

THE LOUISIANA LAWYER
and
OTHER PEOPLE'S
MONEY

A Guide to Managing Client Funds

LOUISIANA BAR FOUNDATION
LOUISIANA STATE BAR ASSOCIATION
LOUISIANA ATTORNEY DISCIPLINARY BOARD
COREGIS INSURANCE ORGANIZATIONS
OFFICE OF LOSS PREVENTION, GILSBAR INC.

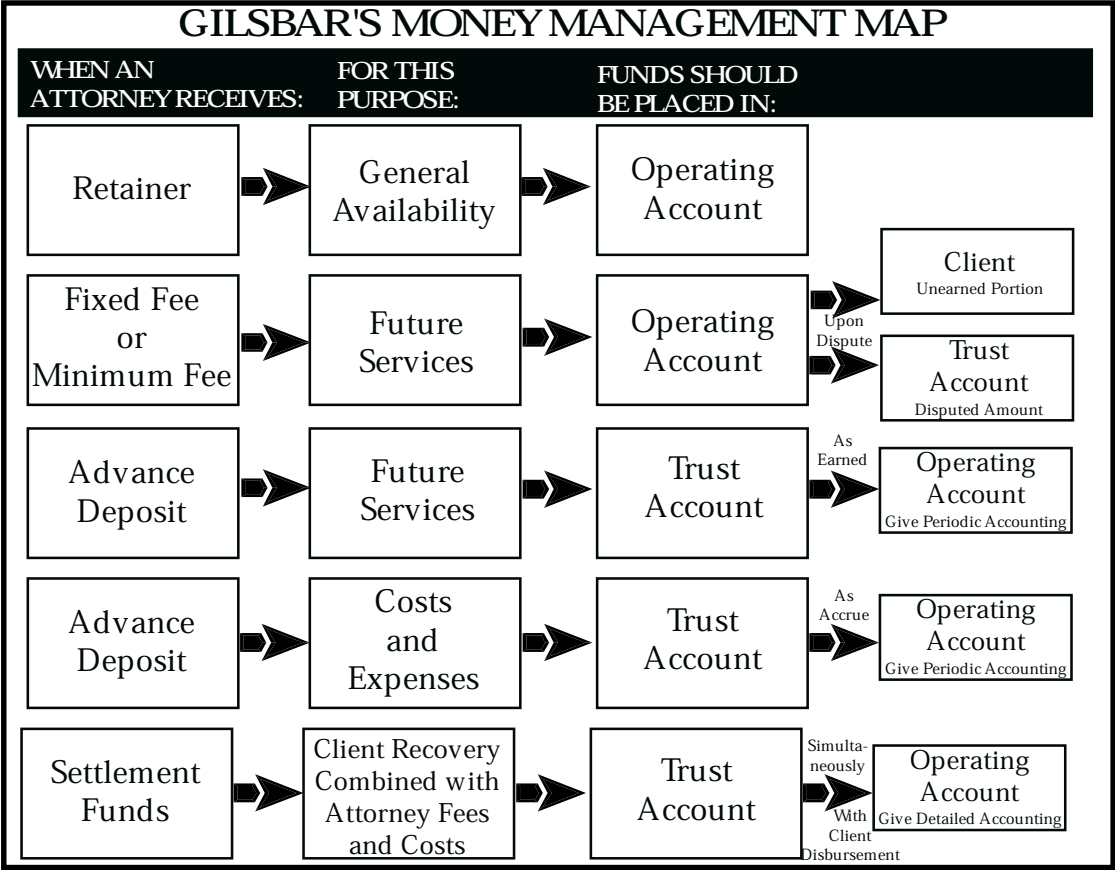


Figure 1

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A Guide to Managing Client Funds

A lawyer must keep client or third party funds in an account separate from the lawyer's account.

This simplistic rule seems easy enough to follow, right?

Wrong! Lawyers are being disciplined for failing to comply with this rule. Some lawyers are even losing their licenses to practice law because they have commingled client funds with the lawyer's funds, or they have converted client funds to their own use. And many lawyers have been publicly reprimanded for failing to provide a proper accounting to their clients and for failing to maintain accurate records.

This publication has been prepared to assist the Louisiana lawyer in the proper handling of client funds and the prevention of ethical violations.

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WHAT IS A LAWYER'S FIDUCIARY OBLIGATION?

