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Staff:

Alfred J. Azen, *Executive Director*

- * Term expired 9-1-02
- ** Effective 9-1-02
- # Effective 9-24-02

Legal Authorization:

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

**Interest
on
Lawyers
Trust
Account
Board**

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History/Background

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.

The program works as follows: clients often ask attorneys to hold particular sums of money for them. When this involves a large amount of money 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 which the IOLTA program targets.

These small or short-term funds are deposited into special, interest-bearing IOLTA accounts at financial institutions which 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 non-profit 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.

Effective November 1, 2002, IOLTA began receiving income from a second major

source. The Access to Justice Act, 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 newly established Access to Justice Account for use by the IOLTA Board. (Unless reviewed by the legislature, the act is scheduled to expire November 1, 2007, under a sunset provision in the statute.)

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.

The IOLTA Board

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.

IOLTA Constitutionality

On June 15, 1998, the U.S. Supreme Court announced a decision in a case involving the Texas IOLTA program. By a 5-4 majority vote the court ruled that Texas law observes the "interest follows principal" doctrine and that interest income earned on client funds held in Texas IOLTA accounts is the private property of the clients.

The Supreme Court did not, however, eliminate or enjoin the Texas IOLTA program. Instead, it sent the case back to the lower court to decide whether the State of Texas had "taken" the clients' private property in violation of the Fifth Amendment to the U.S. Constitution, and if so, whether compensation must be paid for it.

On January 28, 2000, the United States District Court for the Western District of Texas, decided that the Texas IOLTA program does not take private property in violation of the Fifth

Amendment, nor does it violate a client's free speech rights guaranteed by the First Amendment to the constitution. Upon appeal, however, a panel of the United States Court of Appeals for the Fifth Circuit on October 25, 2001, reversed that decision, finding that the Texas IOLTA program does indeed take client funds in violation of the Fifth Amendment. It remanded the case back to the district court for entry of declaratory and injunctive relief. The Texas program requested an en banc rehearing, which was denied by a 7-7 vote. Shortly after, the program filed a Petition for Writ of Certiorari, which is currently pending before the U.S. Supreme Court.

In the meantime, the United States Court of Appeals for the Ninth Circuit issued an en banc decision in a similar case in Washington State, declaring that Washington's IOLTA program does *not* take client property in violation of the constitution. It remanded the case to the district court for consideration of the appellant's First Amendment claim that the IOLTA program compels clients to be associated with causes to which they disagree.

This case was appealed to the United States Supreme Court, which heard oral argument during its 2002-03 session.

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.

Rules & Regulations for IOLTA

To assist attorneys and others in learning the requirements under the IOLTA program, the IOLTA Board has published implementing regulations at Title 204 Pa. Code, Chapter 81. In addition, a booklet entitled *Rules & Regulations*

for IOLTA has been distributed to bar associations, bar leaders and attorneys requesting information on IOLTA requirements. It is also mailed semiannually to newly licensed Pennsylvania attorneys and is available on the board's Web site at www.paiolta.org.

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.

The top five banks, ranked by net interest remitted to the board, for calendar year 2002 were:

- PNC Bank, N.A.
- First Union National Bank
- National City Bank of Pennsylvania
- Citizens Bank of Pennsylvania
- Hudson United Bank

A list of all IOLTA participating financial institutions can be found in the IOLTA Board's annual report.

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:

- Before any allocation of funds is made, the estimated administrative expenses associated with operation of the program will be deducted.
- 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 million and \$7 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 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.
- Act 122 funds are used to supplement the funding of organizations who provide civil legal services to eligible clients and victims of abuse.

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.

2002 Activities

Grants totaling \$5,453,735 were awarded to 35 nonprofit organizations that facilitate and/or provide civil legal assistance to the indigent and disadvantaged residents of Pennsylvania. The largest grant, nearly \$4.4 million 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. That grant sought to provide general and specialized civil legal assistance to

nearly 17,000 indigent persons in all 67 of Pennsylvania's counties.

Contact Person

Anyone with questions regarding the IOLTA program or who wishes to learn more

about it may contact Executive Director Alfred J. Azen at (717) 238-2001 or at Pennsylvania Interest on Lawyers Trust Account Board; 115 State Street; P. O. Box 1025; Harrisburg, PA 17108-1025. AOPC