

State Amends Client Funds Program To Boost Charitable Grants

Thursday, August 13, 2009, Vol. 124, No. 158
REBEKAH HEARN | The Daily News

The Tennessee Supreme Court in July amended court Rule 43 and Rule 8 of the Rules of Professional Conduct to require attorneys holding eligible client funds to participate in the Interest on Lawyers' Trust Accounts (IOLTA) Program.

The rule also was amended to require lawyers to maintain these accounts at financial institutions that pay the same dividends or interest rates to IOLTA accounts as to non-IOLTA accounts.

The amended rule grew out of Memphis attorney and Tennessee Bar Association immediate past president [George Lewis](#)' "Access to Justice 4ALL" initiative.

The interest generated from these accounts, if they cannot be made productive for the client, goes to the Tennessee Bar Foundation. About 170 financial institutions in the state participate in IOLTA.

The TBF distributes the funds annually to organizations that fall under three umbrellas: those that provide legal services, administration of justice (such as family and child services) and assistance to students.

B. Riney Green at Bass Berry & Sims PLC Tuesday held a webinar on the new IOLTA requirements. More than 40 questions were asked of Green and the panel.

The application for 2010 grants went up on the TBF's Web site Friday. Recipients of the 2009 grants include six Memphis-area organizations, including [Memphis Area Legal Services Inc.](#), which received the largest grant of more than \$150,000. (See box for a breakdown of the 2009 recipients.)

What is IOLTA?

The IOLTA Program, adopted by the Tennessee Supreme Court in 1983, permits interest earned on any attorney's pooled trust checking accounts to be paid to the TBF.

Since its adoption, the program has provided \$16 million in grants, and \$1.4 million was distributed in 2008 for use in 2009.

The accounts exist often because an attorney needs to use money on behalf of a client for a variety of reasons: The account could hold retainer fees, settlement funds, funds to pay expert witnesses or other reasons.

The funds earn interest, although until the amended rule last month, IOLTA accounts couldn't earn the same amount of interest as a comparable account. And as the economy free-fell, the amount of interest generated from these accounts dropped sharply.

Memphis IOLTA Grant Recipients 2009

Memphis Area Legal Services Inc. **\$150,295**

Community Legal Center **\$36,000**

YWCA of Greater Memphis **\$12,000**

Exchange Club Family Center of the Mid-South Inc. **\$10,000**

CASA of Memphis and Shelby County Inc. **\$9,000**

University of Memphis Cecil C. Humphreys

School of Law (scholarship) **\$3,000**

Memphis Total **\$220,295**

Statewide Total **\$1.4 million**

Source: Tennessee Bar Foundation

The interest goes to the TBF if the interest can't be made productive for the client, which varies depending on how much money is in the account and what the interest rate is at the time. TBF Executive Director Barri Bernstein termed it a "moving target."

"To make the money productive for the client, there are back-office costs," she said.

Back-office costs means the time and effort it takes for an attorney or staff member to go to the bank, open the account and provide the necessary documentation to the client that the money is where it is. Also, additional tax forms are required every year.

If a lawyer is holding \$250 of a client's money – for whatever reason, perhaps to file a lawsuit – the interest rate on that amount would be too little to consider it productive for the client. In that case, the amount it would cost the lawyer to operate an account with this amount would outstrip any interest it might earn, making it non-productive for the client.

But if a client asks an attorney to hold a larger amount, such as \$100,000, the same steps are worth it for the attorney because the account would earn more interest than the back-office costs. Then the money is productive, and rightfully goes to the client.

"If the money can be made productive for the client, then the lawyer is under an affirmative obligation to do so," Bernstein said.

If the interest earned is not productive for the client, it goes to the TBF. Each bank that participates in the IOLTA Program calculates the interest earned on a monthly basis, and the organization receives a statement, just as with a personal checking account.

Then the monthly interest earned is sent to the TBF, which receives a check or money transfer for the interest.

"We're constantly receiving money," Bernstein said. "(But) ... we give the money away for the three purposes the Supreme Court created. Since that time, we have come up with an annual grant-making program that grants the money we receive back to providers (of legal services) around the state. And we do that once per year."

The only attorneys exempt from the IOLTA Program are those who don't receive trust funds – public defenders, district attorneys, corporate counsel and professors.

Sections under the state Board of Professional Responsibility regulations permit exemptions, but in rare cases; one example would be if an attorney practices in an area where no banks participate in IOLTA.

The good it does

A 15-member committee at the TBF, made up of representatives of statewide law organizations – for example, the TBA, the Tennessee Association of Criminal Defense Lawyers and the Memphis-based Association of Women Attorneys – reviews grant applications each year, makes a list of recommendations of potential recipients along with amounts, and submits that list to the bar foundation's board of trustees, which makes the final decision.

Twenty-two Memphians have served on the committee since 1987, including attorneys Carla Peacher-Ryan, [Frances Riley](#), [Van Turner](#) and the late Shelby County Circuit Court Judge [Rita Stotts](#).

Last year, MALS received more money than any other legal aid organization in Memphis with \$150,295. The other Memphis recipients of IOLTA grants were CASA of [Memphis and Shelby County Inc.](#), Community Legal Center, Exchange Club Family Center of the [Mid-South Inc.](#), University of Memphis Cecil C. Humphreys School of Law and YWCA of Greater Memphis.

MALS Executive Director Harrison McIver said the money is used in several ways, most importantly to support personnel and technological upgrades.

MALS also offers a loan repayment program for its employees with school debt, and MALS is able to help repay those loans in part through IOLTA.

McIver said because of the growing poor population recently, MALS has asked for more money than it's likely to receive in 2010.

"As the economy has worsened, we are seeing more and more people who were part of the middle class who now find themselves – because of loss of employment, foreclosures, loss of health coverage and the like – eligible for our services," McIver said.

But McIver isn't blind to the challenges the IOLTA Program faces, even with its improvements. The twisted economy has led to extremely low interest rates, meaning less money generated for the program.

McIver said there is "some catching up to do," but he hopes that two years down the road, the program and its recipients will have reaped the benefits of increased interest rates.

"I think the challenge is going to be whether we can replace the money we're going to lose, because of the lower interest rates impacting the current accounts," he said. "We hope as interest rates rise, they will be able to replenish our accounts."

"Because I think we provide one heck of a service to this community, and the TBF has been one of the key supporters through the IOLTA Program."