

# **IOLTA**

**INTEREST ON LAWYER TRUST ACCOUNTS**

## **Rule 412 SCACR**

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South Carolina  
**BAR FOUNDATION**  
 Lawyers Sustaining Justice

# Rule 412 SCACR

## INTEREST ON LAWYER TRUST ACCOUNTS (IOLTA) Program

The South Carolina Supreme Court created the Interest on Lawyer Trust Accounts or "IOLTA" program to provide funds for law-related public service projects and programs designed to improve the administration of justice. Rule 412, SCACR, governs the IOLTA program.

### **(a) Definitions. As used herein, the term:**

(1) "Nominal or short-term" describes funds of a client or third person that, pursuant to section (d) below, the lawyer has determined cannot provide a positive net return to the client or third person;

(2) "Foundation" means the South Carolina Bar Foundation, Inc.;

(3) "IOLTA account" means a trust account benefiting the South Carolina Bar Foundation established in an eligible institution for the deposit of pooled nominal or short-term funds of clients or third persons. The account product may be an interest-bearing checking account; a money market account with or tied to check-writing; a sweep account which is a government money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by United States government securities; or an open-end money market fund solely invested in or fully collateralized by United States government securities.

A) "Open-end money market fund" is a fund holding itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940 and, at the time of the investment, having total assets of at least \$250,000,000.

B) "United States government securities" are United States treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including obligations of Government Sponsored Enterprises.

(4) "Eligible Institution" means any bank, credit union or savings and loan association authorized by federal or state laws to do business in South Carolina and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or any successor insurance corporation(s) established by federal or state laws.

(5) "Reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, Federal deposit insurance fees, sweep fees and a reasonable IOLTA account administrative fee.

### **(b) Attorney Participation.**

(1) All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of the South Carolina Bar practicing law from an office or other business location within the state of South Carolina shall be deposited into one or more IOLTA accounts, except as provided in Rule 1.15 of Rule 407, South Carolina Appellate Court Rules, with respect to funds maintained other than in a bank account and as provided in section (i) below.

(2) A law firm of which the lawyer is a member may maintain the account on behalf of any or all lawyers in the firm.

### **(c) Depository Procedures.**

(1) The IOLTA account shall be established with an eligible institution that voluntarily choose to participate. Funds deposited in each IOLTA account shall be subject to withdrawal upon request and without delay, subject only to any notice period which the institution is required or permitted to reserve by law or regulation and as provided in Rule 1.15 regarding safekeeping of client property.

(2) The rate of interest or dividends payable on any IOLTA trust account shall be no less than:

A) the highest interest rate or dividend generally available from the institution to its non-IOLTA customers for each IOLTA account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and these factors do not include that the account is an IOLTA account. The institution also shall consider all product option types noted at (a)(3) for an IOLTA account offered by the financial institution to its non-IOLTA customers by either establishing the applicable product as an IOLTA account or paying the comparable interest rate or dividend on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product; or

B) an eligible institution may choose to pay a rate equal to the greater of 0.65% or 65% (the "index") of the federal funds target rate (the "benchmark") as of the first business day of the IOLTA remitting period, which rate is deemed to be net of allowable reasonable fees, on an IOLTA checking account. The index and benchmark are determined periodically, but not more frequently than every six months, by the Foundation to reflect an overall comparable rate for the South Carolina Bar Foundation. When applicable, the Foundation will express its benchmark in relation to the Federal Funds Target Rate.

(3) Eligible institutions may choose to pay rates higher than comparable rates described at (c) (2) above.

### **(d) Determination of Nominal or Short-Term Funds.**

(1) The lawyer shall exercise good faith judgment in determining upon receipt whether the funds of a client or third person are nominal or short-term. Client or third person funds shall be deposited in a lawyer's or law firm's IOLTA account unless the funds can earn income for the client in excess of the costs incurred to secure such income.

In the exercise of this good faith judgment and determining whether a client's funds can earn income in excess of costs of securing that income for the benefit of the client or third person, and thus provide a positive net return to the client or third person, the lawyer or law firm shall consider the following factors:

A) the amount of funds to be deposited;

B) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

C) the rates of interest or yield at financial institutions where the funds are to be deposited;

D) the cost of establishing and administering non-IOLTA accounts for the benefit of the client or third person, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;

E) the capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons; and

F) any other circumstances that affect the ability of the client's or third persons' funds to earn a net return for the client or third person.

The lawyer or law firm shall review its IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

(2) The determination of whether a client's or third person's funds are nominal or short-term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with ethical impropriety based on the exercise of such good faith judgment.

(3) Notification to the client is not required nor shall the client or third person have the power to elect whether nominal or short-term funds shall be placed in the IOLTA account.

(4) The provisions of section (c) shall not relieve a lawyer or law firm from an obligation imposed by Rule 1.15 of the Rules of Professional Conduct with respect to safekeeping of client property.

### **(e) IOLTA Refund Procedures.**

The Foundation shall establish procedures for the processing of refund requests for such instances as bank or lawyer error.

### **(f) Notice to Foundation.**

Lawyers or law firms shall advise the Foundation, at Post Office Box 608, Columbia, SC 29202-0608, by facsimile at (803) 779-6126, or in such other manner as the Foundation publishes in its materials is acceptable, of the establishment and closing of an IOLTA account for funds covered by this rule. Such notice shall include: the name of the institution where the IOLTA account is established; the IOLTA account number as assigned by the institution; the institution address; and the name and South Carolina Bar attorney number of the lawyer, or of each member of the South Carolina Bar in a law firm, practicing from an office or other business location within the state of South Carolina that has established the IOLTA account.

### **(g) Certification.**

Each member shall certify annually on the member's license fee statement submitted pursuant to Rule 410, South Carolina Appellate Court Rules, that the member is in compliance with the provisions of this rule or, pursuant to section (i) below, has been approved by the Foundation as exempt from the provisions of this rule.

### **(h) Remittance and Reporting Instructions.**

A lawyer or law firm depositing client funds in an IOLTA account shall direct the depository institutions to:

(1) calculate and remit interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice, monthly to the Foundation, which shall be the sole beneficial owner of the interest or dividends generated by the accounts;

(2) transmit monthly to the Foundation a report, listing by account the name of the lawyer or law firm for whom each remittance is made, the lawyer's or law firm's IOLTA account number as assigned by the institution, the rate and type of interest or dividend applied, the average account balance for the reporting period or the other amount from which interest or dividends are determined, the amount of each remittance, and the amount and type of any service charges or fees assessed during the remittance period, and the net amount of interest remitted for the period;

(3) transmit at least quarterly to the depositing lawyer or law firm, a report or statement in accordance with normal procedures for reporting to its depositors.

"Reasonable fees" as defined in (a) (5) may be deducted from interest or dividends on an IOLTA account provided that such charges or fees shall be calculated in accordance with an eligible

institution's standard practice for non-IOLTA customers. No other fees or charges shall be assessed against the interest on an IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account." Fees or charges in excess of the interest or dividend earned on the account for any month shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the account. Eligible institutions may elect to waive any or all fees on IOLTA accounts.

**(i) Exempt Accounts.**

The Foundation will establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short-term when the lawyer's or law firm's account cannot reasonably be expected to produce or has not produced over time an interest income net of reasonable service charges or fees.

**(j) Program Administration.**

The Foundation shall, in accordance with its charter and by-laws, receive, administer, invest, disburse and separately account for all funds remitted to it through this program.