

## **The IOTA Rule**

### **5-1.1 (g) Interest on Trust Accounts (IOTA) Program**

(1) Definitions. As used herein, the term:

(A) “nominal or short-term” describes funds of a client or third person that, pursuant to subdivision (3), below, the lawyer has determined cannot practicably be invested for the benefit of the client or third person;

(B) “Foundation” means The Florida Bar Foundation, Inc.;

(C) “IOTA account” means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

(D) “Eligible Institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (E) below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and a money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. A money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and have total assets of at least \$250,000,000.00. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

2) Required Participation. All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida shall be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of this rule.

(3) Determination of Nominal or Short-Term Funds. The lawyer shall exercise good faith judgment in determining, upon receipt, whether the funds of a client or third person are

nominal or short-term. In the exercise of this good faith judgment, the lawyer shall consider such factors as:

(A) the amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) the period of time such funds are expected to be held;

(C) the likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) the cost to the lawyer or law firm of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short-term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with ethical impropriety or other breach of professional conduct based on the exercise of such good faith judgment.

(4) Notice to Foundation. Lawyers or law firms shall advise the Foundation, at 875 Concourse Parkway South, Suite 195, Maitland, Florida 32751, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) Eligible Institution Participation in IOTA. Participation in the IOTA program is voluntary for banks, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) Remittance and Reporting Instructions. Eligible institutions shall:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the eligible institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the Foundation, the rate of interest applied, and the period for which the statement is made.

(6) Small Fund Amounts. The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short-term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) Confidentiality and Disclosure. The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation shall, upon an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts