

Redlined rules showing revisions to existing rules regulating interest-bearing trust fund accounts

TITLE 2. Members

DIVISION 5. Trust Accounts

Chapter 1. Global Provisions

Rule 2.100 Definitions

- (A) A "Chargeable fee" is a per-check charge, per-deposit charge, fee in lieu of minimum balance, federal deposit insurance fee, or a sweep fee.
- (B) A "Client" is a person or a group of persons that has engaged the attorney or firm for a common purpose. (Former Rule 1)
- (C) "Comparably conservative" in Business and Professions Code 6213(j) includes, but is not limited to, securities issued by Government Sponsored Entities.
- (D) An "Exempt Account" is exempt from IOLTA requirements because it does not meet the productivity criteria established by the Legal Services Trust Fund Commission.
- (E) "Funds" are monies held in a fiduciary capacity by a member for the benefit of a client or a third party.
- (F) An "IOLTA account" is an Interest on Lawyer Trust Account as defined in Business and Professions Code section 6213(j). "Interest-Bea
- (G) An "IOLTA eligible institution" is an eligible institution as defined in 6213(k) that meets the requirements of these rules, State Bar guidelines, and the State Bar Act.
- (H) "IOLTA funds" are the interest or dividends generated by IOLTA accounts.
- (I) A "member" is a member and a member's law firm.
- (J) A "member business expense" is an expense that a member incurs in the ordinary course of business, such as charges for check printing, deposit stamps, insufficient fund charges, collection charges, wire transfer fees, fees for cash management, and any other fee that is not a chargeable fee.

Deleted: In these rules, "client" includes a group of persons which has engaged the attorney or firm for a common purpose.

Deleted: The term "bank" wherever appearing in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and regulations shall include commercial banks and such other institutions as may be permitted by the California Supreme Court.

Chapter 2. Members' Duties

Rule 2.110 Funds to be held in an IOLTA account

- (A) Members must establish IOLTA accounts for funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income because the funds are nominal in amount or held for a short period of time. ~~(Former Rule 1)~~ ~~(Former Rule 1.4)~~

In determining whether funds can earn income in excess of costs, a member must consider the following factors:

- (1) the amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in resolving the matter for which the funds are held;
- (3) the rates of interest or dividends at eligible institutions where the funds are to be deposited;
- (4) the cost of establishing and administering non-IOLTA accounts for the client or third party's benefit, including service charges, the costs of the member's services, and the costs of preparing any tax reports required for income earned on the funds;
- (5) the capability of eligible institutions or the member to calculate and pay income to individual clients or third parties;
- (6) any other circumstances that affect the ability of the funds to earn a net return for the client or third party.

Deleted: All funds received or held for the benefit of clients or otherwise in a fiduciary capacity in the course of the practice of law by a member of the State Bar or law firm of which (s)he is a member and determined by that attorney or firm to be nominal in amount or to be held by the attorney or firm for a short period of time, must be deposited in one or more interest-bearing demand trust accounts, as required by California Business and Professions Code Section 6211(a).

Deleted: Trust funds are nominal in amount or are held for a short period of time and must be placed in an interest-bearing trust account as required by Section 6211(a) of the Business and Professions Code, if it is not practical to segregate them to earn income for the benefit of the client in light of the income the funds could earn or the costs involved in earning or accounting for any such income.

Deleted:

- (B) ~~(Former Rule 1.5)~~ The State Bar will not bring disciplinary charges against a member for determining in good faith whether or not to place funds in an IOLTA account.

Deleted: Each member of the State Bar and firm of attorneys shall determine whether trust funds are nominal in amount or are to be held for a short period of time in accordance with Rule 1.4. No disciplinary matter shall be pursued by the State Bar against an attorney solely by reason of the attorney's making such determination in good faith.

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Rule 2.111 Funds not to be held in an IOLTA account

- (A) If a member determines that the funds can earn income for the benefit of the client or third party in excess of the costs incurred to secure such income, the funds must be deposited in a trust account in accordance with the provisions of Section 6211(b) of the Business and Professions Code and Rule 4-100 of the Rules of Professional Conduct or as the client or third party directs in writing. ~~(Former Rule 1.4)~~
- (B) Members should not designate an exempt account¹ as an IOLTA account.

