

Judiciary Law

§ 497. Attorneys fiduciary funds; interest-bearing accounts.

1. An "interest on lawyer account" or "IOLA" is an unsegregated interest-bearing deposit account with a banking institution for the deposit by an attorney of qualified funds.
2. "Qualified funds" are moneys received by an attorney in a fiduciary capacity from a client or beneficial owner and which, in the judgment of the attorney, are too small in amount or are reasonably expected to be held for too short a time to generate sufficient interest income to justify the expense of administering a segregated account for the benefit of the client or beneficial owner. In determining whether funds are qualified for deposit in an IOLA account, an attorney may use as a guide the regulation adopted by the board of trustees of the IOLA fund pursuant to subdivision four of section ninety-seven-v of the state finance law.
- 2-a. "Funds received in a fiduciary capacity" are funds received by an attorney from a client or beneficial owner 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, guardian or receiver in bankruptcy.
3. A "banking institution" means a bank, trust company, savings bank, savings and loan association, credit union or foreign banking corporation whether incorporated, chartered, organized or licensed under the laws of this state or the United States, provided that such banking institution conducts its principal banking business in this state.
4.
 - (a) An attorney shall have discretion, in accordance with the code of professional responsibility, to determine whether moneys received by an attorney in a fiduciary capacity from a client or beneficial owner shall be deposited in non-interest, or in interest bearing accounts. If in the judgment of an attorney any moneys received are qualified funds, such funds shall be deposited in an IOLA account in a banking institution of his or her choice offering such accounts.
 - (b) The decision as to whether funds are nominal in amount or expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm. Ordinarily, in determining the type of account into which to deposit particular funds held for a client, a lawyer or law firm shall take into consideration the following factors:
 - i. the amount of interest the funds would earn during the period they are expected to be deposited;
 - ii. the cost of establishing and administering the account, including the cost of the lawyer or law firm's services;
 - iii. the capability of the banking institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.
 - (c) All qualified funds shall be deposited in an IOLA account unless they are deposited in:
 - i. a separate interest bearing account for the particular client or client's matter on which the interest will be paid to the client; or
 - ii. an interest bearing trust account at a banking institution with provision by the bank or by the depositing lawyer or law firm for computation of interest earned by each client's funds and the payment thereof to the client.
 - (d) 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 for failure to deposit qualified funds in an IOLA account.

5. 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 to an IOLA account pursuant to a judgment in good faith that such moneys were qualified funds.
6.
 - (a) 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 do so by (1) designating the account as "(name of attorney/law firm IOLA account)" with the approval of the banking institution; and (2) notifying the IOLA fund within thirty days of establishing the IOLA account of the account number and name and address of the banking institution where the account is deposited.
 - (b) The rate of interest payable on any IOLA account shall be not less than the rate paid by the banking institution on similar accounts maintained at that institution, and the banking institution shall not impose on such accounts any charges or fees greater than it imposes on similar accounts maintained at that institution.
 - (c) With respect to IOLA accounts, the banking institution shall:
 - i. Remit at least quarterly any interest earned on the account directly to the IOLA fund, after deduction of service charges or fees, if any, are applied.
 - ii. Transmit to the IOLA fund with each remittance a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of net interest remitted from such account.
 - iii. Transmit to each attorney or law firm which maintains an IOLA account 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.
 - iv. Be permitted to impose reasonable service charges for the preparation and issuance of the statement.
 - v. Have no duty to inquire or determine whether deposits consist of qualified funds.
7.
 - (a) Payment from an IOLA account to or upon the order of the attorney maintaining such account shall be a valid and sufficient release of any claims by any person or entity against any banking institution for any payments so made.
 - (b) Any remittance of interest to the IOLA fund by a banking institution pursuant to this section shall be a valid and sufficient release and discharge of any claims by any person or entity against such banking institution for any payment so made, and no action shall be maintained against any banking institution solely for opening, offering, or maintaining an IOLA account, for accepting any funds for deposit to any such account or for remitting any interest to the IOLA fund.
8. Nothing contained in this section shall be construed to require any banking institution to offer, accept or maintain IOLA accounts.
9. All papers, records, documents or other information identifying an attorney, client or beneficial owner of an IOLA account shall be confidential and shall not be disclosed by a banking institution except with the consent of the attorney maintaining the account or as permitted by any law, regulation or administrative requirement.
10. An attorney or law firm that can establish that compliance with subdivision six of this section has resulted in any banking service charges or fees shall be entitled to reimbursement of such expense from the interest on lawyer account fund by filing a claim with supporting documentation with the fund.