

# New York Codes, Rules and Regulations

## TITLE 21. MISCELLANEOUS

### CHAPTER LXIX. INTEREST ON LAWYER ACCOUNT FUND

#### PART 7000. TRUSTEES' REGULATIONS AND PROCEDURES

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##### **Section 7000.1 Purpose of fund.**

The purpose of the Interest on Lawyer Account Fund is to provide funding for providers of civil legal services in order to ensure effective access to the judicial system for all citizens of the State and to provide stable, economical and high quality delivery of civil legal services to the poor throughout the State. The fund is authorized to receive funds from any source for disbursement to nonprofit legal services providers for charitable purposes, including the delivery of legal services in civil matters to poor persons. The fund will receive interest or dividends earned by qualified client funds held by attorneys in unsegregated interest-bearing or dividend-bearing accounts at banking institutions to the extent that such institutions choose to offer and receive the benefits of providing IOLA accounts, and will utilize the interest or dividends so received for the above-stated purposes.

##### **Section 7000.2 Definitions.**

- (a) Banking institutions are banks, trust companies, savings banks, savings and loan associations, credit unions or foreign banking corporations whether incorporated, chartered, organized or licensed under the laws of this State or the United States, provided that such banking institutions have a banking office in this State.
- (b) Eligible bank or eligible banking institution means a banking institution that maintains IOLA

accounts that comply with section 497 of the New York Judiciary Law, section 97-v of the New York State Finance Law and the criteria provided in these regulations, and has been approved by the Board of Trustees to maintain IOLA accounts.

- (c) Funds received in a fiduciary capacity are funds received by an attorney or a law firm from a client or third person in the course of the practice of law, including but not limited to funds received in an escrow capacity, but not including funds received as trustee, executor, administrator, guardian or receiver in bankruptcy.
- (d) Interest on Lawyer Account or IOLA account means an unsegregated interest-bearing or dividend-bearing account, as approved by the Board of Trustees of the IOLA fund, maintained in an eligible bank for the deposit by an attorney or law firm as a fiduciary of qualified funds.
- (e) Qualified funds are moneys received by an attorney or a law firm in a fiduciary capacity from a client or a third person and which, in the sole discretion and judgment of the attorney or law firm, are too small in amount or are reasonably expected to be held for too short a time to generate sufficient income to justify the expense of administering a segregated account for the benefit of the client or third person and cannot earn income for a client or third person in excess of the costs incurred to secure such income. Qualified funds do not include those moneys which are deposited for the particular client or client's matter on which the interest will be paid to the client or an interest-bearing trust account at a banking institution with provision by the bank or by the depositing attorney or law firm for computation of interest earned by the client funds and the payment thereof to the client.
- (f) New York Interest on Lawyer Account fund or IOLA fund means the fiduciary fund established by subdivision (1) of section 97-v of the New York State Finance Law and administered by the IOLA Board of Trustees.
- (g) IOLA board of trustees, board of trustees or board means the body of individuals appointed by the Governor pursuant to subdivision (2) of section 97-v of the New York State Finance Law that is authorized to administer the IOLA fund.

### **Section 7000.3 Organization.**

- (a) The IOLA fund shall be administered by a board of trustees appointed by the Governor.
- (b) The board of trustees shall consist of 15 members, at least eight of whom shall be attorneys licensed to practice in New York. Two of the appointments, at least one of whom shall be an attorney, shall be appointed on the recommendation of the President of the Senate; two of the appointments, at least one of whom shall be an attorney, shall be appointed on the recommendation of the Speaker of the Assembly; one appointment shall be on the recommendation of the Minority Leader of the Senate and one on the recommendation of the Minority Leader of the Assembly. Two of the appointments, both of whom shall be attorneys, shall be appointed on the recommendation of the Court of Appeals. The Governor shall designate one member of the board as chair. No member of the Senate or Assembly shall be eligible to serve as a member of the board.
- (c) The term of a trustee shall be three years. Of the trustees first appointed, five shall be appointed for terms expiring December 31, 1984; five shall be appointed for terms expiring December 31, 1985; and five shall be appointed for terms expiring December 31, 1986. As each term expires, each new appointment shall be for a term of three years. Vacancies shall be filled in the manner of the original appointment for the remainder of the term.
- (d) The trustees shall employ an executive director to serve as the chief administrative officer of the

fund.

