

# OHIO LEGAL ASSISTANCE FOUNDATION

## *RULES*

**Adopted on September 6, 2001**

**Effective April 1, 2002**



The Ohio Legal Assistance Foundation is committed to equal access to justice and will work to assure that resources, programs, and services exist statewide to serve the unmet civil legal needs of Ohio's poor.

The Board of Trustees of the Ohio Legal Assistance Foundation adopted these Rules on September 6, 2001. A special thank you to the following individuals for their service and hard work on the committee responsible for the development and implementation of these Rules:

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## **120.51**

### **Ohio Legal Assistance Foundation**

#### **Chapter 120.51-1**

#### **General Provisions**

##### **120.51-1-01 Mission**

- (A) The Ohio Legal Assistance Foundation is committed to equal access to justice and will work to assure that resources, programs and services exist statewide to serve the unmet civil legal needs of Ohio's poor.

##### **120.51-1-02 Method of public notice in adopting, amending or rescinding rules**

- (A) The Ohio Legal Assistance Foundation is an Ohio not-for-profit entity, recognized as tax-exempt pursuant to section 501(C)(3) of the Internal Revenue Code. The Foundation is authorized by section 120.52 of the Revised Code to perform public functions as prescribed by law. The executive director of the Ohio Legal Assistance Foundation is appointed by the Ohio Legal Assistance Foundation board in the manner provided by the constitution of the Foundation. The promulgation of these rules shall not change the status of the Ohio Legal Assistance Foundation as a private, not-for-profit organization.
- (B) The Ohio Legal Assistance Foundation is governed by a board of trustees, 12 of whom are appointed by the following public officials: one each by the Governor, the Attorney General, the Treasurer, the President of the Senate, the Speaker of the House, the Ohio Public Defender and six by the Chief Justice of the Supreme Court. The Foundation board shall meet in public session not fewer than four times per year in locations to be determined by the board.
- (C) Under section 120.52 of the Revised Code, the Foundation is authorized to adopt, amend and rescind rules governing administration of the legal aid fund, including the program established under sections 4705.09 and 4705.10 of the Revised Code regarding interest on interest-bearing trust accounts.
- (D) Prior to the adoption, amendment or rescission of any rule by the Foundation, the executive director shall give public notice of its intention to consider adoption, amendment or rescission of such rule. Such notice shall be published once at least thirty days prior to the date set for hearing in one newspaper of general circulation in Franklin County, Ohio. The public notice referred to in this rule will be mailed to any person who requests it and who provides an address for mailing of the notice.
- (E) The public notice referred to in paragraph (D) of this rule shall contain the following:
  - (1) A statement of the Foundation's intention to consider adopting, amending, or rescinding a rule;

- (2) A synopsis of the proposed rule, amendment or rule to be rescinded or a statement of the subject matter to which the proposed rule, amendment or rescission relates;
- (3) A statement of the reason or purpose for adopting, amending, or rescinding the rule; and,
- (4) The date, time and place of the hearing on said proposed action.

### **120.51-1-03 Definitions**

- (A) “Foundation” means the Ohio Legal Assistance Foundation, established pursuant to section 120 of the Revised Code.
- (B) “Legal aid fund” means the monies deposited with the Treasurer of State by clerks of courts from filing fee surcharges and by financial institutions from interest on lawyer’s trust account and title insurance agent’s interest on trust account programs. Pursuant to section 120.53 of the Revised Code, revenues from the legal aid fund are used to provide financial assistance to those Ohio legal aid societies that are eligible applicants and to support the mission of the Ohio Legal Assistance Foundation.
- (C) “Eligible applicants” for financial assistance from the legal aid fund includes those legal aid societies that meet the requirements of sections 120.51-120.55 of the Revised Code and the rules adopted by the Ohio Legal Assistance Foundation.
- (D) “Legal aid society” means a nonprofit corporation:
  - (1) Chartered to provide general legal services to the poor;
  - (2) Incorporated and operated exclusively in the state of Ohio;
  - (3) Having a board of trustees, or a board of directors
    - (a) A majority of which are attorneys, and
    - (b) At least one-third of which, when selected, are eligible to receive legal services from the legal aid society;
  - (4) Having a primary purpose of providing civil legal services, without charge, to indigents; and,
  - (5) In addition to providing civil legal services to indigents, the legal aid society may provide legal training or technical assistance to other legal aid societies in the state of Ohio: or,
  - (6) The legal aid society may provide civil legal services to special population groups such as migrant farm workers.
- (E) “General legal services” means a full range of civil legal services provided across the spectrum of matters and conflicts faced by indigents, including but not limited to: contract and other transactional or consumer matters; bankruptcies and credit counseling; family matters such as adoption, custody, divorce, support and dissolution of marriage; housing issues including landlord-tenant disputes and foreclosures; administrative advocacy as well as representation in matters requiring litigation; and, employment and income maintenance issues.

