

Questions & Answers for Attorneys Regarding Maine's IOLTA Program Managed by the Maine Bar Foundation

What is IOLTA?

IOLTA stands for "Interest **O**n **L**awyers **T**rust **A**ccounts." Attorneys routinely receive client funds to be held in trust for future use. If the amount is large or the funds are to be held for a long period of time, the attorney must place these monies at interest for the benefit of the client. However, in the case of amounts that are small or are to be held for a short time, it is impractical to establish separate interest-bearing accounts for individual clients. Participating in the IOLTA program allows attorneys to place these funds at interest with that interest paid to the Maine Bar Foundation and dedicated to support civil legal aid for low income and disadvantaged people, law related education and administration of justice projects.

What is the Maine IOLTA program?

The purpose of the Maine IOLTA program is to channel IOLTA funds from participating attorneys to civil legal aid for the poor, law related education and administration of justice programs.

The Maine IOLTA Program is similar to programs developed in 50 states, the District of Columbia, the U.S. Virgin Islands, the Canadian provinces and Australia. Participation in the program is authorized under a 1986 amendment of Maine Bar Rule 3.6(e) and 6. **Effective April 1, 2008, participation in IOLTA will be required for all attorneys who handle client funds.** The IOLTA funds are distributed for the public good through a grants administered by the Board of Directors of the Maine Bar Foundation.

How does it work?

Lawyers often handle client funds such as settlement checks, fees advanced for services not yet performed or money to pay various court fees. Sometimes the amount of money held for a single client is quite large. In such cases, lawyers deposit the funds into trust accounts where the funds can earn interest for the client.

Frequently, the amount being handled for a single client is small in amount or held for only a short period of time and cannot earn interest for the client in excess of the costs incurred to collect that interest. Traditionally, lawyers placed these deposits into combined or pooled trust accounts which did not earn interest because they were typically checking accounts which could not earn interest.

In the early 1980s, however, state laws and supreme court rules, together with changes in banking and IRS regulations, together created IOLTA programs. Since the inception of IOLTA, attorneys who handle nominal or short-term client funds that cannot earn net income for the individual client, place these funds in a single, pooled, interest-bearing account. Banks forward the interest earned to the state IOLTA program for charitable purposes.

Although IOLTA creates income, nothing else has changed: lawyers satisfy their ethical and fiduciary duty to place client funds in a secure account; there is on-demand access to the client's money; and, as in the past, the client realizes no interest income because the nominal or short-term client funds are pooled in IOLTA accounts that cannot earn interest for the client.

Recent changes in the Bar Rule also establish comparability requirements for IOLTA accounts. This means that financial institutions offering IOLTA products must treat IOLTA accounts as they would similarly situated accounts in regard to interest paid.

Does an attorney have an obligation to monitor compliance with interest or dividend requirements on IOLTA accounts?

No. The Maine Bar Foundation is.

How does an attorney determine whether a sum of money is to be held for too short a time or is too small an amount to justify being put in a separate interest bearing account for the benefit of a client?

This is a discretionary decision which Maine attorneys have been making for as long as they have had custody of their client's funds. The rule allows for bank fees and charges and the attorney's administrative costs to be taken into account. It also holds harmless the attorney's good faith efforts in making this decision.

What are the tax consequences?

There are no tax consequences for either the attorney or the client if the IRS requirements are met. Compliance with IRS requirements is assured by the use of the IOLTA enrollment form prepared by the Maine Bar Foundation, use of the Foundation's Taxpayer Identification Number and designating the Foundation as the recipient of the interest funds.

How is the Maine Bar Foundation authorized to receive IOLTA funds?

The Maine Bar Foundation qualifies for Section 501(C)(3) status under the Internal Revenue Code and has obtained the necessary approval from the Internal Revenue Service, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Maine Attorney General to serve as administrator of Maine's IOLTA program. It is designated as the administrative entity for IOLTA funds by Maine Court Rule 3.6(e)(4).

Why is support of the Maine Bar Foundation through IOLTA important to Maine attorneys?

IOLTA funds are used to support civil legal services for low income and disadvantaged people, law related education and for projects to improve the administration of justice. This is an attorney directed charity and an opportunity for Maine attorneys to make a difference.

Must clients be notified that an attorney participates in the IOLTA program?

No. The program is mandatory for attorneys for qualifying funds. The client realizes no interest income because the nominal or short-term client funds are pooled in IOLTA accounts that cannot earn interest for the client.

What additional bookkeeping or administrative expense will be required?

None. Your financial institution automatically sends the interest to the Maine Bar Foundation account. You will be provided a monthly statement regarding the interest your account has generated. Lists of eligible financial institutions are available through the Bar Foundation and on its Web site: www.mbf.org.

How do I sign up for IOLTA?

The process of establishing or converting your pooled trust account is simple and once it is done no further time or effort is required. Use the IOLTA enrollment form and forward one copy to your financial institution and one copy to the Maine Bar Foundation. The Bar Foundation and your financial institution will do the rest. Forms are available by contacting Joan Gilbert, Program Assistant at 622-3477 or jgilbert@mbf.org. You may also visit our Web site at www.mbf.org.