

RULE 1.18 INTEREST ON LAWYERS TRUST ACCOUNTS (IOLTA) Program.

(a) **PURPOSE.** The purpose of the Interest on Lawyer Trust Accounts (IOLTA) program is to provide funds for the Montana Justice Foundation to pay the reasonable costs of administering the program and to make grants to entities with missions within the following general categories:

- (1) Providing legal services, through both paid staff program(s) and pro bono program(s), to Montana's low income citizens who would otherwise be unable to obtain legal assistance;
- (2) Promoting knowledge and awareness of the law; and
- (3) Improving the administration of justice.

(b) **REQUIRED PARTICIPATION.** IOLTA program participation is mandatory, except as provided in subsection (d), below. Every non-exempt lawyer admitted to practice in Montana, and/or every law firm composed of any such lawyers, which receives client funds, shall establish and maintain an interest-bearing trust account for pooled client funds, termed an "IOLTA Trust Account." Each lawyer/firm shall also establish separate interest-bearing trust accounts for individual clients, termed "Client Trust Accounts," when appropriate pursuant to this Rule.

(c) **ADMINISTRATION.**

(1) **Deposit of Client's Funds.**

(A) All client funds paid to a lawyer/firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable interest-bearing trust accounts ("Trust Accounts") in the State of Montana. No funds belonging to the lawyer/firm shall be deposited into a Trust Account except:

- (i) funds reasonably sufficient to pay account charges offset by interest;
- (ii) an amount to meet a minimum balance requirement for the waiver of service charges; and/or
- (iii) funds belonging in part to a client and in part presently or potentially to the lawyer/firm, but the portion belonging to the lawyer/firm shall be withdrawn when due unless the right of the lawyer/firm to such funds is disputed by the client, in which event the disputed portion shall remain in the account until the dispute is resolved.

(B) The lawyer/firm shall comply with all Rules relating to preserving the identity of clients' funds and property.

(C) Every Trust Account shall be established with a federally-insured and state or federally regulated financial institution authorized by federal or

state law to do business in Montana. Funds in each Trust Account shall be subject to immediate withdrawal.

(D) The interest rate payable on a Trust Account shall not be less than the rate paid to non-lawyer depositors. Higher rates offered for deposits meeting certain criteria, such as certificates of deposit, may be obtained on Trust Account funds if immediate withdrawal is available.

(E) Every Trust Account shall bear the name of the lawyer/firm and be clearly designated as either an IOLTA Trust Account or a Client Trust Account established under this Rule.

(2) IOLTA Trust Accounts. Every IOLTA Trust Account shall comply with the following provisions:

(A) The lawyer/firm shall maintain all client funds that are either nominal in amount or to be held for a short period of time in an IOLTA Trust Account.

(B) No client may elect whether his funds should be deposited in an IOLTA Trust Account receive interest or dividends earned on funds in an IOLTA Trust Account, or compel a lawyer /firm to invest funds that are nominal in amount or held for a short period of time in a Client Trust Account.

(C) The determination of whether a client's funds are nominal in amount or to be held for a short period of time rests solely in the sound judgment of each lawyer/firm. No charge of professional misconduct or ethical impropriety shall result from a lawyer's exercise of good faith judgment in that regard.

(D) To determine if a client's funds should be deposited in an IOLTA Trust Account, a lawyer/firm may be guided by considering:

- (i) the amount of interest the funds would earn during the period they are expected to be deposited;
- (ii) the costs of establishing and administering the account, including the lawyer's/firm's fees, accounting fees, and tax reporting requirements;
- (iii) the amount of funds involved, the period of time they are expected to be held, and the financial institution's minimum balance requirements and service charges;
- (iv) the financial institution's ability to calculate and pay interest to individual clients; and
- (v) the likelihood of delay in the relevant transaction or proceeding.

(E) The lawyer/firm shall require the financial institution in which the IOLTA Trust Account is established to:

- (i) remit to the Montana Justice Foundation, at least quarterly, all interest or dividends on the average monthly balance in the IOLTA Trust Account, or as otherwise computed according to the

institution's standard accounting practices, less reasonable service fees, if any;

(ii) with each remittance, provide the Montana Justice Foundation and the lawyer/firm with a statement showing for which lawyer/firm the remittance is sent, the period covered, the rate of interest applied, the total amount of interest earned, any service fees assessed against the account, and the net amount of interest remitted;

(iii) charge no fees against the IOLTA trust account greater than fees charged to non-lawyer depositors for similar accounts, or which are otherwise unreasonable; and

(iv) collect no fees from the principal deposited in the IOLTA Trust Account.

(F) Annually the Montana Justice Foundation shall make available a list of all financial institutions offering IOLTA accounts and meeting this Rule's IOLTA depository qualifying requirements. Lawyers/firms shall be entitled to rely on the most recently published list for purposes of IOLTA Rule compliance. The Montana Justice Foundation shall pay all service charges incurred in operating an IOLTA Trust Account from IOLTA funds, to the extent that charges exceed those incurred in operating non-interest-bearing checking accounts at the same financial institution.

(G) Confidentiality. The Montana Justice Foundation shall protect the confidentiality of information regarding Trust Accounts pursuant to this Rule.

(3) Non-IOLTA Client Trust Accounts. All client funds shall be deposited in an IOLTA Trust Account, unless they are deposited in a separate interest-bearing account for a particular client's matter with the net interest paid to the client. Such interest must be held in trust as the property of the client as provided in this Rule for the principal funds of the client.

(d) A LAWYER/FIRM IS EXEMPT FROM THIS RULE REQUIREMENT IF:

(1) the nature of their practice is such that no client funds are ever received requiring a Trust Account;

(2) the lawyer practices law in another jurisdiction and not in Montana;

(3) the lawyer is a full-time judge, or government, military, or inactive lawyer; or

(4) the Montana Justice Foundation's Board of Directors, on its own motion, exempts the lawyer/firm from participation in the program for a period of no more than two years when:

(A) service charges on the lawyer's/firm's Trust Account equal or exceed any interest generated; or

(B) no financial institution in the county where the lawyer/firm does business will accept IOLTA accounts.

(e) Lawyer Filings and Records.

(1) Filings. Each lawyer/firm shall file an annual certificate of compliance with or exemption from this Rule with the Montana Justice Foundation. The certification must include the name of the lawyer/firm listed on the account, the account number, and the financial institution name and address. The certification may be made in conjunction with the annual dues billing process. Failure to provide the certification may result in suspension from practice of law in this state until the lawyer complies with the requirements of this Rule.

(2) Records. Lawyer trust accounts shall be maintained as prescribed by this Court in the "Trust Account Maintenance and Audit Requirements" (adopted February 27, 1989).

(f) Implementation. Implementation will be effected through this Rule and the Rules of the State Bar of Montana, all as amended and approved by the Montana Supreme Court.

[Adopted by the Montana Supreme Court in January 1996]