The special relationship between a lawyer and a client gives rise to the fiduciary obligation to protect the client's interests and shelter the client from harm. In dealing with client funds, this fiduciary obligation imposes a duty upon the lawyer to hold the client's funds separate from the lawyer's own funds.

Funds held in a fiduciary capacity should be placed in accounts clearly identified as fiduciary in nature. Account titles such as "special account" or "costs account" (for costs advanced from clients) do not indicate that the funds are held in a fiduciary capacity. Proper titling is necessary for purposes of state law and FDIC insurance coverage. For example, if the lawyer's funds are seized or if the FDIC closes a bank, clients' funds held in improperly titled accounts would not receive the protection they would in properly titled fiduciary accounts.

Account names including words such as "estate," "escrow," "trust," "agent," or "trustee" establish the account as fiduciary. Lawyers should consult their banking officer for assistance in properly titling fiduciary accounts.

To further substantiate identification as a fiduciary account, ownership of funds must be documented in the bank's records, including signature cards, corporate resolutions and other records. When an account contains multiple clients' funds, documentation differs. The FDIC may look to the lawyer's records of ownership maintained outside of the bank if the account has been properly identified as a pooled trust account in the records of the financial institution.

WHAT TYPES OF ACCOUNTS ARE MAINTAINED BY A LAWYER?

Generally, lawyers should maintain at least two bank accounts: a trust account for client and third party funds, and an operating account for the lawyer's funds. Many lawyers also maintain additional separate accounts, such as payroll or petty cash accounts. Rule 1.15 of the Rules of Professional Conduct requires that attorneys hold clients' funds in separate accounts and in banking institutions in the state where the lawyers' office is situated. While a banking institution outside the state of Louisiana may be used, the rule provides that client consent must first be obtained.¹

Regardless of the number of accounts maintained, it is critical that each account be maintained separately, that clear accounting records of each account be kept, and that there be no commingling of the funds. The "commingling rule" has a single exception: The lawyer may deposit his own funds in a client trust account to establish the minimum sufficient funds required by a banking institution to maintain the account open and free of bank service charges, or to offset anticipated service charges.

A law practice may set up a trust account containing and commingling funds of more than one client or other party only under certain limited circumstances. Law practices may set up an interest-bearing account with interest being distributed to clients or third parties (through a

combination of savings and non-interest bearing checking account). The account may be under the law firm's own tax identification number into which they deposit all client funds with interest payable to their clients or third parties. All interest earned on such an account must be apportioned and paid to the beneficial owners of the principal amounts.

The lawyer is cautioned to avoid conversion of one client's funds to the use of a second client. This occurs by disbursing funds on behalf of the second client before the bank has collected the funds deposited on behalf of the second client. Lawyers should consult with banking officers on how to determine when deposits have been collected.

Funds which are nominal in amount or will be disbursed so quickly that it is impractical to account for and distribute interest may be deposited into a pooled clients' trust account established under Rule 1.15(d). The lawyer may determine whether to use an IOLTA account and/or set up a pooled account to pay interest to the clients. (See the IOLTA section of this booklet). It is left to the good faith discretion of each lawyer to decide in what circumstances this is practical after considering the in-office expenses of calculating and transferring interest to clients, and reporting the disbursed interest annually to the IRS.

It is common for lawyers to establish separate bank accounts for the benefit of a single client, estate, trust, case or other matter. Such accounts should be established under the tax identification number of the owner of the funds. Care should be taken to consult with the client about other funds in which the client may have an ownership interest deposited in the same banking institution. Under some situations the various funds on deposit may exceed the \$100,000 FDIC insurance limit. Since the FDIC insurance regulations on determining ownership are complex, lawyers should consult with their banking officers in order to fully protect client funds.

In addition to the trust account and the operating account, many lawyers and law firms maintain other specialized accounts. Some maintain separate payroll accounts to disburse compensation to lawyers and staff members. Maintaining a separate payroll account has a variety of benefits as it facilitates:

(1) limiting access to the account; (2) restricting the number of authorized signatories; and (3) accounting for payroll taxes.

Additionally, some law firms maintain petty cash accounts from which minor daily expenses are paid. Maintaining other accounts in a law office may simplify record-keeping, but care should be taken to keep these other accounts separate from the trust account.

n What Goes Into the Trust Account?