- (e) The trustees shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the discharge of their duties.

#### **Section 7000.4 Meetings.**

- (a) The trustees shall meet at least quarterly each year at such locations, and in such manner, as the chair shall designate. Special meetings may be called by the chair, and shall be called by the chair upon the request of at least four trustees. The chair shall provide reasonable notice of all meetings.
- (b) Eight trustees shall constitute a quorum. A majority of the trustees present at any meeting of the board may exercise any powers held by the trustees, except as otherwise provided in this Part.

#### **Section 7000.5 Powers and duties of trustees.**

- (a) In the exercise of the authority granted the trustees, the trustees have the power to:
  - (1) receive, hold and distribute the moneys remitted to the IOLA fund pursuant to the provisions of section 497 of the Judiciary Law and to receive such other moneys and property received from any source, including voluntary contributions, together with any interest accrued thereon. All such revenue not distributed shall be secured and invested as required by the provisions of sections 97-v and 98 of the State Finance Law;
  - (2) require eligible banking institutions that apply to be considered eligible to accept the deposit of IOLA funds to verify their current compliance with New York Judiciary Law 497, New York State Finance Law 97-v and these regulations and determine eligibility for the deposit of IOLA funds;
  - (3) make available to the public the names of eligible banking institutions;
  - (4) allocate no less than 75 percent of the net funds distributed after covering administrative expenses in any fiscal year as grants and contracts to not-for-profit tax-exempt "qualified legal services providers," as defined by section 7000.12(a)(1) of this Part, for the provision of civil legal services to the poor allocated according to the geographic distribution of poor persons throughout the State based on the latest available figures from the United States Department of Commerce, Bureau of Census;
  - (5) allocate the remaining funds to "administration of justice providers," as defined by section 7000.12(a)(2) of this Part, for purposes related to the improvement of the administration of justice, including but not limited to the provision of civil legal services to groups currently underserved by legal services, such as the elderly and the disabled, and the enhancement of civil legal services to the poor through innovative and cost-effective means, such as volunteer lawyer programs and support and training services;
  - (6) adopt and amend regulations for the administration of the fund and procedures for the distribution of grants and contracts;
  - (7) review applications for grants and contracts using staff and other available resources;
  - (8) determine, pursuant to the provisions of section 97-v of the State Finance Law, the award of grants and contracts, including the amount to be awarded and the terms under which the awards of grants and contracts shall be made;
  - (9) employ and remove, at their pleasure, employees, agents and consultants and fix their compensation within the amounts available therefor, but in no event shall more than 10

percent of the funds available in any fiscal year be spent on personnel and related services, including necessary nonpersonnel administrative costs of the program; provided, however, that pursuant to section 97-v of the State Finance Law as amended by the Laws of 1984, such limitation may be waived by the board of trustees by the adoption of a resolution, and such waiver shall remain in effect until the board determines by a subsequent resolution that the program is fully operational;

(10) furnish the Governor, the Court of Appeals, the Legislature and the State Comptroller with an annual report of the activities and operations of the fund; and

(11) perform all other acts necessary or proper for the fulfillment of the purpose of the fund and its effective administration, including but not limited to the creation of subcommittees of the board and the appointment of officers other than chair.

(b) Powers and duties of officers. The duties of the officers of the fund shall be as follows:

(1) the chair shall preside at all meetings of the trustees, generally supervise the administration of the fund and exercise such other functions and duties that the trustees may assign or delegate, or that are customary to the office of the chair;

(2) the vice-chair shall assume the duties of the chair in the absence or disability of the chair;

(3) the treasurer shall maintain the financial records of the fund and, jointly with the chair, certify vouchers of the fund that authorize the State Comptroller to make payments of grants and contracts; and

(4) the executive director shall assist the trustees, supervise the implementation of regulations, coordinate the review of applications, supervise staff, serve as secretary at meetings and fulfill such other duties as may be assigned or delegated by the chair or the trustees.

