

# INTEREST ON LAWYERS' TRUST ACCOUNT PROGRAM



## *Reporting Guidelines for Financial Institutions*

Revised 2006

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## Introduction

The Kansas Supreme Court issued a rule encouraging all lawyers to fill out an IOLTA application. The following pages go into detail as to how financial institutions can operate an IOLTA account. A summary of this information is as follows:

1. Convert or create the lawyer or law firm commingled client trust account into a NOW or Super NOW account.
2. The Tax Identification Number of the Kansas Bar Foundation, No. **48-6116429**, should appear in all designated locations that concern the ownership of the interest.
3. Remit to the Kansas Bar Foundation at least quarterly any interest earned on the account.
4. Deduct any charges associated with creating or administering the IOLTA account before remitting the interest.

The Kansas Bar Foundation will work with each financial institution to develop a procedure which will work for each individual institution. There are a large number of financial institutions that currently participate and we would be glad to provide you with a list of those in your area.

The Foundation can use the automated clearinghouse to clear interest from accounts. Please contact the Foundation at (785) 234-5696 if you would like to use this service or have any questions.

Thank you,  
Kansas Bar Foundation Staff

Please note that this information has been reviewed by the Kansas Bankers Association.

## **INTEREST ON LAWYERS' TRUST ACCOUNT (IOLTA) PROGRAM GUIDELINES FOR FINANCIAL INSTITUTIONS**

The Kansas Supreme Court authorized the establishment of the Interest on Lawyers' Trust Account (IOLTA) program in 1984. An IOLTA account is simply a NOW or Super NOW account converted from an existing or newly created lawyer non-interest-bearing trust account except that the beneficiary of the interest is the Kansas Bar Foundation, as stipulated by the Court.

The program develops funds for charitable public service programs approved by the Kansas Supreme Court. Up to this date, the primary beneficiaries are programs that provide civil representation to victims of domestic violence and programs that provide representation to children identified as in need of care.

These guidelines contain alternative methods for establishing and reporting these accounts. The Foundation wants to work with you to make this program as simple as possible for your institution to implement. Please consult with us if you would like to use other procedures.

### **Kansas Supreme Court regulations:**

1. Remit *at least quarterly* any interest earned on the account to the IOLTA program.
2. Transmit to the IOLTA program, with each remittance, a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted from such account.
3. Transmit to each attorney who maintains an IOLTA account a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted on such account.
4. We can clear the account(s) using the automated clearinghouse system. Please notify us if this is the remittance option you wish to use.

### **METHODS OF COMPLYING WITH THESE REQUIREMENTS**

#### **I. Remittance to the IOLTA Program**

- a. If financial institutions charge service fees, please take them:
  - i. From the interest earned on each account separately, (Charges or fees which exceed the interest earned in any remitting period may be carried over to the next remitting period and deducted from interest earned in subsequent quarter.); or

- ii. By netting the total of reasonable service charges assessed on IOLTA accounts against the total of interest paid on those accounts. (Netting may be done for any group of accounts for which a financial institution submits a corporate or summary report.)

**NOTE:** Service charges and fees for IOLTA accounts are deductible solely from the interest earned or by billing the IOLTA program. The principal amount cannot be used to offset the service charges or fees imposed on an IOLTA account.

- b. Financial institutions may remit interest payments:
  - i. Quarterly; or
  - ii. At intervals more frequently than quarterly.
- c. Financial institutions may:
  - i. Hold the interest in the depositing attorney's account until remitted;
  - ii. Debit the depositing attorney's account for the interest when paid and hold it in a separate interest-bearing account until remitting to the IOLTA program; or
  - iii. Pay interest directly into a separate interest-bearing account until remitting the interest to the IOLTA program or pay interest directly to the IOLTA program.
- d. Financial institutions may calculate interest earned on the accounts based on the aggregate average balance.
- e. Financial institutions may:
  - i. Remit interest for each account separately;
  - ii. Remit interest on more than one account in one payment; or
  - iii. Remit interest for all accounts in one payment
- f. Financial institutions may remit interest payments to the IOLTA program by check, mailed directly to the Kansas Bar Foundation, Attn: IOLTA Program, P.O. Box 1037, Topeka, KS 66601.