All funds in which a client or third party has an interest should be placed in trust accounts. Examples include:

- Funds to be held in escrow
- Succession funds
- Earnest money payments
- Settlement proceeds
- Unearned fees
- Advanced costs
- Disputed funds

Rule 1.5 (f) of the Rules of Professional Conduct provides guidelines for the depositing of fees and advances into the lawyer's trust account.²

An advance deposit against fees which have not yet accrued must be placed in the trust account. As fees are earned, funds may be transferred into the operating account. A periodic accounting to the client must be rendered for these funds.

Advanced deposits for costs and expenses must also be placed in the trust account until the costs and expenses accrue. As costs and expenses accrue the funds can be transferred into the operating account. A periodic accounting must also be rendered for these funds.

In the event of a fee dispute, funds are to be held in the trust account until the dispute is resolved. (See Figure 1 on the inside front cover.)

n What Goes Into the Operating Account?

Only those funds belonging to a lawyer or law firm should be placed in the operating account. The operating account is kept for lawyer or law firm funds which are used for the daily operation of the law office. The operating account is maintained separate from the trust account and may contain the following:

- General retainer fees
- Fixed lawyer fees
- Minimum fees paid for particular representation
- Earned fees
- Reimbursement amounts for costs and advances accrued
- Funds generated from law firm or lawyer properties

(Refer to Figure 1)

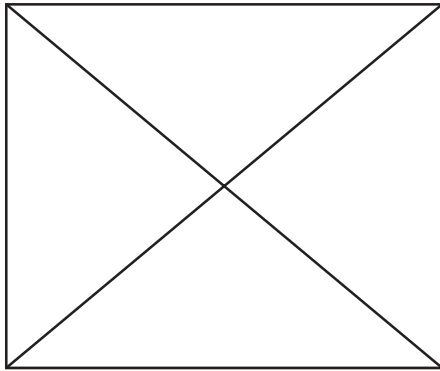
When a lawyer places client funds into the operating account (no matter how briefly), he has committed an ethical violation amounting to lawyer misconduct.³ Disciplinary proceedings may be warranted, and a lawyer may be faced with a public or private reprimand, suspension from the practice of law, or possibly disbarment. Thus, it is extremely important to prevent the commingling of client and lawyer funds.

WHAT ARE THE LAWYER'S OBLIGATIONS TO THE CLIENT?

n Prompt Notification, Disbursement and Accounting

Rule 1.15(b) of the Rules of Professional Conduct provides that upon receipt of funds in which a client (or third party) has an interest, the lawyer shall promptly notify the client (or third party). If a client or third party is entitled to receive funds, those funds should be promptly delivered to the client or third party, except as otherwise permitted by law or by agreement with the client. Furthermore, every lawyer should maintain a strict policy of promptly providing an appropriate accounting to each client for whom funds are received. Even though the rule states that an accounting is to be rendered "upon request by the client or third person...", lawyers should not wait for clients to ask for this information, but should send it as soon as feasible after funds are received.

An accounting is also necessary even when funds are not to be disbursed to a client. For example, if a lawyer receives a partial settlement check, these funds may be used to reimburse a lawyer for costs and expenses which have accrued. In this instance, though the client may not be receiving funds, the client has the right to an accounting which documents how the funds were distributed.



Lawyers who receive funds belonging to the client and fail to disburse such funds to the client have been disciplined as well as prosecuted.⁴ Such conduct has warranted disbarment and has contributed to the public's distrust of the legal profession.⁵ Moreover, failure to render an accounting is an ethical violation which may also result in disciplinary proceedings brought against a lawyer.⁶

The procedure is clear: promptly notify the client, disburse to the client what belongs to the client, and render an accounting. And if there is a question of what amount belongs to the client, hold the disputed amount in trust and explain this to the client. Don't deposit the funds, ignore the client, and let time go by. The case against you will grow faster than any interest can be earned!

WHAT RECORDS MUST A LAWYER MAINTAIN?

Rule 1.15(a) of the Rules of Professional Conduct imposes an obligation upon the Louisiana lawyer to maintain banking records for a minimum of five (5) years. The records to be maintained include:

- check stubs
- vouchers
- journals
- closing statements
- accounts
- statements of disbursement
(Rule 19, 28A {2})⁷

Further, the records must reflect:

- the date the funds were received and/or disbursed
- the amount of funds received and disbursed
- the source of the funds
- explanation for receipts, withdrawals, deliveries,
and disbursements

Keep in mind, however, that not all records can be destroyed after the five-year period. In many instances lawyers may need to retain records indefinitely in order to protect or defend themselves in the event a dispute regarding those records arises. For example, a disgruntled client may

dispute a lawyer's accounting records and make an allegation of fraud. If this happens, the lawyer who has saved records which can exonerate himself or herself is in a much better position than a lawyer without supporting documentation who must rely on memory.