#### **Section 7000.6 Conflict of interest.**

A trustee with a past or present affiliation with an applicant (including employee, officer, director, trustee, counsel or business relationship) for distribution of funds shall declare such affiliation to the trustees, and that trustee shall not participate in a vote on any matter relating directly to such applicant.

#### **Section 7000.7 Reports.**

(a) On or after the first day of April each year, the trustees shall prepare an annual report of the activities and operations of the fund during the preceding year. The report shall be transmitted to the Governor, the Legislature, the Court of Appeals and the State Comptroller.

(b) The trustees may issue periodic reports to the public concerning the activities and procedures of the fund.

#### **Section 7000.8 Establishment of IOLA accounts by attorneys and law firms.**

(a) Participation in IOLA is mandatory. Each attorney or law firm that receives qualified funds shall establish and maintain an IOLA account in an eligible banking institution of the attorney's or law firm's choosing. An attorney or law firm which receives qualified funds in the course of its practice of law and establishes and maintains an IOLA account shall (i) designate the account as "(name of attorney/law firm IOLA account)" with the approval of the banking institution and (ii) notify the IOLA fund within 30 days of establishing the IOLA account of the account number and the name and address of the eligible banking institution where the account is deposited. Such attorney or law firm:

(1) shall have discretion, in accordance with the code of professional responsibility, to determine

whether moneys received by the attorney or law firm in a fiduciary capacity from a client or third person shall be deposited in a nonsegregated IOLA account;

- (2) shall, if in the judgment of the attorney or law firm any moneys received are qualified funds, deposit such funds in an IOLA account;
- (3) shall, ordinarily, in determining the type of account into which to deposit particular funds held for a client or third person, take into consideration the following factors:
  - (i) the amount of the funds received, the interest or dividends the funds would earn during the period they are expected to be deposited, the expected duration of the deposit, the rates of interest or yield and service charges or fees at a banking institution where the funds may be deposited;
  - (ii) the cost of establishing and administering non-IOLA accounts for clients or third persons, including the cost of the lawyer or law firm's services, and including the cost of obtaining tax identification information, the necessity or propriety of completing tax reports and forms, and remitting interest to a client;
  - (iii) the capability of the banking institution, or attorney or law firm, to calculate and pay interest earned by each client's fund, net of any service charges, fees or other applicable costs, to the particular clients, including through the use of subaccounting;
  - (iv) any other circumstances that affect the ability of the funds to earn income for a client or third person in excess of the costs incurred to secure such income while the funds are held.

(b) Notwithstanding the deposit requirements of this subdivision, no attorney or law firm shall be liable in damages nor held to answer for a charge of professional misconduct because of a deposit of moneys into an IOLA account pursuant to the attorney's good faith judgment that such moneys were qualified funds.

(c) Attorneys with accounts in a financial institution which ceases for any reason to be an eligible banking institution for IOLA accounts shall move such accounts to an eligible banking institution.

(d) An attorney or law firm that establishes that compliance with the foregoing provisions of this section has resulted in any banking service charges or fees to such attorney or law firm shall be entitled to reimbursement of such charges or fees from the interest on the IOLA account of such attorney or law firm by filing a claim with supporting documentation with the IOLA fund within 90 days of the imposition of such charges or fees, as approved by the Board. In no event, however, shall the attorney or law firm be entitled to reimbursement in excess of the interest earned by such IOLA account.

#### **Section 7000.9 Interest and dividends.**

(a) To be considered presumptively eligible for the deposit of IOLA funds, an IOLA account shall pay an interest or dividend rate on IOLA accounts which is not less than the highest rate available among the following types of accounts, as paid by the banking institution to its best customers on accounts maintained at that institution which are determined to be similar to its IOLA accounts:

- (1) A money market account with or tied to check writing capability;
- (2) A government (such as for municipal deposits) checking account;

