

2003 Membership:

Gerald A. McHugh, Jr., Esq., *Chairman**
David E. Lehman, Esq. , *Chairman***
Richard I. Thomas, Esq., *Vice Chairman+*
Hubert X. Gilroy, Esq.++
Lewis F. Gould, Jr., Esq.
Kenneth M. Jarin, Esq.
Maureen P. Kelly, Esq.++
Honorable William P. Mahon, Esq.+
M. Mark Mendel, Esq.
Sallie Updyke Mundy, Esq.*
Carl Oxholm, III, Esq.
Ernestine Watlington*

Staff:

Alfred J. Azen, *Executive Director*

- * Term expired 9-1-03
- ** Appointed chairman effective 9-1-03
- + Appointed vice chairman effective 9-1-03
- ++ Effective 9-1-03

Legal Authorization:

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

About the Board

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. It is the job of the IOLTA Board to administer the program, collecting and managing the funds received and awarding grants to nonprofit organizations, law school clinical and internship programs, and *pro bono* programs.

The IOLTA Board is comprised of nine members appointed by the Supreme Court. Members serve terms of three years and may serve maximums of two consecutive terms.

Interest on Lawyers Trust Account Board

115 State Street
P. O. Box 1025
Harrisburg, PA 17108
(717) 238-2001
(888) 724-6582
fax (717) 238-2003
e-mail paiolta@pcourts.us
www.paiolta.org

How the IOLTA Program Works

Clients often ask attorneys to hold particular sums of money for them. When this involves a large amount 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 that the IOLTA program targets.

These small or short-term funds are deposited into special interest-bearing IOLTA accounts at financial institutions that 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 nonprofit 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.

Additional Funding

Effective November 1, 2002, IOLTA began receiving income from a second major source. The Access to Justice Act (AJA), part of Act 122 of 2002, provides for a \$10 surcharge to be placed on all civil filings and on criminal filings where a conviction or guilty plea is obtained. A percentage of this surcharge is placed into the Access to Justice Account for the

IOLTA Board to provide grants to legal services organizations. (Under a sunset provision in the statute, the AJA is scheduled to expire November 1, 2007, unless reviewed by the legislature.)

The IOLTA Board also receives a small amount of funding from voluntary lawyer contributions. These contributions are used to increase organized *pro bono* representation in Pennsylvania.

Pennsylvania Lawyers Fund for Client Security

Plagued by historically low interest rates on IOLTA accounts over the past year, funding for the IOLTA Board has reached critical levels. Grants for law school clinics and internships declined significantly, and the board used nearly all of its cash reserve in order to fund its grants. With interest rates likely to remain low and the board in dire need of additional funds, the Supreme Court authorized a one-time transfer of \$1.4 million from the Pennsylvania Lawyers Fund for Client Security (PLFCS) to the IOLTA Board. This funding will allow the board to reestablish its cash position as well as provide stabilizing grants to the law school clinics and internships. It will also allow the board time to explore potential alternative funding sources or policy alternatives to stabilize the law school grants program.

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.

Banks

Participation by financial institutions in the IOLTA program is voluntary. Since attorneys must

have IOLTA accounts if they handle qualified funds, however, banks that do not offer IOLTA accounts risk losing their attorney customers.

To ease the administrative burden that comes with offering IOLTA accounts, the IOLTA Board initiated an automated clearinghouse (ACH) service for smaller banks. This service is available at no cost to financial institutions that do not assess IOLTA service charges and that have 50 or fewer IOLTA accounts. Under the ACH service, the IOLTA Board's staff, through the use of the Federal Reserve's ACH system, initiates the transfer of IOLTA interest from individual attorney/law firm IOLTA accounts to the IOLTA Board's account.

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.

This includes the full range of legal services needed for the representation of a client, including brief service, litigation or representation of a class of similarly situated eligible clients, and other advocacy.

The board also seeks to assure the geographical dispersion of IOLTA grant awards to legal services organizations and encourages law schools to reach beyond the physical locations of the schools when providing externship opportunities for their law students.

Board policy states that IOLTA funds may not be used to provide legal assistance for 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 (not to include AJA or PLFCS funds):

- Before any allocation of funds is made, the estimated administrative expenses associated with operation of the program will be deducted (currently \$300,000).
- After this initial deduction, \$5 million 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 at the board's discretion and upon approval by the Supreme Court.

Grant Process

In December of each year, the IOLTA Board projects its expected annual revenues for the upcoming fiscal year grant cycle (July 1 - June 30). Variations from projections are generally taken into consideration in subsequent grant cycles, although the board reserves the right to adjust current grants if actual IOLTA revenues are significantly below projections. In mid-January the board announces the availability of funds.

Grant applications must be made to the board by early February. The board reviews all requests and submits its recommendations to the Supreme Court in late March. Upon approval by the Court, grant applicants are 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 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.

Legal Service Organizations	\$6,006,015
Pennsylvania Law Schools	844,113
<i>Pro Bono</i> Grants	17,151

2003 Statistics

Grants totaling \$6,867,279 were awarded in fiscal year 2003-04 as follows:

The largest grant, \$5,010,915, was awarded to Pennsylvania Legal Services, which is an administrative and support organization that oversees a statewide system of legal aid programs (the Pennsylvania Legal Aid Network) that is staffed by professional poverty law lawyers.
AOPC