- (F) “Civil legal services” means the provision of a full range of legal advocacy and assistance to address the needs of persons eligible for legal assistance in non-criminal matters and conflicts, including, but not limited to, advice, counsel, negotiation, litigation, mediation, community legal education, policy advocacy, community economic development, and other types of assistance and advocacy.
- (G) “Primary purpose of providing civil legal services, without charge,” means that most of the legal services provided by a legal aid society do not require a client to pay attorney’s fees for legal services; it does not, however, prohibit a payment system for some applicants, such as a modest application fee, a sliding-scale fee arrangement based on income levels, a donation or contribution request, or the collection of attorney’s fees paid by the opposing party or permitted by statute.
- (H) “Persons eligible for legal assistance” means indigents with civil, that is non-criminal, cases that are not fee-generating. Groups may be eligible for legal assistance if a majority of their members are indigent or if their primary purpose is the furtherance of interests of indigents unable to afford legal assistance and the group has no practical means of obtaining funds to retain private counsel.
- (I) “Indigent” means a person or persons whose income is not greater than one hundred twenty-five per cent of the current poverty threshold established by the United States office of management and budget.
- (J) “Income” means a person’s actual current annual total cash receipts before taxes. A legal aid society may adopt policies to deduct expenses such as: medical expenses; fixed debts and obligations, including unpaid federal, state and local taxes from prior years, child and/or spousal support payments and garnishments; child care, transportation, and other work-related expenses; and expenses associated with age or physical infirmity of resident family members.
- (K) “Total cash receipts” may include, pursuant to policies adopted by the legal aid society: money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance, social security, unemployment, and worker’s compensation; strike benefits from union funds; veterans benefits; training stipends; spousal support; child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.
- (L) “Fee generating case” means any case or matter which, if undertaken on behalf of an indigent by an attorney in private practice, reasonably would be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered a fee generating case if adequate representation is unavailable or if any of the following circumstances exist concerning the case:
- (1) The legal aid society that represents the indigent in the case has determined that free referral is not possible for any of the following reasons:

- (a) The case has been rejected by the lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.
  - (b) Neither the local lawyer referral service, if one exists, nor any attorney will consider the case without payment of a consultation fee.
  - (c) The case is of a type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.
  - (d) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.
- (2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a claim requesting damages is necessary for effective defense or because of applicable rules governing joinder of claims.
  - (3) A court has appointed a legal aid society or its employee to represent the indigent in the case pursuant to a statute, or a court rule or practice of equal applicability to all attorneys in the jurisdiction.
  - (4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement is based on need.
- (M) "Interest on Lawyers' Trust Account," or "IOLTA," means an interest-bearing account established in an eligible, participating, depository institution by an attorney, law firm, legal professional association, or ancillary business related to the practice of law, pursuant to section 4705.09 of the Revised Code, for the deposit of funds of clients or third persons that are subject to withdrawal upon request, or as soon as is permitted by federal law.
  - (N) "Interest on Trust Account," or "IOTA," means an interest-bearing trust account established in an eligible, participating, depository institution by a title insurance agent pursuant to section 3953.231 of the Revised Code, for the deposit of funds of clients or third persons that are subject to withdrawal upon request or as soon as permitted by law and meet the requirements of sections 1349.20 to 1349.22 of the Revised Code.
  - (O) "Funds that are nominal in amount or to be held for a short period of time" describes funds of a client or third person that the attorney, law firm, legal professional association, or ancillary business related to the practice of law has determined cannot be placed at interest for the benefit of the client or third person.
  - (P) "Eligible depository institution" means a financial institution that is a federally insured bank, savings and loan association or credit union authorized to do business in this state and meets the requirements of sections 3953.231 and 4705.09-4705.10 of the Revised Code and the rules established by the Ohio Legal Assistance Foundation.
  - (Q) "Interest-bearing account" includes standard negotiable order of withdrawal or NOW accounts and accounts paying higher rates or dividends because deposits exceed quantity qualifications such as "sweep accounts," "investment accounts," tiered deposit special accounts, or other special promotional higher interest accounts.