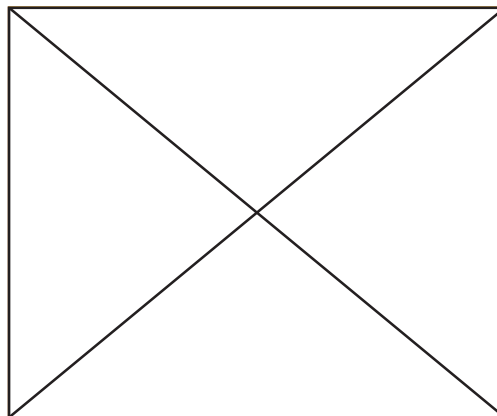
Lawyers must individually decide, on a case-by-case basis, whether or not records should be maintained beyond the five-year period. Client trust account records and canceled trust checks should be stored separate from other account records and canceled checks. Some helpful procedures which can be established in your law office include:

- Utilizing a different color for trust checks (for example, blue) and other checks (green or yellow)
- Maintaining trust account records in a separate filing cabinet in the office
- Maintaining trust accounts in a different financial institution than other accounts
- Keeping a separate ledger showing income and expenditures for the trust account
- Segregating trust account supplies and non-trust account supplies, and marking materials "TRUST" or "NON-TRUST."

CAN STAFF MEMBERS ASSIST THE LAWYER?

A lawyer's secretary or another designated employee can assist with the handling of the accounting matters for the law practice. However, it is unwise to turn over these procedures to one person for complete handling. Mistakes can be made for which the lawyer will be held responsible.

Delegating tasks to non-lawyer employees "is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product." ⁸ A lawyer who wrongfully allows a non-lawyer employee "to handle and distribute the client's money without close supervision and without any check by the lawyer upon the non-lawyer's judgment in this regard" has "defaulted upon his professional responsibility" and violated his or her ethical obligations. ⁹



The proper handling of client funds is a lawyer's obligation. Staff members should be closely supervised and instructed properly when it comes to law firm accounting matters. Having more than one trustworthy person verify receipts and disbursements, under the lawyer's guidance, is helpful in preventing mistakes (this operates as a "checks and balances" procedure). Frequent review and reconciliation of trust account records and documentation is recommended as well.

One good way for a lawyer to monitor his or her staff's handling of clients' and other funds is to instruct the staff to present bank statements to the lawyer unopened. The lawyer should examine the statements for unusual transactions and the cancelled checks for unusual signatures, payees and endorsements before returning the envelopes to the staff for reconciliation. Another way of monitoring is to require monthly reconciliations listing receipts, disbursements and

balances from each client and a reconciliation of the totals to the cash balance. All staff reconciliations should be examined by the lawyer for completeness and accuracy.

DISCIPLINARY CONCERNS

The Supreme Court has traditionally viewed violations of trust account rules as among the most serious ethical breaches. Commingling and conversion (theft) cases are a matter of high priority for the Louisiana Attorney Disciplinary Board and typically result in a baseline sanction of disbarment or lengthy suspension. Understanding and complying with Rules 1.15 and 1.5(f) are vital to the practitioner.

YOU CAN DO THIS RIGHT!

Handling client funds has been made easier with the amendment to Rule 1.5 of the Rules of Professional Conduct adding subsection (f) (the "where does the money go?" rule). Additionally, following the guidelines of Rule 1.15 and the IOLTA program have enabled lawyers to better handle the funds entrusted to their care. Lawyers whose practices do not have established procedures for the handling of client funds are encouraged to implement them today!

IOLTA ACCOUNTS-WHAT ARE THEY AND HOW DO THEY WORK?

n What is IOLTA?

IOLTA is an acronym for "Interest On Lawyers' Trust Accounts." The trust accounts which are subject to IOLTA as defined in Rule 1.15(d) are only "pooled clients' trust accounts" on which the lawyer is not collecting and disbursing interest to the clients. Client funds which the lawyer determines should be set up in an account for the benefit of the clients *are not* affected by the IOLTA rule. In circumstances in which the lawyer determines that the clients' funds are "nominal" in amount or may be kept for short periods of time, the Rules of Professional Conduct do not require that the lawyer place the funds in a segregated account for the exclusive benefit of that particular client. Rather, the lawyer is permitted to place these funds into the "pooled" trust account along with the funds of other clients since they will be kept for only a short period of time or the amounts are "nominal". This account should be used to segregate clients' funds regardless of how briefly the funds are in the fiduciary custody of the lawyer. A lawyer who does not receive and disburse these types of clients' funds does not need to open a pooled clients' trust account.

The Supreme Court of Louisiana adopted certain rules to govern the Interest on Lawyers' Trust Accounts (IOLTA) effective January 1, 1991.¹⁰ Under Rule 1.15 and the LSBA's IOLTA rules, pooled clients' trust accounts containing funds which have been determined to be nominal or short-term are to be enrolled in or exempted from the IOLTA program and must bear the tax identification number of the Louisiana Bar Foundation, an IRC §501(c)(3) tax-exempt organization. These accounts are to be established at banks which participate in the IOLTA program. The

Louisiana Bar Foundation, as program administrator, is the only entity which may issue exemptions under certain conditions described below.

n What are nominal funds?

The Rules of Professional Conduct leave to the sound judgment of the lawyer the decision as to which funds are to be classified as “nominal” and which time period is considered “short.” This sound judgment is tempered by the guidance in the Courts’ Order that it be judged by the \$50.00 standard. That is, if the interest which a client’s funds will earn is \$50.00 or more, the funds may be placed in a separate segregated account for the exclusive benefit of the client. When the amount is less than \$50.00, the funds may be placed in the IOLTA pooled trust account.

Funds which would typically be considered too “nominal in amount” to justify a separate bank account or in-office accounting expenses, would be filing fee advances or unearned advances on lawyers’ fees which are received from clients and held until used or earned. Funds which might be considered “large but held for a short period of time” are exemplified by real estate or loan settlement escrows or lawsuit proceeds which will be disbursed quickly. It would seldom be practical to either set up these types of clients’ funds in a separate interest-bearing account or to provide for in-office accounting, disbursement and reporting of any interest transferred to the client or other party.

n Setting up an IOLTA account

Although bank mergers have decreased the number of participating banks from which the lawyer may choose to set up IOLTA accounts, most banks in Louisiana do participate in the program. Except for lawyers in a few rural areas of the state, most Louisiana lawyers will have a choice among several participating financial institutions. Information on financial institutions in a particular geographical area may be obtained by calling the Louisiana Bar Foundation at (504) 561-1046.

Lawyers who are licensed and practicing in the State of Louisiana and who maintain one or more non-exempt bank accounts as described in Rule 1.15(d) must specifically instruct their chosen bank to establish the bank account in the IOLTA program under the Louisiana Bar Foundation’s tax-exempt tax identification number, and to periodically remit interest net of monthly service charges to the Louisiana Bar Foundation. The Louisiana Bar Foundation provides a “Notice to Financial Institution” form which will serve this purpose. Banks will typically calculate and post interest monthly to the bank account as they do other interest bearing accounts, then reverse the entry immediately or within a few days to transfer the interest to the IOLTA program.

Lawyers who have properly established their accounts in the IOLTA program will see these transfers occurring on a regular periodic basis; for most banks the transfer will be made monthly, but a few smaller banks will process and remit the interest quarterly to the Louisiana Bar Foundation. While some banks will post and reverse some or all monthly service charges, quite a few banks waive monthly service charges on IOLTA accounts because the interest income generated is going to a charitable purpose. A few banks which may charge substantial fees on these accounts do not show these fees on bank statements but do separately pass them on to the IOLTA program.

n Pooled clients’ trust accounts exempted from IOLTA

Since it is the duty of the administrator of the IOLTA program to maximize the funds available

for the grants program, the administrator may exempt accounts which have the net effect of consistently costing more in bank service charges than interest earned. Interest rates can vary considerably from bank to bank as well as a bank's formula for calculation of the interest-bearing balance each month. Some banks waive all fees on IOLTA accounts and some other banks charge only minimal amounts for these accounts. The primary factors in evaluating most accounts for exemption from the program, therefore, are the policies of the lawyer's chosen bank; a trust account which would be exempted at one bank could be a viable interest-bearing account at some other banks. Exemption of an account is therefore not a reflection upon the law practice itself.

Since a fiduciary may not benefit from clients' funds, exempted pooled clients' trust accounts should be converted to non-interest bearing accounts upon their exemption. Most banks can simply change a software code to transform an account to non-interest-bearing.

