

### Interest On Lawyer Account (IOLA) Program

*New York law encourages attorneys who have been entrusted with client and escrow funds to make those funds productive in interest-bearing bank accounts. Section 497 of the Judiciary Law also authorizes practitioners to utilize special bank accounts (sometimes called IOLA bank accounts for the deposit of "qualified funds" belonging to law clients and escrow beneficiaries in the practice of law.*

*An IOLA bank account is a species of the attorney trust account that is required by court rule (DR 9-102). Section 497 of the Judiciary Law grants broad discretion to attorneys to participate in the IOLA program. It also immunizes them from disciplinary and civil liability should they determine not to use IOLA bank accounts.*

*The IOLA statute requires participating banks to remit the earned interest on IOLA bank accounts, net after bank service charges and fees, to the IOLA state agency. That fund's Trustees distribute the pooled revenue, in the form of grants, to organizations which provide civil legal services to needy persons and projects which improve the administration of justice in New York. The Trustees' regulations are reported at 21 NYCRR Part 7000.*

*"Qualified funds" are defined in subdivision (2) of section 497, and IOLA's Trustees have determined that a deposit of client funds is "qualified", for purposes of the statute, if the escrow deposit would not generate \$150 in interest.*

*The offices of the IOLA Fund are located at 36 West 44<sup>th</sup> Street, New York, NY 10036. Telephone: (800) 222-IOLA (4652). Fax: (212) 944-9836.*

*The constitutionality of IOLA-type programs is the subject of pending litigation in the federal courts. See, Phillips v. Washington Legal Foundation, Inc., 118 S. Ct. 1925 (1998).*

#### Judiciary Law §497

1. An "interest on lawyer account" or "IOLA" is an unsegregated interest-bearing deposit account with a banking institution for the deposit by an attorney of qualified funds.

2. "Qualified funds" are moneys received by an attorney in a fiduciary capacity from a client or beneficial owner and which, in the judgment of the attorney, are too small in amount or are reasonably expected to be held for too short a time to generate sufficient interest income to justify the expense of administering a segregated account for the benefit of the client or beneficial owner. In determining whether funds are qualified for deposit in an IOLA account, an attorney may use as a guide the regulation adopted by the board of trustees of the IOLA fund pursuant to subdivision four of section ninety-seven-v of the state finance law.

2-a. "Funds received in a fiduciary capacity" are funds received by an attorney from a client or beneficial owner in the course of the practice of law, including but not limited to funds received in an escrow capacity, but not including funds received as trustee, guardian or receiver in bankruptcy.

3. A "banking institution" means a bank, trust company, savings bank, savings and loan association, credit union or foreign banking corporation whether incorporated, chartered, organized or licensed under the laws of this state or the United States, provided that such banking institution conducts its principal banking business in this state.

4. (a) An attorney shall have discretion, in accordance with the code of professional responsibility, to determine whether moneys received by an attorney in a fiduciary capacity from a client or beneficial owner

shall be deposited in non-interest, or in interest-bearing accounts. If in the judgment of an attorney any moneys received are qualified funds, such funds shall be deposited in an IOLA account in a banking institution of his or her choice offering such accounts.

(b) The decision as to whether funds are nominal in amount or expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm. Ordinarily, in determining the type of account into which to deposit particular funds held for a client, a lawyer or law firm shall take into consideration the following factors:

(i) the amount of interest the funds would earn during the period they are expected to be deposited;

(ii) the cost of establishing and administering the account, including the cost of the lawyer or law firm's services;

(iii) the capability of the banking institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(c) All qualified funds shall be deposited in an IOLA account unless they are deposited in:

(i) a separate interest bearing account for the particular client or client's matter on which the interest will be paid to the client; or

(ii) an interest bearing trust account at a banking institution with provision by the bank or by the depositing lawyer or law firm for computation of interest earned by each client's funds and the payment thereof to the client.

(d) Notwithstanding the deposit requirements of this subdivision, no attorney or law firm shall be liable in damages nor held to answer for a charge of professional misconduct for failure to deposit qualified funds in an IOLA account.

5. No attorney or law firm shall be liable in damages nor held to answer for a charge of professional misconduct because of a deposit of moneys to an IOLA account pursuant to a judgment in good faith that such moneys were qualified funds.

6. a. An attorney or law firm which receives qualified funds in the course of its practice of law and establishes and maintains an IOLA account shall do so by (1) designating the account as "(name of attorney/law firm IOLA account)" with the approval of the banking institution; and (2) notifying the IOLA fund within thirty days of establishing the IOLA account of the account number and name and address of the banking institution where the account is deposited.

b. The rate of interest payable on any IOLA account shall be not less than the rate paid by the banking institution on similar accounts maintained at that institution, and the banking institution shall not impose on such accounts any charges or fees greater than it imposes on similar accounts maintained at that institution.

c. With respect to IOLA accounts, the banking institution shall:

(i) Remit at least quarterly any interest earned on the account directly to the IOLA fund, after deduction of service charges or fees, if any, are applied.

(ii) Transmit to the IOLA fund with each remittance a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of net interest remitted from such account.

(iii) Transmit to each attorney or law firm which maintains an IOLA account a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted from such account.

(iv) Be permitted to impose reasonable service charges for the preparation and issuance of the statement.

(v) Have no duty to inquire or determine whether deposits consist of qualified funds.

7. a. Payment from an IOLA account to or upon the order of the attorney maintaining such account shall be a valid and sufficient release of any claims by any person or entity against any banking institution for any payments so made.

b. Any remittance of interest to the IOLA fund by a banking institution pursuant to this section shall be a

valid and sufficient release and discharge of any claims by any person or entity against such banking institution for any payment so made, and no action shall be maintained against any banking institution solely for opening, offering, or maintaining an IOLA account, for accepting any funds for deposit to any such account or for remitting any interest to the IOLA fund.