- (3) An open-end money market fund investment offered through the banking institution that is (i) tied to check writing capability at the institution, (ii) and which fund is solely invested in, or fully collateralized by, U.S. Government securities and (iii) has total assets of at least \$250,000,000; or
  - (4) Any other interest- or dividend-paying product with or tied to check-writing capability at the institution.
- (b) As alternatives to the foregoing, the institution requesting designation by the trustees of an account as eligible to accept the deposit of IOLA funds may offer:
- (1) The greater of 60% of the Federal Funds Target Rate or 1% paid on an interest-bearing checking account; or
  - (2) A yield specified by the IOLA fund, if it so chooses, which is agreed to by the financial institution and would be in effect for a period to be mutually agreed upon.
- (c) The following additional provisions are applicable. As indicated by their terms, some apply only to one or some of the options set forth above.
- (1) The Federal Funds Target Rate referenced in paragraph (1) of subdivision (b) shall be calculated as of the first day of each month.
  - (2) A bank may elect to offer the highest rates that it pays on government or high-yield money market accounts on another qualifying IOLA checking account, instead of actually offering such account.
  - (3) Institutions may elect to pay a higher interest or dividend rate than provided for in this section.
  - (4) All participating financial institutions shall report, in the form and manner prescribed by the IOLA fund, on the best rate paid to their best customers for each of the types of accounts they offer within the definitions specified in paragraphs (1) through (4) of subdivision (a) above. To enable attorneys and law firms to open and maintain an IOLA account, an eligible banking institution shall, within 60 days of the effective date of these regulations and as requested thereafter, provide to the IOLA board information that demonstrates compliance with the provisions of this section.
  - (5) Where there is reasonable cause to believe a financial institution is willfully misrepresenting its best rate information, the IOLA fund may condition continued approval status on a finding by the institution's auditor that its certifications have been accurate.
- (d) The IOLA Board shall periodically monitor the effectiveness of this standard.

**Section 7000.10 Eligible banking institutions.**

With respect to IOLA accounts, eligible banking institutions that choose to offer, establish, accept or maintain IOLA accounts:

- (a) shall have no duty to inquire or determine whether deposits consist of qualified funds;
- (b) shall charge only equitable service charges or fees against the interest earned on IOLA accounts which shall not be greater than it imposes on similar accounts maintained at the institution and shall be limited to per check charges, per deposit charges, monthly maintenance fees, a fee in lieu of a minimum balance, federal deposit insurance fees, or a service charge for the preparation and issuance of reports required by this section, as approved by the trustees of the fund. All other fees for special services requested by the account-holder are the responsibility of, and may be charged

to, the lawyer or law firm maintaining the IOLA account;

- (c) may elect to waive any charges or fees on IOLA accounts;
- (d) shall remit at least quarterly any interest earned on IOLA accounts to the IOLA fund, after deduction of equitable service charges or fees, if any;
- (e) shall not take any equitable service charges or fees in excess of the interest or dividends earned on an IOLA account for any month or quarter from interest or dividends earned on another IOLA account or from the principal of the account and such charges or fees in excess of the interest or dividends earned on an IOLA account may be carried over to the next remitting periods and deducted from interest or dividends earned in such account;
- (f) shall transmit to the IOLA fund with each remittance a report that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average balance for each IOLA account for the period in which the report is made;
- (g) shall transmit to each attorney or law firm who maintains an IOLA account a report in accordance with the normal procedures for reporting to its depositors;
- (h) shall have no liability for any claims by any person or entity for payments from an IOLA account to or upon the order of the attorney or law firm maintaining the account;
- (i) shall have no liability for any claims by any person or entity for any remittance of interest to the IOLA fund pursuant to the provisions of section 97-v of the State Finance Law; and
- (j) shall not be subject to any action solely by reason of its opening, offering or maintaining an IOLA account, accepting any funds for deposit to any such accounts or remitting any interest to the IOLA fund. If in the sole discretion of the board of trustees of the IOLA fund, a banking institution has, because of a mistake of fact, error in calculation or erroneous interpretation of section 97-v of the State Finance Law, section 497 of the Judiciary Law or of this Part, remitted to the IOLA fund any moneys not required by such provision to be remitted, the board of trustees shall refund such moneys upon application of any aggrieved party. Any such refund shall be paid from the IOLA fund without interest and without the deduction of any service charge and shall constitute a full satisfaction and discharge of any claim for such refund.