Account exemptions are specific to the bank account number exempted. If a practice replaces an exempted account or sets up another at the same bank or a different bank, the new account is not exempted. It must be enrolled in or receive a separate exemption from the program.

All exemptions are granted only until the circumstances which qualified the account for exemption change substantially. Before an exempted account must be re-enrolled in the program, the account should exhibit a consistently higher average balance over a period of at least six months, with expectations that this higher balance will continue into the foreseeable future. A lawyer who is not sure the account should be re-enrolled can submit photocopies of the latest six months statements to the Louisiana Bar Foundation. The IOLTA staff can review the statements and advise whether the account should be re-enrolled, given the current interest rates paid and service fees charged by the chosen bank.

n What happens to IOLTA funds?

The IOLTA program is similar to such programs established in other states to raise funds to provide legal services to the indigent, although the permissible uses of funds generated vary from state to state. Under the Louisiana Supreme Court's order dated December 13, 1990, grants may be awarded to non-profit entities for the following purposes in Louisiana:

- To provide legal services to the indigent and to the mentally disabled;
- To provide law-related educational programs for the public;
- To study and support improvements to the administration of justice.

The Louisiana Bar Foundation is to use the interest income generated for the purposes provided for in the Court's order.

n The benefits of IOLTA

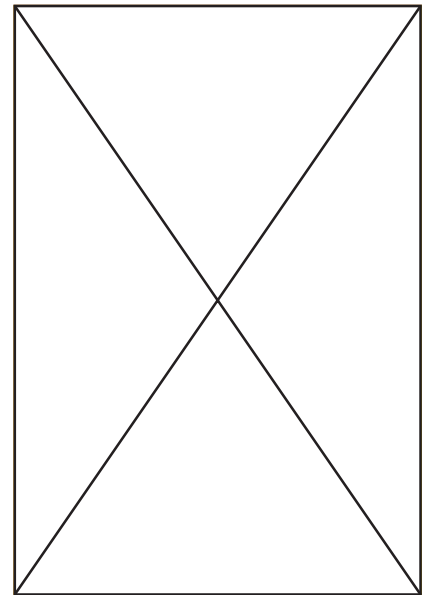
The Louisiana Bar Foundation's Board is proud of the impact that IOLTA has had in Louisiana. At an annual funding level in excess of \$2million, more than 23,000 indigent or mentally disabled persons annually can receive civil legal services funded in whole or in part by Louisiana IOLTA grants. Additional family members, including children, benefit by the assistance received by the grantee programs' client of record. Skilled legal assistance provided through IOLTA funding often resolves many problems without litigation; alternatively, when litigation is warranted the assistance provided through IOLTA funding assures equal access to justice for many who would otherwise not have their day in court.

The types of cases funded by IOLTA most often involve domestic or income-maintenance issues such as divorce, child custody and support payments, domestic abuse, landlord/tenant disputes, and appeals of denial of Social Security and other benefits. Court-Appointed Special Advocates (CASA) programs train and supervise court-appointed volunteers who research alternatives and advocate for the best interest of children in custody of the state.

Many other Louisiana residents, primarily teenagers, benefit from law-related education programs funded statewide. Through grants to the Louisiana Center for Law and Civic Education (which was founded through a start-up grant from IOLTA in 1993) and the Young Lawyers Section of the Louisiana State Bar Association (which for years has provided lawyers in the classrooms, mock trial competitions and Law Day observances), IOLTA reaches Louisiana's teenagers to teach citizenship and respect for the law. Other funded programs such as Teen Courts and Street Law reach at-risk youth at a crossroads.

IOLTA-funded programs geared toward the improvement of the administration of justice in Louisiana will benefit immeasurable residents in years to come. Typically, this type of project is formed to either study or correct a problem with "the system." A task force partially funded through IOLTA recommended and helped implement state funding through the Louisiana Indigent Defenders Board for criminal cases. Other funded task forces have studied treatment of women and minorities in the courts and the court fees in Louisiana.

The IOLTA Director can provide interested parties with more information on IOLTA grants awarded and information on the criteria for judging grant applications. For more information, contact the Louisiana Bar Foundation, 601 St. Charles Avenue, New Orleans, LA 70130 (504) 561-1046; Fax (504) 566-1926.



WHAT DOES IT MEAN?