8. Nothing contained in this section shall be construed to require any banking institution to offer, accept or maintain IOLA accounts.

9. All papers, records, documents or other information identifying an attorney, client or beneficial owner of an IOLA account shall be confidential and shall not be disclosed by a banking institution except with the consent of the attorney maintaining the account or as permitted by any law, regulation or administrative requirement.

10. An attorney or law firm that can establish that compliance with subdivision six of this section has resulted in any banking service charges or fees shall be entitled to reimbursement of such expense from the interest on lawyer account fund by filing a claim with supporting documentation with the fund.

### **State Finance Law Section 97-v.**

1. There is hereby established in the custody of the state comptroller a fiduciary fund to be known as the New York interest on lawyer account (IOLA) fund. A board of trustees shall be appointed to administer the New York IOLA fund.

2. The board shall consist of fifteen members appointed by the governor. All members shall be residents of the state of New York and shall be knowledgeable and supportive of the delivery of civil legal services to the poor and the improvement of the administration of justice. At least eight of the members shall be attorneys licensed to practice law in the state of New York. Two members shall be appointed upon the recommendation of the temporary president of the senate, at least one of whom shall be an attorney; two members shall be appointed upon the recommendation of the speaker of the assembly, at least one of whom shall be an attorney; one member shall be appointed upon the recommendation of the minority leader of the senate; and one member shall be appointed upon the recommendation of the

minority leader of the assembly. Two members shall be appointed upon the recommendation of the court of appeals, each of whom shall be an attorney. The governor shall designate one of the members of the board as chairman.

a. The term of office shall be three years, provided, however, that of the members first appointed, five shall be appointed for terms expiring on December thirty-first, nineteen hundred eighty-four, five shall be appointed for terms expiring on December thirty-first, nineteen hundred eighty-five and five shall be appointed for terms expiring on December thirty-first, nineteen hundred eighty-six. Vacancies shall be filled in the manner of original appointments for the remainder of the term.

b. The members shall receive no compensation for their services as members, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

c. The members shall be considered employees of the state for the purposes of section seventeen of the public officers law.

d. No member of the senate or assembly shall be eligible to serve as a member of the board.

3. a. The board shall have the power to receive, hold and manage any moneys and property received from any source. It shall distribute funds as grants and contracts to not-for-profit tax exempt entities for the purpose of delivering civil legal services to the poor and for purposes related to the improvement of the administration of justice, including, but not limited to, the provision of civil legal services to groups currently underserved by legal services, such as the elderly and the disabled, and the enhancement of civil legal services to the poor through innovative and cost-effective means, such as volunteer lawyer programs and support and training services.

b. No less than seventy-five percent of the total funds distributed in any fiscal year shall be allocated to not-for-profit tax-exempt providers for the purpose of delivering civil legal services to the poor. The funds distributed annually to legal services providers shall be allocated according to the geographical distribution of poor persons throughout the state based on the latest

available figures from the United States department of commerce, bureau of census, as prescribed by rules and regulations of the board of trustees.

c. The remaining funds shall be allocated for purposes related to the improvement of the administration of justice, including, but not limited to, the provision of civil legal services to groups currently underserved by legal services, such as the elderly and the disabled, and the enhancement of civil legal services to the poor through innovative and cost-effective means, such as volunteer lawyer programs and support and training services.

d. The board shall adopt rules and regulations for the administration of the IOLA fund to carry out the purposes and provisions of this section and of section four hundred ninety-seven of the judiciary law. Such regulations shall be adopted in accordance with article two of the state administrative procedure act.

e. The board may employ and remove such personnel as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available therefor and may allocate funds for the actual and necessary nonpersonnel administrative costs of the program. No more than ten percent of the funds available in any fiscal year shall be spent on personnel and related services, and on necessary nonpersonnel administrative costs of the program provided, however, that such limitations may be waived by the board by the adoption of a resolution and such waiver shall remain in effect until the board determines by a subsequent resolution that the program is fully operational.

f. The board shall insure that grants and contracts are made with not-for-profit providers of civil legal services for the poor to provide stable, economical and high quality delivery of civil legal services to the poor throughout the state.

g. Notwithstanding any statute or rule to the contrary, the board shall maintain all papers, records, documents or other information identifying an attorney, client or beneficial owner of an IOLA account on a private and confidential basis and shall not disclose such information unless such disclosure is necessary to accomplish the purposes of this section and section four

hundred ninety-seven of the judiciary law, or unless disclosure is pursuant to compulsory legal process.

h. All payments from the IOLA fund shall be made by the state comptroller upon certification and authorization of the board of trustees of the fund.

4. a. The board of trustees shall establish by regulation a specific dollar amount equivalent to the cost of administering a segregated interest bearing account for a client or beneficial owner. This dollar amount may be used by participating attorneys as a guide when determining whether the moneys are qualified funds.

b. The board of trustees shall also establish by regulation the qualifications of a recipient of funds and the nature and scope of civil legal services to be provided to poor persons by the funds disbursed under this section.

5. If it shall appear to the satisfaction of the board of trustees that, because of a mistake of fact, error in calculation or erroneous interpretation of the provisions of this chapter or of section four hundred ninety-seven of the judiciary law, or of any regulation adopted by the board, a banking institution has remitted to the IOLA fund any moneys not required by such provisions to be remitted, the board shall refund such moneys upon application of any aggrieved party. Any such refund shall be paid from the IOLA fund without interest and without the deduction of any service charge, and shall be and constitute a full satisfaction and discharge of any claim for such refund.