

RULE 1:28A. Interest On Lawyers Trust Accounts (IOLTA) Fund

1:28A-1. Purpose; Administration; Appointments

(a) Administration. The Supreme Court shall appoint six Trustees to administer and operate, in accordance with these Rules, the IOLTA Fund of the Bar of New Jersey, whose purpose is to provide a means of using the return to IOLTA on income earned by depository institutions from funds held in IOLTA accounts to fund law-related, public-interest programs. In addition to the Trustees appointed by the Supreme Court, the following shall be ex officio members and will have the right to vote on all matters except grant applications made to the Board of Trustees, but they may participate in Board discussions of the grant applications: the President of the New Jersey State Bar Association; the First Vice President of the New Jersey State Bar Foundation; and the President of Legal Services of New Jersey, Inc.

(b) Qualification, Terms of Trustees. The original appointment shall be of two Trustees for a one-year term, one for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms all subsequent appointments shall be for a term of five years, and no Trustee who has served a full five-year term shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof. At least four of the Trustees appointed by the Supreme Court shall be members of the bar of this State.

(c) Organization; Meetings. The Trustees shall organize annually and shall then elect from among their number a chairperson and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chairperson. Except as may be otherwise provided by this rule or by regulations promulgated by the Trustees, five of the nine trustees, including the ex officio members, shall constitute a quorum and may transact all business not involving grants. Four of the six Trustees appointed by the Supreme Court shall constitute a quorum for all decisions concerning grants.

(d) Regulations. The Trustees shall adopt regulations, consistent with these rules and subject to the approval of the Supreme Court, governing the administration of the Fund, the procedures for the presentation, consideration, and payment of grants, and the exercise of their investment powers.

(e) Reimbursement. The Trustees shall serve without compensation.

Note: Adopted February 23, 1988, to be effective March 1, 1988; paragraphs (a), (b), (c) and (d) amended September 15, 1992, to be effective January 1, 1993; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; caption of Rule 1:28A and paragraphs (a) and (b) of Rule 1:28A-1 amended February 6, 2003 to be effective March 1, 2003.

1:28A-2. Attorney IOLTA Trust Accounts

(a) **Attorney Participation.** Commencing on the date established by regulations to be adopted by the Board of Trustees pursuant to Rule 1:28A-1(d), every attorney who practices in this State shall maintain in a financial institution in New Jersey, in the attorney's own name or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability entity of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed, an IOLTA non-interest-bearing trust account or accounts for all clients' funds that are not placed at interest for the benefit of the client.

(1) The IOLTA non-interest-bearing trust account may be established with any financial institution approved by the Supreme Court to hold attorney trust funds under R. 1:21-6(a) and insured by the Federal Deposit Insurance Corporation or an analogous federal government agency. Funds in each IOLTA non-interest-bearing trust account will be subject to withdrawal on request and without delay.

(2) Funds shall be deposited in an IOLTA non-interest-bearing trust account authorized by this Rule when an attorney determines that a trust account deposit will not be placed at interest for a client. Such a determination shall be made whenever an attorney determines that either (A) the amount of the funds or the period of time that the funds are held, if deposited in an interest-bearing account, would not earn interest in excess of the cost incurred to secure such interest, or (B) because of particular costs in accounting, administration, or attribution of income, as may occur when multiple parties or clients pool advance payments against the costs of litigation in a single fund, a client's funds should not be deposited in an interest-bearing account because they will not realize income. No ethical impropriety will attend an attorney's depositing such funds in an IOLTA non-interest-bearing trust account in accordance with this Rule.

(3) An attorney or law firm shall maintain one or more IOLTA non-interest-bearing trust accounts and shall submit to the approved financial institutions in which such accounts are maintained such forms as may be necessary to establish and maintain such accounts or to open IOLTA interest-bearing trust accounts, on forms prescribed by the Trustees, and provide a copy of such form to the IOLTA Fund Trustees. If such a form is not filed, the signed registration statement required by Rule 1:20-1 and Rule 1:21-6 shall constitute such authorization.

(b) **Deposit of Funds in IOLTA Account.** An attorney will exercise good-faith judgment in determining initially whether the funds of a client are of a nominal amount, are expected to be held by the attorney for a short period of time, or otherwise fall within the circumstances described in (a) above.

In exercising that judgment, the attorney will also consider such other factors as:

(1) the cost of establishing and maintaining a separate non-IOLTA, interest-bearing trust account, including service charges, bookkeeping and accounting and tax-reporting procedures;

(2) the nature of the transaction(s) involved;

(3) the likelihood of delay in the matter for which the funds are held;

(4) whether the funds received by an attorney in a fiduciary capacity from a client or beneficial owner will generate less than \$150 of interest, provided that that \$150 figure may be used by an attorney as a minimum threshold indicating whether monies received in a fiduciary capacity should be placed in an IOLTA trust account, but shall not preclude the use of a higher figure if the costs or circumstances warrant; and

(5) the other circumstances described in (a) above.