Accounting	An act or system of making up or settling accounts; a statement of account, or a debit and credit in financial transactions.
Commingling	Act of fiduciary in mingling funds of his beneficiary, client, employer, or ward with his own funds. A lawyer who mixes client's funds with his own and as a result is subject to disciplinary action.
Conversion	An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition to the exclusion of the owner's rights.
Deposit	In general, an act by which a person receives the property of another, binding himself to preserve it and return it in kind.
Disbursements	To pay out, commonly from a fund. To make payment in settlement of a debt or account payable.
IOLTA	Interest on Lawyers' Trust Accounts.
Jurnal	A daily book; a book in which entries are made or events recorded from day to day. The place where transactions are recorded as they occur.
Ledger	The principal book of accounts of a business establishment in which all the transactions of each day are entered under appropriate heads so as to show at a glance the debits and credits of each account.
Misappropriation	The act of misappropriating or turning to a wrong purpose.
Receipts	Written acknowledgment of the receipt of money, or a thing of value, without containing any affirmative obligation upon either party to it.
Reconciliation	In bookkeeping, it is the practice of adjusting the bank statement with the depositor's books. Also, a statement showing the consistency of two or more other financial statements.
Retainer	Act of the client in employing his attorney or counsel, and also denotes the fee which the client pays when he retains the attorney to act for him, and thereby prevents him from acting for his adversary. Term can mean a fee not only for the rendition of professional services when requested, but also for the attorney taking the case, making himself available to handle it, and refusing employment by plaintiff's adversary; or it can mean solely the compensation for service to be performed in a specific case. A contract between attorney and client stating the nature of the services to be rendered and the cost of the services.

ENDNOTES

ENDNOTE 1

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a bank or similar institution in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions:

(1) No earnings from such an account shall be made available to a lawyer or firm.

(2) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time except as described in (6) below.

(3) An interest-bearing trust account shall be established with any bank or savings and loan association or credit union authorized by federal or state law to do business in Louisiana and insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(4) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors.

(5) Lawyers or law firms depositing client funds in a trust savings account shall direct the depository institution:

A. To remit interest or dividend, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

B. To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

C. To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(6) Any account enrolled in the program which has or may have the net effect of costing the IOLTA program more in bank fees than earned in interest over a period of time may, at the discretion of the program's administrator, be exempted from and removed from the IOLTA program. Exemption of an account from the IOLTA program revokes permission to use the administrator's tax identification number for that bank account. Exemption of a pooled clients' trust account from the IOLTA program does not relieve an attorney or law firm of the obligation to maintain the property of clients and third persons separately, as required above, in a non-interest-bearing account. Amended effective June 29, 1995

LSBA IOLTA Rules Effective January 1, 1991

1. The IOLTA program shall be a mandatory program requiring the participating by attorneys and law firms, whether proprietorships, partnerships or professional corporations.

2. The program shall apply to all clients of the participating attorneys or firms whose funds on deposit are either nominal in amount or to be held for a short period of time.

3. The following principles shall apply to clients' funds which are held by attorneys and firms.

a. No earnings on the IOLTA accounts may be made available to or utilized by an attorney or law firm.

b. Upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive.

c. Clients' funds which are nominal in amount to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account with the interest (net of any service charge or fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

d. In determining whether a client's funds are nominal in amount, the lawyer or law firm shall take into consideration the following factors:

(1) The amount of interest which the funds would reasonably be expected to earn during the period they are to be deposited;

(2) The lawyer's cost to establish and administer the account, including the cost of preparing any required tax reports for interest accruing to a client's benefit; and

(3) The capability of financial institutions to calculate and pay interest to individual clients.

The determination of whether funds to be invested could be utilized to provide a positive net return to the client rests in the sound judgment of each attorney or law firm. In making the determination, the attorney or law firm may assume that \$50.00 is a reasonable estimate of the minimum amount of interest that a segregated trust account for an individual client must generate to be practical in light of the costs involved in earning or accounting for any such income.

e. Although notification to clients whose funds are nominal in amount or to be held for a short period of time is not required, many attorneys may want to notify their clients of their participation in the program in some fashion. There is no impropriety in an attorney for the firm advising all clients of the members of the firm's advancing the administration of justice in Louisiana beyond their individual abilities in conjunction with other public-spirited members of their profession. In fact, it is recommended that this be done. Participation in the program will require communication to an authorized financial institution.

4. The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest income derived from trust accounts in the IOLTA program. Interest earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:

a. to provide legal services to the indigent and to the mentally disabled;

b. to provide law-related educational programs for the public;

c. to study and support improvements to the administration of justice, and

d. for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.

5. The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and make recommendation to the Foundation with respect thereto.