- (R) "Reasonable service charges" include only monthly maintenance, deposit and/or withdrawal fees applied on accounts that do not meet quantity qualifications for waiver. Reasonable service charges do not include, among others, fees or charges for: check printing, stop payment orders, non-sufficient funds withdrawals, and wire transfers.
- (S) "Sweep account," for purposes of IOLTA/IOTA, means a cash management product, or repurchase agreement sweep program, used to generate higher yields on available funds. At the end of each business day after all deposits, checks and charges have cleared against an account, the depository institution electronically transfers the excess funds out of the account into a higher yield investment. At the start of the next business day, the depository institution electronically returns the excess funds to the account and posts the interest earned.
- (T) "Repurchase agreement," as it pertains to sweep accounts defined in (S) above, means an overnight investment of pre-determined IOLTA/IOTA deposits in which the underlying security consists solely of direct obligations of the United States government or agency thereof, with an eligible depository institution which is determined to be "well capitalized" or "adequately capitalized" as defined in applicable federal statutes and regulations.
- (U) "Tiered pricing" means the application of a range of interest rates by participating depository institutions to IOLTA/IOTA deposits based on the amount on deposit in each account.
- (V) "Yield," stated as a percentage, means the rate actually earned on deposits net of service charges.
- (W) "Ancillary business related to the practice of law" has the same meaning as that set forth in the Code of Professional Responsibility adopted by the Supreme Court of Ohio.

## Chapter 120.51-2

### Administration of Interest on Lawyers' Trust Accounts (IOLTA) and Interest on Trust Accounts (IOTA) Program

#### 120.51-2-01 Eligible Depository Institution Participation in the Interest on Lawyers' Trust Accounts (IOLTA) and Interest on Trust Account (IOTA) Program

- (A) The state of Ohio's IOLTA and IOTA program is an integral part of a comprehensive system of providing resources to assist in the charitable public purpose of delivering legal services in non-criminal matters to impoverished Ohioans. Revenues generated from IOLTA/IOTA deposits comprise more than one half of the total of state funds distributed to legal aid providers.
- (B) Depository institution participation in the IOLTA/IOTA program is voluntary, but those eligible depository institutions that choose to offer and maintain IOLTA/IOTA products must adhere to the provisions set forth in section 4705.10 of the Revised Code, section 3953.231 of the Revised Code and the requirements established by these rules, which are authorized by sections 120.52 and 120.521 of the Revised Code. These rules amplify Revised Code sections 4705.10 and 3953.231 and are designed to ensure that participating depository institutions provide products that are reasonable, equitable, and in compliance with the public policy.
- (C) Eligible participating depository institutions' IOLTA/IOTA accounts shall meet all of the following requirements:
  - (1) Eligible participating depository institutions shall assign federal tax identification number 31-1126612 to all IOLTA and IOTA accounts. Federal Internal Revenue 1099-INT reporting is not required. If IRS 1099 reports cannot be suppressed by the depository institution's data processing system, then the Ohio Legal Assistance Foundation should be listed as the owner of the tax identification number.
  - (2) Interest or dividends, whichever is applicable, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice, less reasonable service charges, shall be remitted to the Treasurer of State monthly, but if that is not possible, at least quarterly, not later than the fifteenth day of the month following the period for which the remittance is made, for deposit in the legal aid fund. Remittances shall be made by electronic funds transfer through the Automated Clearing House. Should interest earned on an IOLTA/IOTA account be less than the amount of reasonable service charges assessed said account, the depository institution may waive the excess charges because the account meets a minimum balance applicable to this or like accounts or for other reasons, or it may bill the depositor. In no event shall the depository institution deduct such excess charges from the interest earned on other IOLTA/IOTA accounts.
  - (3) Participating depository institutions shall transmit to the Treasurer of State, and if requested, to the Ohio Legal Assistance Foundation, the depositing attorney, law firm or legal professional association, and title insurance agent or company, at the

time of each remittance, a statement showing the name of each attorney or title insurance agent for whom, or the law firm, legal professional association, or title insurance company for which the remittance is sent, the account number, the accounting period, the average account balance for each month of the period for which the report is made, the rate of interest or the dividend applied, the rate type, gross interest, sweep target balance, sweep fee, activity fees, monthly account maintenance fee, the net amount remitted to the Treasurer of State for each account, and the totals for the aforementioned average balances, gross interest, net interest remitted and fees. If the participating depository institution utilizes computerized systems for reporting the above-required data, then its statements shall be transmitted electronically in a manner acceptable to the Ohio Legal Assistance Foundation.

