attorneys to hold particular sums of money for them. When this involves a large amount of money or a lengthy period of time, attorneys invest the money for their clients. When the amount is small or will be held for a relatively short period of time, however, investing is not practical. It is these funds which the IOLTA program targets.

These small or short-term funds are deposited into special, interest-bearing IOLTA accounts at financial institutions which have been approved by the Supreme Court. On a quarterly basis, the financial institutions transfer the interest from these accounts to the Pennsylvania Interest on Lawyers Trust Account Board, which administers the program. The board, upon approval from the Supreme Court, distributes the funds to non-profit organizations, law school-administered clinics and administration of justice projects that provide civil legal services free of charge to the poor and disadvantaged.

Attorneys may apply for exemption from IOLTA requirements. This is usually granted when attorneys infrequently handle fiduciary funds or when the service charges on an IOLTA account routinely and significantly exceed the interest that might be generated by the account. Currently, the IOLTA Board has established that accounts with an average daily balance of \$3,500 or less over a twelve-month period (higher for accounts at banks that assess higher service charges) will be exempted from the requirements. Other exemption requests are considered on a case by case basis.

Revenues gained by the IOLTA program are affected by several factors, including interest rates, bank service charges, attorney compliance and the economy in general. Statistics for the fund's first year, however, show that the fund nearly doubled its revenues to about \$4.7 million. This figure could increase as more attorneys begin to comply with requirements.

The IOLTA Board

The IOLTA Board is comprised of nine members who are appointed by the Supreme Court. Appointments are made based upon recommendation from the Pennsylvania Bar Association, which provides the Court with three nominees for each vacancy. The chairman of the board is appointed by the Supreme Court. Members serve terms of three years and may serve maximums of two consecutive terms.

Attorney Compliance

To assure attorney compliance with the IOLTA program requirements, attorneys must report their fiduciary accounts on the attorney fee form, which is filed annually with the Disciplinary Board of the Supreme Court. Follow-up with attorneys is made if the data on the form does not match the IOLTA Board's records.

Rules & Regulations for IOLTA

To assist attorneys and others in learning the requirements under the new IOLTA program, the IOLTA Board has published a booklet entitled *Rules & Regulations for IOLTA*. This booklet has been distributed to bar associations, bar leaders, and attorneys requesting information on IOLTA requirements. It will also be mailed yearly to newly licensed attorneys in Pennsylvania.

IOLTA Grants

Under Rule 1.15 of the Rules of Professional Conduct, IOLTA program funds may be used for the following purposes:

- providing civil legal assistance to the poor and disadvantaged in Pennsylvania
- educational legal clinical programs and internships administered by law schools located in Pennsylvania
- administration and development of the IOLTA program in Pennsylvania
- the administration of justice in Pennsylvania.

Board policy states that IOLTA funds may not be used to provide legal assistance with respect to any of the following purposes:

- fee-generating cases
- the defense of any criminal prosecution
- civil actions brought against an official of the court or against a law enforcement official for the purpose of challenging the validity of a criminal conviction
- advancement of any political party or association or candidate for any public office or to support or oppose any ballot question
- support of activities intended to influence the issuance, amendment or revocation of any executive or administrative order or regulation or to influence the introduction, amendment, passage or defeat of any legislation
- seeking the freedom to choose abortion or the prohibition of abortion.

Upon careful consideration the board, with Supreme Court approval, has decided on the following priorities for distribution of funds:

- Before any allocation of funds is made, \$300,000 will be deducted annually for administrative expenses associated with operation of the program.
- After this initial deduction, the first \$5 million generated by the program will be distributed as follows:
 - 85% to legal services programs
 - 15% to qualified law school clinical and internship programs.
- Income between \$5.3 million and \$7.3 million will be allocated in the following manner:
 - 50% to legal services programs
 - 50% to law school clinical and internship programs.
- Any income over \$7.3 million will be distributed to legal services programs and administration of justice programs.

Grant Process

In December of each year, the IOLTA Board will project its expected annual revenues for the upcoming fiscal year grant cycle (July 1 - June 30). In mid-January the board will announce the availability of funds.

Grant applications must be made to the board by early February. The board will then review all requests and submit its recommendations to the Supreme Court in late May. Upon approval by the Court, grant applicants will be notified and grant agreements executed with the successful organizations and law schools.

Applicant Qualifications

The IOLTA Board has determined the following qualifications for prospective applicants to be considered for an IOLTA grant:

Legal Services Organizations

Organizations must:

- be not-for-profit Pennsylvania corporations
- be tax exempt under section 501(c)(3) of the Internal Revenue Code
- operate primarily within Pennsylvania
- have as their primary purpose the provision of civil legal services without charge.

Organizations may provide *pro bono* legal services directly and/or administer provision of services.

Law Schools

Law schools must meet the following requirements:

- the funds must be used to address the current unmet civil legal needs of the poor, organizations assisting the poor or other charitable organizations
- the schools must consult with local area *pro bono* or legal services programs that provide free or low-fee legal services to the poor
- the funds must be used for live-client or other real-life practice experience
- the school must demonstrate its own funding participation for clinical and internship programs.

Other factors considered by the board when reviewing law school applications include whether:

- the clinical/internship program is for credit
- specific and measurable training goals and objectives are defined

- the IOLTA-funded program is integrated with the school's curriculum
- the school's standing faculty has made an articulated commitment to the IOLTA-funded program
- the school has an articulated *pro bono* or public service policy
- the funds are being used to expand clinical educational opportunities for students and not simply to replace existing financial commitments by the law schools.

Administration of Justice

The board has not yet defined this grant category.

Interim Grant Program

Because the Lawyer Trust Account Board, the board which administered the previous, voluntary IOLTA program, was in the process of awarding its grants when the mandatory program went into effect, an interim grant program was approved by the Supreme Court. Grants totaling \$1,733,227 are providing funding for legal services organizations from December 1, 1996, through June 30, 1997. This program has allowed organizations to continue their operations while the new board develops grant criteria for law schools.

Contact Person

Anyone with questions regarding the IOLTA program or who wishes to learn more about it may contact Executive Director Alfred J. Azen at 717-238-2001 or at Pennsylvania Interest on Lawyers Trust Account Board; 115 State Street; P.O. Box 1025; Harrisburg, PA 17108-1025.