(c) Periodic Review of Deposits. At reasonable intervals, an attorney should consider whether changed circumstances require different action respecting the deposit of client funds.

(d) Registration; Enforcement. The accounts required by this Rule shall be registered annually with the IOLTA Fund in the manner prescribed by the IOLTA Fund Trustees. The Trustees shall annually report the names of all attorneys failing to comply with the provisions of this Rule to the Supreme Court for inclusion on a list of those attorneys deemed ineligible to practice law in New Jersey by Order of the Court. An attorney shall be removed from the Ineligible List without further Order of the Court on submission to the Trustees of the prescribed forms.

(e) Duties of Financial Institution. The financial institution must:

(1) from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institutions a just and reasonable return equivalent to their return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Funds. And

(2) report in the form provided by the Fund.

Note: adopted February 23, 1988, to be effective March 1, 1988; former rule deleted and R. 1:28A-3 renumbered as 1:28A-2 September 15, 1992, to be effective January 1, 1993; paragraph (a)(1) of former R. 1:28A-3 amended November 7, 1988, to be effective January 2, 1989; rule amended September 15, 1992, to be effective January 1, 1993; new paragraph (d) adopted and former paragraph (d) redesignated as paragraph (e) December 13, 1993, to be effective January 3, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (e) amended February 6, 2003 to be effective March 1, 2003.

1:28A-3. Duties of Trustees and Officers

(a) **Audit and Report.** The Trustees shall arrange for an independent audit annually and at such other times as the Supreme Court shall direct, such audits to be at the expense of the Fund. The annual audit shall be included in a report to be submitted annually by the Trustees to the Supreme Court, reviewing in detail the administration of the Fund during the preceding year.

(b) **Applications to the Supreme Court.** The Trustees may apply to the Supreme Court for interpretations of these Rules and of the extent of their powers thereunder and for advice regarding the proper administration of the Fund.

(c) **Treasurer's Duties.** The treasurer shall maintain the assets of the Fund in separate accounts and shall disburse monies therefrom only on the action of the Trustees pursuant to these Rules. He or she shall file a bond annually with the Trustees with such surety as may be approved by them and in such amount as they may fix.

Note: Adopted as R. 1:28A-4 February 23, 1988, to be effective March 1, 1988; renumbered as R. 1:28A-3 and paragraphs (b) and (c) amended September 15, 1992, to be effective January 1, 1993.

1:28A-4. General Powers of Trustees

(a) **Reserve Fund.** The Trustees of the Fund are authorized to maintain a reasonable reserve fund. At least annually, after a reasonable reserve fund has been created, the Trustees will solicit applications for grants and award grants to those entities deemed to be meritorious under the regulations of the Fund. Grant-making decisions of the Board are final and are not subject to appeal or judicial review.

(b) **Grants.** Grants will be made only for the following purposes:

(1) legal aid to the poor;

(2) improvement of the administration of justice;

(3) education of lay persons in legal and justice-related areas; or

(4) such other programs for the benefit of the public as are specifically approved by the New Jersey Supreme Court from time to time.

(c) **Awards.** The Board of Trustees shall award:

(1) to Legal Services of New Jersey, Inc., not less than 75% of the funds available annually for grants, to be used directly by itself and, through subgrants, by its local member Legal Services programs, in conducting legal assistance activities on behalf of the poor throughout New Jersey;

(2) to the New Jersey State Bar Foundation, not less than 12.5% of the funds available annually for grants to be used for the purposes enumerated in R. 1:28A-4(b)(1)-(4) above; and

(3) to other entities deemed to be meritorious under the regulations of the Fund, the balance of the funds available annually for grants to be used for the purposes enumerated in R. 1:28A-4(b)(1)-(4) above.

The foregoing may be amended by the Supreme Court from time to time in the public interest.

(d) **General Powers.** In addition to the powers conferred by these Rules on the trustees, they shall have the following general powers:

(1) to receive, hold, manage, distribute, and invest the funds received by the Fund and such other funds as it may receive by voluntary contribution or otherwise;

(2) to employ and compensate consultants, agents, legal counsel, and such other employees as they deem necessary and appropriate consistent with personnel policies of the Judiciary; and

(3) to monitor and insure compliance with the provisions of this Rule.

Note: Adopted as R. 1:28A-5 February 23, 1988, to be effective March 1, 1988; renumbered as R. 1:28A-4 and amended September 15, 1992, to be effective January 1, 1993.

1:28A-5. Confidentiality

All activities conducted and records made or maintained by the IOLTA Fund in connection with its operations under this rule shall not be disclosed, except that the IOLTA Board is authorized to:

(a) Release such information as it may deem necessary to carry out its responsibilities as prescribed by this rule, including the identity of recipients and amounts and purposes of grant awards, and data concerning participating financial institutions; and

(b) Release statistical and other information in its annual report to the Supreme Court or as requested by the Supreme Court.

Note: Former Rule 1:28A-5 redesignated as Rule 1:28A-4 September 15, 1992 to be effective January 1, 1993. New Rule 1:28A-5 adopted July 12, 2002 to be effective September 3, 2002.