- (4) All funds in the account shall be subject to withdrawal upon request and without delay, or as soon as is permitted by federal law.
- (5) Pursuant to sections 3953.231 and 4705.10 of the Revised Code, rates of interest or dividends payable on IOLTA and IOTA accounts shall not be less than the rates of interest or dividends generally available from the depository institution to other non-IOLTA/IOTA depositors when IOLTA/IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. Eligible participating depository institutions shall provide rates or dividends comparable to the highest rates or dividends paid on products offered by the depository to other depositors, which permit funds to be withdrawn upon request, including, but not limited to the following products:
  - (a) If money market or business investment accounts are offered by the depository to personal or business account depositors based on balances exceeding certain quantity qualifications, then IOLTA and IOTA accounts should be established as money market or business investment accounts when their balances meet those quantity qualifications, and the interest rates or dividends paid on IOLTA and IOTA deposits should not be less than the rates or dividends paid on the other money market or business investment accounts;
  - (b) If money market or business investment products are not available, or the deposits are insufficient to meet the quantity requirements of money market or business investment accounts at the depository institution, then IOLTA and IOTA accounts should be established as sweep accounts when their balances meet those quantity qualifications, and the interest rates or dividends paid on IOLTA and IOTA deposits should not be less than the rates or dividends paid on the other sweep accounts;
  - (c) If money market, business investment, or sweep accounts are not available, or the deposits are insufficient to meet the quantity requirements of money market, business investment, or sweep accounts at the depository institution, then IOLTA and IOTA accounts should be established as checking or business savings accounts providing the highest rates or dividends based on available quantity qualifications.

- (D) The Ohio Legal Assistance Foundation shall maintain a list of IOLTA/IOTA-eligible institutions. The list of IOLTA and IOTA eligible institutions shall consist of those depositories that certify on a periodic basis to the Ohio Legal Assistance Foundation and the Treasurer of State, that they are in compliance with sections 3953.231 and 4705.10 of the Revised Code, and the foregoing provisions of this rule, as confirmed by the Ohio Legal Assistance Foundation.

**120.51-2-02 Participation in the IOLTA and IOTA Program by the Attorney, Law Firm, Legal Professional Association, or Ancillary Business Related to the Practice of Law.**

- (A) Each attorney, law firm or legal professional association, or other ancillary business related to the practice of law in which the attorney is a principal, receiving funds of a client or third person that are nominal in amount or that are to be held for a short period of time for deposit in a pooled trust or escrow account, shall:
  - (1) Establish and maintain an IOLTA or IOTA account for the deposit of such funds in an eligible, participating depository institution;
  - (2) Cooperate with and assist the Foundation to ensure that the deposits are maintained in an account providing the greatest return pursuant to section 120.51-2-01 (C)(5).
- (B) The attorney, law firm, legal professional association, or ancillary business related to the practice of law may establish and maintain one or more IOLTA or IOTA accounts. Each IOLTA or IOTA account shall be in the name of the attorney, law firm, legal professional association, or ancillary business related to the practice of law maintaining it and shall be identified as an IOLTA or IOTA. The name of the account may contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, law firm, legal professional association, or ancillary business related to the practice of law.
- (C) No funds belonging to any attorney, law firm, legal professional association, or ancillary business related to the practice of law shall be deposited in any IOLTA or IOTA account, except that funds sufficient to pay or enable a waiver of depository institution service charges on the account, may be deposited in the IOLTA or IOTA account.
- (D) The attorney, law firm, legal professional association, or ancillary business related to the practice of law in which the attorney is a principal shall advise the Ohio Legal Assistance Foundation of the establishment of an IOLTA or IOTA account for funds covered by this rule. Such notice shall include:
  - (1) The IOLTA or IOTA account number as assigned by the financial institution;
  - (2) The name of the attorney, law firm, legal professional association, or ancillary business related to the practice of law on the account;
  - (3) The name and address of the depository institution; and,
  - (4) The name and Ohio Supreme Court registration number of the attorney, or of each person licensed to practice law in this state and associated with the law firm, legal professional association, or ancillary business related to the practice of law that has established the account.
- (E) Should an attorney fail to demonstrate compliance with this section, or DR 9-102 of the Code of Professional Responsibility, the Ohio Legal Assistance Foundation shall promptly send the attorney by certified mail, return receipt requested, a noncompliance notice specifically identifying the deficiencies. Should the attorney fail or refuse to be compliant within 30 days, showing that such deficiencies have been removed, the Ohio Legal Assistance Foundation shall notify the Office of Disciplinary Counsel.

**Chapter 120.51-3**  
**Rules Affecting Ohio Legal Aid Societies**

**120.51-3-01 Determination of Indigence.**

- (A) To determine a person's income for purposes of establishing whether a person is indigent, a legal aid society shall calculate a person's total cash receipts and then may make deductions from this total, pursuant to policies adopted by the legal aid society, such as: the person's medical expenses; fixed debts and obligations, including unpaid federal, state and local taxes from prior years, child support and spousal support payments; child care, transportation, and other work-related expenses; and expenses associated with age or physical infirmity of resident family members.
- (B) The person is indigent if the amount remaining after the deductions is not greater than one hundred twenty-five percent of the current poverty threshold established by the United States Office of Management and Budget.
- (C) No deductions shall be made if the actual current annual total cash receipts exceed two hundred percent (200 %) of the current poverty threshold established by the United States Office of Management and Budget.
- (D) The legal aid society may adopt policies regarding the treatment of assets in determining indigence.

**120.51-3-02 Legal Aid Societies' Eligibility for Financial Assistance from the Legal Aid Fund or the Ohio Legal Assistance Foundation.**

- (A) Eligible applicants for financial assistance from the legal aid fund are those legal aid societies that meet requirements set forth in sections 120.51-120.55 and as amplified by these rules. The determination of whether a legal aid society is eligible to receive financial assistance shall be made by the Ohio Legal Assistance Foundation based on the satisfactory compliance with all of the following:
  - (1) An application for financial assistance from the legal aid fund shall be submitted by an applicant legal aid society by the first day of October during the calendar year preceding the calendar year for which financial assistance is desired in a format prepared and sent to legal aid societies by the Ohio Legal Assistance Foundation, which shall include, at a minimum:
    - (a) Verification of the applicant's non-profit corporate status;
    - (b) A list of its current trustees or directors;
    - (c) The applicant's proposed budget for these funds and for all other funds projected for receipt in the following calendar year;
    - (d) A summary of the services to be offered by the applicant in the following year;

- (e) A list of the counties served by the applicant;
  - (f) An estimate of the number of persons to be served by the applicant during the following calendar year;
  - (g) The amount of the applicant's total budget that it will expend in the following calendar year for each of the counties it serves;
  - (h) A specific description of any services, programs, training, and legal technical assistance to be delivered by the applicant or by another person pursuant to a contract with the applicant, including but not limited to, by private attorneys or through reduced fee plans, judicare panels, organized pro bono programs, and mediation programs; and,
    - (i) Such other information as the Ohio Legal Assistance Foundation may require, including those assurances required as a condition of receipt of the grant.
- (2) Following receipt, the Ohio Legal Assistance Foundation will review an application for accuracy and to ensure that it is complete. If the application is not complete or needs clarification, the Foundation will notify the applicant and request that corrections be provided within 10 days of the date of the request, but not later than the first day of November in the calendar year preceding the year for which assistance is sought. In the event that an application is not satisfactorily completed by November 1<sup>st</sup>, the applicant may be deemed ineligible for assistance for the first disbursement made January 31 of the year for which assistance is sought.
- (3) The Ohio Legal Assistance Foundation will review the application filed by a legal aid society, and if it is complete and if the applicant meets the requirements of the statute and these rules, the Foundation will notify the applicant that it is eligible for financial assistance.
- (B) A legal aid society that receives financial assistance in any calendar year shall file an annual report with the Ohio Legal Assistance Foundation. The legal aid society annual report shall be completed in a format provided by the Ohio Legal Assistance Foundation and returned to the Foundation by the time set forth in the request sent to the legal aid society, and in no event shall the annual report be sent later than May 31 of the year following that for which the information is sought. The information provided in the annual report will include, at a minimum:
- (1) The number of persons served and the number and types of cases or matters handled by the legal aid society and any contractors or volunteers with whom the legal aid society made arrangements for the provision of legal assistance to eligible persons;
  - (2) The amount of legal training, legal technical assistance, and other services provided;
  - (3) An audited financial statement for the legal aid society's most recent fiscal year; and,
  - (4) Such other information as the Foundation may require.

- (C) A legal aid society that receives financial assistance from the legal aid fund and/or directly from the Ohio Legal Assistance Foundation shall provide such other information as the Foundation may require for the effective administration of the program. The provision of any such information requested shall be made within the time period set forth in the particular request.
- (D) An applicant for financial assistance or a legal aid society that fails to timely file or provide reports or other data requested within the prescribed period may be subjected by the Foundation's director to a delay in the disbursement from the legal aid fund or in the payment of monies pursuant to agreements with the Foundation. When applications, reports or other requested information are not timely submitted, the Foundation director will provide notice to the Foundation board and set the matter for the board's consideration at its next regularly scheduled meeting. Any funds scheduled to be paid or disbursed to a legal aid society that is non-compliant will be held until the Foundation board has acted to approve payment.

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