#### **Section 7000.11 Confidentiality.**

- (a) All records, documents or other information identifying an attorney or law firm, client or third person of an IOLA account shall be confidential and shall not be disclosed by a banking institution except with the consent of the attorney or law firm maintaining the account or as required by law, regulation, administrative requirement or compulsory legal process.
- (b) The board of trustees shall maintain all papers, records, documents or other information identifying an attorney or law firm, client or third person of an IOLA account on a private and confidential basis, and shall not disclose such information unless such disclosure is (1) necessary to accomplish the purposes of section 497 of the Judiciary Law and section 97-v of the State Finance Law or (2) made pursuant to compulsory legal process.

#### **Section 7000.12 Qualified recipients.**

- (a) Qualified recipients shall be not-for-profit entities, tax-exempt under section 501(a) of the Internal Revenue Code, or any successor provision, eligible to receive distributions of IOLA funds pursuant to one or both of the following categories:

- (1) Qualified legal services providers which shall be an entity which operates within New York State and provides direct civil legal services without charge to poor persons within a geographical area in New York State; or
  - (2) Administration of justice providers which shall be an entity which operates within New York State and which:
    - (i) enhances civil legal services to the poor through innovative and cost-effective means;
    - (ii) provides direct civil legal services either to groups of clients currently underserved by legal services, such as the elderly or the disabled, or in an area of representation, whether substantive or geographical, that cannot be or is not effectively served by individual qualified legal services providers;
    - (iii) provides legal, management or operational training, or legal, management, support service, or technical assistance, or direct legal assistance, informational advocacy or litigation support to qualified legal services providers; or
    - (iv) which otherwise promotes the improvement of the administration of justice.
- (b) All qualified recipients shall:
- (1) ensure that the funds received are expended in accordance with the provisions of section 97-v of the State Finance Law, section 497 of the Judiciary Law and this Part;
  - (2) preserve the attorney-client privilege in all cases;
  - (3) ensure that no one shall interfere with any attorney funded in whole or in part by IOLA funds in fulfilling a professional responsibility to a client as established by the code of professional responsibility and the provisions of section 97-v of the State Finance Law, section 497 of the Judiciary Law and this Part; and
  - (4) prohibit discrimination, as defined by the applicable laws of the United States and the State of New York, against (i) any person applying for employment or employed by the qualified recipient; or (ii) any person seeking participation in, or the benefits or proceeds of, a program or programs supported in whole or in part by IOLA funds.
- (c) Recognizing that the IOLA funds available for distribution may not be sufficient to make distributions to all qualified recipients submitting applications for such funds which merit funding, the board of trustees shall from time to time establish funding priorities. Among the factors to be considered by the board of trustees in establishing the priorities shall be:
- (1) if there are two or more qualified recipients in a geographical area who have applied for IOLA funding, the board shall distribute available funds annually based upon a determination by the board in its discretion of the merits of the applications of the qualified recipients and the impact that distribution to the qualified recipients will have on ensuring the delivery of stable, economical and high quality civil legal services to that area;
  - (2) absent special circumstances, qualified recipients shall have substantial sources of income used for the provision of civil legal services to the poor in addition to the funds requested;
  - (3) expansion and improvement of existing qualified recipients shall be preferred over requests to provide IOLA funding to establish new qualified recipients, except in instances of unique and difficult to serve areas and groups;
  - (4) requests shall be encouraged for applications for IOLA funds which will result in the

development and strengthening of pro bono programs which generate the provision of substantial voluntary legal services to the poor;

- (5) the level of professional standards and efficiency and quality of services;
- (6) the provisions for client participation in program planning, priority setting and operation;
- (7) provisions which prohibit attorneys employed full time in legal assistance activities supported all or in part by IOLA funds from engaging in any compensated outside practice of law;
- (8) the encouragement of cooperative proposals from multiple qualified recipients in a given service area;
- (9) the level of client and community support for the services for which IOLA funds are being sought;
- (10) whether a qualified support and training provider applicant seeking IOLA funds to provide training and support services to qualified legal service providers has obtained the approval of a majority of the programs it seeks to assist; and
- (11) qualified support and training provider applicants seeking IOLA funds to provide direct legal services either to groups of clients currently underserved by legal services or in areas of representation that cannot effectively be serviced by individual qualified legal services providers shall demonstrate the need for such services.