Adopted effective Jan. 1, 1991.

ENDNOTE 2

Rule 1.5(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(6). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) The fee under Rule 1.5(f)(1), (2), or (3) must be reasonable under the circumstances, and the contract between the lawyer and the client regarding the fee should preferably be in writing and should specify the basis on which fee payments are to be made.

(6) When the client pays the lawyer a fixed fee or a minimum fee for particular services to be rendered in the future under Rule 1.5(f)(2) and the funds are placed in the lawyer's operating account, and a fee dispute subsequently arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of the fee, if any. If the lawyer and the client cannot agree on the amount of unearned fee, the lawyer shall immediately refund to the client the amount, if any, that the parties agree has not been earned, and the lawyer shall deposit into a trust account an amount which represents the portion of the fee which is reasonably in dispute. The funds shall be held in the trust account until the dispute is resolved, and the lawyer may not hold the disputed portion of the funds to coerce a client into accepting the lawyer's contentions. The lawyer should also suggest means for prompt resolution of the dispute such as the Louisiana State Bar Association Fee Dispute Program or other similar arbitration.

ENDNOTE 3

In Re: Stephens, 624 So.2d 903 (La. 1993).

ENDNOTE 4

State of La. v. Banks, 503 So.2d 529 (La.App. 3d Cir. 1987), granted 503 So. 2d 1007 (La. 1987). (case remanded for resentencing;

18 months sentence excessive).

ENDNOTE 5

La. State Bar Assn. v. Thierry, 573 So.2d 1099 (La. 1991).

ENDNOTE 6

Louisiana State Bar Association v. Daye, 443 So.2d 1107 (La. 1983).

ENDNOTE 7

Supreme Court of Louisiana, Rule 19§28

Section 28 Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts", and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or other wise.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records. Every lawyer practicing or admitted to practice law in Louisiana shall, as condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution.

C. Request for Production of Records. A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement. Adopted effective April 1, 1990.

ENDNOTE 8

La. State Bar Assn. v. Edwins, 540 So.2d 294, 299 (La. 1989).

ENDNOTE 9

Id. At 301, 302.

ENDNOTE 10

Supreme Court of Louisiana, Order dated December 31, 1990.

1. The IOLTA program shall be a mandatory program requiring the participation by attorneys and law firms, whether proprietorships, partnerships or professional corporations.

2. The program shall apply to all clients of the participating attorneys or firms whose funds on deposit are either nominal in amount or to be held for a short period of time.

3. The following principles shall apply to clients' funds which are held by attorneys and firms.

a. No earnings on the IOLTA accounts may be made available to or utilized by an attorney or law firm.

b. Upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive.

c. Clients' funds which are nominal in amount or to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account with the interest (net of any service charge or fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

d. In determining whether a client's funds are nominal in amount, the lawyer or law firm shall take into consideration the following factors:

(1) The amount of interest which the funds would reasonably be expected to earn during the period they are to be deposited;

(2) The lawyer's cost to establish and administer the account, including the cost of preparing any required tax reports for interest accruing to a client's benefit; and

(3) The capability of financial institutions to calculate and pay interest to individual clients.

The determination of whether funds to be invested could be utilized to provide a positive net return to the client rests in the sound judgment of each attorney or law firm. In making the determination, the attorney or law firm may assume that \$50 is a reasonable estimate of the minimum amount of interest that a segregated trust account for an individual client must generate to be practical in light of the costs involved in earning or accounting for any such income.

e. Although notification to clients whose funds are nominal in amount or to be held for a short period of time is not required, many attorneys may want to notify their clients of their participation in the program in some fashion. There is no

impropriety in an attorney for the firm advising all clients of the members of the firm's advancing the administration of justice in Louisiana beyond their individual abilities in conjunction with other public-spirited members of their profession. In fact, it is recommended that this be done. Participation in the program will require communication to an authorized financial institution.

4 The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest income derived from trust accounts in the IOLTA program. Interest earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:

- a. to provide legal services to the indigent and to the mentally disabled;
- b. to provide law related educational programs for the public;
- c. to study and support improvements to the administration of justice;
- d. for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.

5 The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses, and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto. * * *

This booklet is informational only and is not to be construed as legal advice. Compliance with the suggestions made herein does not guarantee that all mistakes will be eliminated or prevented, or that all problems associated with handling client and third party funds will be avoided. For specific legal advice, it is recommended that an independent lawyer be consulted.

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