## **II. Reporting to the IOLTA Program**

- a. Financial institutions may submit:
  - i. One report for each account (See Exhibit A on Page 14); or
  - ii. Composite detail report(s) for some or all accounts.

- b. If a financial institution reports to the IOLTA program under 1.D (interest on aggregate average balance) and opts to net all service charges or fees against all interest as described in A.2, the financial institution will be deemed to have met the reporting requirements by submitting a report to the IOLTA program which shows the service charges or fees assessable against the attorney's trust account and the interest payable on such account. In other words, if the interest payable on one account is less than the service charges assessable against the account, meaning that part of the service charges are actually "paid for" with interest from another account through the netting process, financial institutions are not required to show on their reports to the IOLTA program the fact that the service charges or fees were actually "paid for" with interest from another account.

### **III. Reporting to Attorneys**

- a. Financial institutions may:
  - i. Submit a separate report for each participating attorney or firm; or
  - ii. Add the amount of IOLTA interest, the service charges and fees deducted from interest, if any, to the regular periodic statement prepared for the attorney's account.

### **IV. Automated Clearinghouse Reporting**

The automated clearinghouse system allows the Foundation to tell its originating bank how much interest has accumulated in each IOLTA account in order for the originating bank to request that the funds be transferred. The easiest method of determining the amount of interest is for the financial institution's computer system to send the Foundation a copy of the bank statement that indicates the amount of interest generated within a certain period without providing copies of detailed transactions. The other method of determining the amount of interest is for the Foundation to send out a form which the financial institution fills out indicating the amount of interest generated within a certain time period. The forms are faxed either monthly, or quarterly, as directed by the financial institution. The forms can be mailed or faxed back. The Foundation then uses the reported amount to send to the originating bank to request a transfer of funds.

### **V. Tax-exempt Status of the IOLTA Program**

The IOLTA program has the beneficial ownership of the interest generated on these accounts. The Kansas Bar Foundation is a 501(c)(3) organization. No IRS forms, 1099 or other reports of interest, should be prepared or submitted to the IRS for these accounts.

The following item is from the Internal Revenue Bulletin No. 1987-2, dated Jan. 12, 1987:

Lawyer Trust Account Fund created, supervised, and controlled by a state Supreme Court is not subject to federal income tax, and interest income on lawyers' pooled account for clients' nominal and short-term advances is not taxable. REV. RUL. 87-2

If your data processing system depends on the issuance of 1099 forms, the tax identification used for ALL IOLTA accounts is the IOLTA program's T.I.N. 48-6116429. Under no circumstances should the financial institution enter the attorney's social security number, or law firm employer identification number.

All forms should indicate the name of the attorney or law firm, IOLTA account, and the T.I.N. of the IOLTA program listed above. All 1099 forms should be sent directly to the IOLTA Program, Kansas Bar Foundation, P.O. Box 1037, Topeka, KS 66601, and never sent to the attorney or law firm. You can add "Kansas Bar Foundation" to the name of the account to avoid any mismatch on the 1099 forms, but do not put this addition on checks or deposit slips.

## **Information Summary**

1. If remitting for multiple lawyers/firms, please remit a single report for each, although the payment may be in one lump sum.
2. Interest should be submitted at least quarterly.
3. The report form should be remitted at least quarterly, even if no interest was earned or paid during the quarter.
4. Interest should be remitted to:  
**Kansas Bar Foundation**  
**Attn: IOLTA Program**  
**P.O. Box 1037**  
**Topeka, KS 66601**
5. Participating lawyers/law firms must comply with any minimum balance requirements of their financial institutions.
6. Any questions regarding this form or the program should be directed to:  
**Kansas Bar Foundation**  
**Attn: IOLTA Program**  
**P.O. Box 1037**  
**Topeka, KS 66601**  
**(785) 234-5696**

**Important Note:**

Since the Kansas Bar Foundation is a Section 501(c)(3) charitable organization, the financial institution does not need to report interest income on IRS Form 1099. To do so may create severe administrative problems dealing with backup withholding.