**Section 7000.13 Use of funds.**

(a) No IOLA funds distributed pursuant to section 97-v of the State Finance Law, section 497 of the Judiciary Law and this Part may be used for any of the following purposes:

- (1) the provision of legal services with respect to any fee-generating case unless adequate representation is unavailable;
  - (i) for the purposes of this subparagraph, fee-generating case shall mean any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party;
  - (ii) other adequate representation is deemed unavailable if any one of the following factors are met:
    - (a) it has been determined that free referral is not possible for any of the following reasons:
      - (1) the case has been rejected by the local lawyer referral service or by two attorneys in private practice who have experience in the subject matter of the case;
      - (2) neither the referral service nor at least two attorneys in private practice who have experience in the subject matter of the case will consider the case without payment of a consultation fee;
      - (3) case is of the type which attorneys in private practice in the area ordinarily do not accept without prepayment of a fee;
      - (4) emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with

the code of professional responsibility, referral will be attempted at a later time;

- (b) recovery of damages is not the principal object of the case and a request for damages is ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims;
  - (c) a court has appointed a qualified recipient or an attorney employed by a qualified recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction;
  - (d) the case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.
- (b) Criminal proceedings. No funds distributed pursuant to this Part shall be used for the provision of legal assistance with respect to any criminal proceeding or any action in the nature of habeas corpus collaterally attacking a criminal conviction.
- (c) Prohibition on the use of funds for political purposes. No funds distributed pursuant to this Part shall be used either directly or indirectly to contribute to any political party or association, or any candidate for public or party office, and no political test or qualification shall be used in making any decision, taking any action, or performing any function under these regulations.

**Section 7000.14 Client financial eligibility for services.**

- (a) A person eligible to receive legal services from funds allocated pursuant to this Part must have an income that does not exceed 125 percent of the official poverty threshold as defined by the United States Office of Management and Budget, except in the following circumstances:
- (1) the person is seeking legal assistance to secure benefits provided by a governmental program for the poor;
  - (2) person would be eligible but for the receipt of benefits provided by a governmental income maintenance program; or
  - (3) the person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in subdivision (b) of this section.
- (b) In addition to income, a recipient shall consider other relevant factors in determining whether a person is eligible to receive legal assistance. Factors to be considered shall include:
- (1) current income, taking into account seasonal variations in income;
  - (2) liquid assets;
  - (3) fixed debts and obligations, including Federal and local taxes and medical expenses;
  - (4) child care, transportation, mandatory payroll deductions and other expenses necessary for employment;
  - (5) age or physical infirmity of resident family members;
  - (6) the cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;
  - (7) the consequences for the individual if legal assistance is denied; and
  - (8) any other factors related to financial inability to afford legal assistance.

- (c) A recipient may provide legal assistance to a group, corporation, or association if it:
  - (1) is primarily composed of persons eligible for legal assistance under these regulations; or
  - (2) has as its primary purpose the furtherance of the interests of persons in the community who are unable to afford legal assistance; and
  - (3) provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.
- (d) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it in a manner consistent with the attorney-client relationship. Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client without the express written consent of the client.
- (e) If an eligible client becomes ineligible due to a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for a period which will enable the client to retain private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibility.

**Section 7000.15 Applications for grants and contracts.**

- (a) The board of trustees shall seek submissions of grant and contract applications on a regular and periodic basis, and distribute available IOLA funds, after the payment of administrative expenses, to qualified recipients pursuant to the provisions of this Part on the basis of the merits of the applicants. The board of trustees may delegate the screening of the funding applications to its staff or other entity it deems appropriate.
- (b) All applicants seeking funds pursuant to this Part shall:
  - (1) submit a written grant proposal;
  - (2) respond adequately to the recommended grant proposal format and any additional requests for information;
  - (3) agree to carry out the program for which funds are requested, report on its progress and results, and return any funds not utilized in accordance with the grant;
  - (4) cooperate with all data collection and evaluation activities requested and submit annually an audited financial statement by a certified public accountant and a report of the programs on which the IOLA funds were expended.
- (c) All grant and contract applications submitted to the board of trustees shall include the following information:
  - (1) community characteristics demonstrating the need for legal services and describing the affiliation with existing legal services providers, volunteer lawyer programs and local bar associations;
  - (2) organizational structure of the applicant, including policy board composition, sources and amounts of other funding, planning and priority setting processes, and client and community input and support;
  - (3) description of the applicant, including community outreach, office and staffing patterns, staff

qualifications, specialty units, client statistics, client screening, intake and referral procedures, systems of quality control (case assignment and review, supervision and follow-up training, technical assistance and other support), client grievance procedures and staff and program evaluation;