Rule 2.112 Review of funds in an IOLTA account

¹ As defined in Rule 2.100(D)

A member must review an IOLTA account at reasonable intervals to determine whether changed circumstances require funds be moved out of the IOLTA account.

Rule 2.113 Charges against IOLTA funds

A member may allow an IOLTA eligible institution to deduct chargeable fees permitted by Business and Professions Code 6212(c) from IOLTA funds. A member must pay any member business expense and may not allow the bank to deduct such expense from IOLTA funds. If the State Bar becomes aware that a member business expense is erroneously deducted from IOLTA funds, the State Bar will inform the IOLTA-eligible institution and request the error be corrected.

Rule 2.114 Reporting to the State Bar

Members must annually report compliance with these rules.

Rule 2.115 Consent to reporting

(Former Rule 1.1) By establishing funds in an account, a member consents to the eligible institution furnishing account information to the State Bar as required by these rules, State Bar guidelines, and the State Bar Act.

Deleted: Establishing such an account constitutes consent by the attorney for the depository institution to furnish copies of periodic account statements to the State Bar.

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Rule 2.116 Liquidity requirements

(Former Rule 1.3)

IOLTA accounts must allow prompt withdrawal of funds, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the eligible institution so long as such notification requirement does not exceed thirty days.

Deleted: "Interest-Bearing Trust Account" or "Interest-Bearing Demand Trust Account" wherever used in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and regulations shall have the same meaning. An interest-bearing trust account shall be one in which the funds are subject to prompt withdrawal, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the bank or branch of a bank so long as such notification requirement does not exceed thirty (30) days.

Rule 2.117 Institution eligibility requirements

A member may place an IOLTA Account only in an IOLTA eligible institution. The State Bar will maintain a list of IOLTA eligible institutions.

Rule 2.118 No change to the duties and obligations of a member

Nothing in these rules shall be construed as affecting or impairing the duties and obligations of members pursuant to the statutes and rules governing the conduct of members of the State Bar including, but not limited to, provisions of Rule 4-100 of the

Deleted: attorneys or law firms

Rules of Professional Conduct requiring a member to promptly notify a client of the receipt of the client's funds and to promptly pay or deliver to the client, as requested by the client, the funds in the possession of the member which the client is entitled to receive. (Former Rule 1.4)

Article 3. Duties of an IOLTA eligible institution

Rule 2.130 Comparable Interest Rate or Dividend Requirement

(A) An IOLTA-eligible institution must pay comparable interest rates or dividends as required under Business and Professions Code 6212(b) and 6212(e) and may choose to do so in one of three ways:

- 1) allow establishment of IOLTA accounts as comparable-rate products,
- 2) pay the comparable-product rate on IOLTA deposit accounts, less chargeable fees, if any, or
- 3) pay a benchmark rate determined by the Legal Services Trust Fund Commission.

(B) "Accounts of the same type" in section 6212(b) refers to comparable-rate products described in sections 6212(e) and 6212(j) for which the IOLTA-eligible institution pays no less than the highest interest rate or dividend generally available from the institution to non-IOLTA account customers when the IOLTA account meets the same minimum balance or other eligibility qualifications.

Rule 2.131 Payments to the State Bar

(Former Rule 1.1)

IOLTA Eligible institutions must remit payments to the State Bar in accordance with Business and Professions Code 6212(d)(1-3) and State Bar rules and guidelines.

(Former Rule 1.1)

Deleted: All interest or dividends earned by funds held in trust accounts required by Business and Professions Code Section 6211(a) shall be paid by the bank or branch of a bank where the funds are deposited directly to the State Bar of California and used for the purposes set forth in Article 14 of Chapter 4, Division 3, of the Business and Professions Code. The interest or dividend payments to the State Bar shall be paid quarterly or at more frequent intervals. Interest or dividends for all trust accounts held by the bank or branch of a bank during such quarter or other interval may be remitted in one payment.

Deleted: Nothing in these rules shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to these rules shall be limited to the monies generated pursuant to Article 14 of Chapter 4, Division 3, of the Business and Professions Code. The Board of Governors may adopt such guidelines as may be appropriate to implement administration of these rules.