## **KRPC Rule 1.15—Safekeeping of Property**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state of Kansas. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) Preserving identity of funds and property of a client.

(1) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the State of Kansas with a federal or state chartered or licensed financial institution and insured by an agency of the federal or state government, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein.

(ii) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(2) The lawyer shall:

(i) Promptly notify a client of the receipt of the client's funds, securities, or other properties.

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(iii) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them.

(iv) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(v) Produce all trust account records for examination by the Disciplinary Administrator upon request of the Disciplinary Administrator in compliance with Rule 216A.

(3) Except as provided in subsection (3)(iv), any lawyer or law firm that creates or maintains an account for funds of clients or third persons, that are nominal in amount or that are expected to be held for a short period of time and on which interest is not paid to the clients or third persons shall comply with the following provisions:

(i) Such an account shall be established and maintained with a federal or state chartered or licensed financial institution located in Kansas and insured by an agency of the federal or state government. Funds shall be subject to withdrawal upon request and without delay.

(ii) If the account bears interest, the rate of interest payable shall not be less than the rate paid by the institution to regular, non-attorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately.

(iii) If the account bears interest, lawyers or law firms that deposit client funds in such an account shall direct the depository institution:

(aa) to remit at least quarterly, to the Kansas Bar Foundation, Inc., interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice; and

(bb) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of the interest applied; and

(cc) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(iv) A lawyer or law firm that elects not to comply with Rule 1.15 (d)(3)(iii):

(aa) shall file a Notice of Declination with the Clerk of the Appellate Courts on or before the beginning of the next annual registration period under Supreme Court Rule 208; or

(bb) Notwithstanding the foregoing, may file a Notice of Declination with the Clerk of the Appellate Courts at such other time, after July 1, 1992, that a decision to decline is effected.

(v) Every lawyer who has not previously registered or who is required to register under Supreme Court Rule 208 shall be provided the opportunity, at the time of initially registering, to elect or decline to comply with Rule 1.15 (d)(3)(iii) (the IOLTA program) on such forms as the Clerk of the Appellate Courts may prescribe.

(e) Every Kansas lawyer engaged in the private practice of law in Kansas shall, as a part of his or her annual registration, certify to the following:

“I am familiar with and have read Kansas Supreme Court Rule 226, MRPC 1.15, and I and/or my law firm comply/complies with MRPC 1.15 pertaining to preserving the identity of funds and property of a client.”

(f)

(1) Every federal or state chartered or licensed financial institution referred to in KRPC 1.15(d)(1) shall be approved as a depository for lawyer trust accounts if it files with the Disciplinary Administrator an agreement, in a form provided by the Disciplinary Administrator, to report to the Disciplinary Administrator in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Disciplinary Administrator. The Disciplinary Administrator shall annually publish a list of approved financial institutions.

(2) The overdraft notification agreement shall provide that all reports made by the financial institution shall contain the following information:

(i) The identity of the financial institution;

(ii) The identify of the lawyer or law firm;

(iii) The account number;

(iv) Either (i) the amount of the overdraft and the date created; or (ii) the amount of returned instrument(s) and date returned.

The information required by the notification agreement shall be provided within five (5) banking days of the date the item(s) were paid or returned unpaid.

(3) Every lawyer admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. The Disciplinary Administrator's Office shall reimburse the financial institution for the reasonable cost of producing the reports and records required by this rule should the lawyer or law firm fail to do so.

(5) This rule shall not create any cause of action for any person or organization against the financial institution based upon the failure of the financial institution to provide the notices required by this rule.

[History: Amended effective June 1, 1992; Amended effective April 30, 1993; Amended effective March 11, 1999.]