- (4) description of the program for which IOLA funding is sought;
- (5) program budget which sets forth the proposed use of the requested IOLA funds and a timetable and self-assessment plan to monitor the implementation and operation of the proposed program;
- (6) the documentation to be provided by the applicants shall include: (i) tax-exempt status; (ii) latest audited financial statements; (iii) affirmative action policy; (iv) current professional liability coverage; and (v) approval of the proposal by the applicant's board of directors; and
- (7) any other relevant information requested by the executive director.

#### **Section 7000.16 Processing applications.**

Review and approval of the grant and contract applications shall be completed within three months of the date set for the submission of the funding application, and if the amount to be distributed differs from the funds requested, within 30 days after notification of such proposed distribution, each qualified recipient shall submit a modified budget and narrative explaining how the funds will be utilized.

#### **Section 7000.17 Payment of grants and contracts.**

All payments from the IOLA fund shall be made by the State Comptroller upon certification and authorization of the trustees of the fund.

#### **Section 7000.18 Denial of grants and contracts.**

- (a) The board of trustees shall have the power to determine that an applicant for funding is not qualified to receive funding or is not the most meritorious of competing applicants, to deny or reduce future funding, or to terminate existing funding.
- (b) In reaching a decision, the board of trustees shall take into consideration the amount of funds available for distribution, the continuity, competence and cost-effectiveness of the services provided, the provider's compliance with the terms and conditions of the grant and the requirements of these regulations, the standing of the recipient in the client community being served, the viability of an alternate provider of services and the disruption of services caused by a change in the identity of the provider. If a decision is made to terminate or deny refunding of a grant, the board of trustees may authorize temporary funding if necessary to enable a grant recipient to close or transfer current matters in a manner consistent with its professional responsibilities to its current clients. Where the board of trustees has funded an applicant for general operating support on a recurring basis, a decision to terminate funding or deny refunding will normally only be based on:
  - (1) a substantial failure to comply with the terms and conditions of the grant or the requirements and restrictions of these regulations;
  - (2) a substantial failure to use the grant to provide economical and effective legal assistance as measured by generally accepted professional standards and the provisions of these regulations; or
  - (3) a lack of sufficient funds available for distribution pursuant to these regulations.
- (c) The provisions of subdivision (b) of this section shall not apply to any grant awards which the

board of trustees designates, at the time such award is made, as onetime in nature.

**Section 7000.19 Advisory council.**

The board of trustees may from time to time establish one or more advisory councils made up of representatives of qualified recipients and members of the private bar and communities serviced in order to assist in the promotion of IOLA accounts and to provide advice in the development and implementation of the programs initiated by this Part. The members of the advisory council will receive no compensation for their services but, in the discretion of the board, may be entitled to receive reimbursement for their actual and necessary expenses incurred in the discharge of their duties.

**Section 7000.20 Adoption and amendment of regulations.**

New regulations may be adopted, and any regulation may be amended or repealed, by the trustees at any regular or special meeting, provided that notice of the proposed adoption, amendment or repeal has been given to all trustees at least seven days before the meeting and, provided further, that any amendment of a provision of this Part, which by its terms requires action by a special vote, shall become effective only if adopted by such special vote. In addition, any such regulation proposed by the board of trustees to be adopted, amended or repealed may be so adopted, amended or repealed only in accordance with Article 2 of the State Administrative Procedure Act. Copies of all regulations shall be made available to the public at all offices of the fund.

**Section 7000.21 Construction of regulations.**

This Part shall be liberally construed to accomplish the objectives of the fund and the policies of the trustees.

**Section 7000.22 Fiscal year.**

The fund's fiscal year shall begin April 1 and end March 31.