# IOLTA APPLICATION

## NOTICE TO FINANCIAL INSTITUTION

**Financial Institution Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Financial Institution Routing Number:** \_\_\_\_\_

**Date:** \_\_\_\_\_

The undersigned elect(s) to participate in the interest bearing trust account program authorized by the Kansas Supreme Court (Rule No. 225, DR 9-102). Under this program the following account should be converted or placed in an account subject to negotiable order of withdrawal (NOW account).

**Account Number:** \_\_\_\_\_

**Account Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

Interest on the average monthly balance in the account, or as otherwise computed in accordance with your standard accounting practice (net any service charges or fees), should be remitted at least quarterly to the Kansas Bar Foundation. The remittance of the interest can be done by check, automated clearinghouse, or any other method provided by the Federal Reserve System. A sample remittance reporting form is enclosed. The Foundation is a 501 ( c ) ( 3 ) charitable organization and the IRS does not require a Form 1099 for this program. If your financial institution does elect to send out a W-9 Form, it should reflect the Kansas Bar Foundation as the payee, should contain the Kansas Bar Foundation tax identification number (48-6116429), and should be sent to the Kansas Bar Foundation.

The establishment of NOW trust accounts by law firms, including professional corporations, to implement this program has been approved by the Federal Reserve System, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation. Questions? Contact the Kansas Bar Foundation at (785) 234-5696.

Thank you for your prompt attention to this request. Your cooperation and support for this important program benefiting the residents of Kansas are appreciated.

\_\_\_\_\_  
**(Authorizing trust account signature)**

**(Please include a list of attorneys in your firm for our IOLTA membership file.)**

Mail to:

Kansas Bar Foundation  
Attn: IOLTA Program  
P.O. Box 1037  
Topeka, KS 66601

**Exhibit A**

**INTEREST ON LAWYER TRUST ACCOUNT  
INTEREST REMITTANCE REPORT FOR INDIVIDUAL ACCOUNT**

(To be completed by financial institution and submitted with each remittance.)

**Financial Institution:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Routing No.: \_\_\_\_\_

Contact Name: \_\_\_\_\_

**Attorney/Law Firm:**

Name: \_\_\_\_\_

Trust Account No.: \_\_\_\_\_

Report Period: \_\_\_\_\_ through \_\_\_\_\_ Annual Percentage Rate \_\_\_\_\_

Earned Interest for Period \$ \_\_\_\_\_

Less Service Charges or Fees (if any) \$ \_\_\_\_\_

Net Amount Remitted to IOLTA \$ \_\_\_\_\_

**Please remit completed form to:**

Kansas Bar Foundation  
Attn: IOLTA Program  
1200 S.W. Harrison Street  
P.O. Box 1037  
Topeka, KS 66601-1037  
(785) 234-3813 Fax

**Exhibit B**  
(Remittance Report for Multiple Accounts)

**Kansas Bar Foundation – IOLTA**  
**REMITTANCE REPORT**

(Date)

**FROM:** Joyce Neiswender jneiswender@ksbar.org  
P.O. Box 1037  
Topeka, KS 66601-1037 **FAX: 785-234-3813**  
**Phone:** 785-234-5696

**TO:** CONTACT PERSON  
Name of Financial Institution  
City  
Phone No. Fax No.

Please provide information for the following account(s) for the period ending in (month or quarter).

Account Number	Law Firm Name	Interest Rate	Interest Earned	Maint. Fees	NET Amount
XXXXXXXXXXXXXX		_____	_____	_____	_____
XXXXXXXXXXXXXX		_____	_____	_____	_____
XXXXXXXXXXXXXX		_____	_____	_____	_____
	<b>Total remittance</b>	_____	_____	_____	_____

**PLEASE MAKE CORRECTIONS TO THE INFORMATION ON THIS FORM  
(ESPECIALLY BANK ROUTING & ACCOUNT NUMBERS).  
We are charged for every transaction returned.  
Please complete and FAX this form within 5 days to 785-234-3813.  
NO COVER SHEET REQUIRED**

Please sign and print your name below.

\_\_\_\_\_  
Signature Printed Name Date