



Choose your bank wisely: IOLTA revenues drive legal aid funding

With legal aid societies seeing a dramatic decrease in resources, it is more important than ever for lawyers to re-evaluate interest rates and yields on IOLTA accounts.

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IOLTA and IOTA revenue is directly related to the interest rates paid by the participating banks and the fees that these banks deduct from gross interest earned on the accounts.

The Federal Reserve's steep reduction of its benchmark interest rate has helped some sectors of the economy improve, but the effect on OLAF funding has been calamitous. While the prevalent IOLTA and IOTA rates in 2007 were around 5 percent, current IOLTA and IOTA rates range from 0.18 percent to 2 percent. Lower interest rates mean lower interest income. Between 2007 and 2008, IOLTA and IOTA interest income decreased by more than \$11 million, or approximately 50 percent. Revenue in 2009 was \$5.6 million, another decline of nearly 50 percent. The 2010 projection does not get any better. Since 2007, IOLTA revenues will have declined by 75 percent, or approximately \$15 million annually. Put another way, the cumulative loss of IOLTA revenue since January 2007 will reach \$45 million by the end of 2010.

These reductions in OLAF funding, combined with reduced funding from other sources, have forced legal aid programs to freeze the hiring of new staff to fill vacancies while furloughing additional staff and implementing other cost-containment measures. At the same time, absent adequate funding for legal aid, tens of thousands of individuals and families will go without necessary legal advice and assistance.

What can OSBA members do to help?

The easiest and most effective thing that an attorney can do today to help legal aid

The current economic crisis has caused a rapid increase in the demand for legal aid services in Ohio and throughout the nation. At the same time, funding for legal aid programs through the Interest on Lawyers' Trust Accounts program (IOLTA) and the Interest on Trust Accounts program (IOTA) has decreased drastically. The result has been devastating, with legal aid societies laying off lawyers while requests for help with foreclosures, consumer debt and related problems flood legal aid offices. There is something that you can and must do.

Lawyers must be aware of their obligations, and their abilities, to increase legal aid funding by placement of their IOLTA and IOTA accounts with banks that pay the highest available interest rates on deposits and charge the lowest possible fees. Lawyers and law firms can often increase legal aid funding significantly without any additional cost by encouraging their current bank to raise rates or by moving their IOLTA and IOTA deposits to higher-paying banks.

Legal Aid funding through IOLTA and IOTA

Lawyers have a fiduciary duty to safeguard and segregate client funds.¹ In Ohio, like

every other state, interest from pooled-client trust or escrow accounts supports legal aid programs. This is accomplished in Ohio through IOLTA for lawyers and IOTA for title insurance agents engaged in the business of residential real estate closings, including lawyer-agents.²

The Ohio Legal Assistance Foundation (OLAF) was established by the Legislature to administer the IOLTA and IOTA programs.³ While Ohio banks are not required to offer IOLTA and IOTA accounts, more than 200 banks participate in Ohio's IOLTA and IOTA programs. The banks must pay interest rates that are not less than the rates available for non-IOLTA and IOTA customers. The largest of the participating banks currently holds more than \$100 million on deposit in its IOLTA and IOTA accounts.

The revenue generated from IOLTA and IOTA deposits has proven to be a significant source of funding for Ohio's legal aid programs. While federal funds administered through the Legal Services Corporation have declined almost one-third from their peak in 1994, revenue from IOLTA and IOTA has become the predominant source of funding for each of Ohio's six regional legal aid programs.⁴ The level of

is to ensure that the highest possible rate of interest is being paid on the attorney's IOLTA or IOTA. For example, if your law firm's IOLTA has \$100,000 in average monthly balances and that account is paying an interest rate one percent higher than the rate paid by a lower-paying bank, then legal aid receives \$1,000 more in revenue every year.

The effect is more pronounced if your firm, like many collection and personal injury firms, maintains an even higher monthly balance in your IOLTA. A firm with an average IOLTA balance of \$1 million at 0.2 percent interest (currently the low range for participating banks) would generate only \$2,000 for legal aid in a year. The same funds at a bank paying 1 percent (near the high end of the range) would generate more than \$10,000 to support legal aid—a 400 percent increase.

To help appreciate the magnitude of this effort, two of the largest IOLTA depository banks that pay the least favorable rates hold collectively over \$158 million in IOLTA deposits, or 20 percent of all IOLTA deposits. If these deposits were moved to a bank that paid a more favorable rate (e.g., 1 percent), almost \$1.3 million more per year, or 300 percent increase, would be generated for legal aid.

This significant increase could be achieved with little effort and without any effect whatsoever on firm profits. This is also achieved without breaching your fiduciary duty to your clients, whose money you hold in trust in your IOLTA. The corpus of the account, the clients' money, is never put at risk. It remains safeguarded and segregated, as required by Court rules.

With the statutory requirement that client escrow funds deposited in an IOLTA or IOTA account earn income for legal aid societies, lawyers have a duty to ensure that the income is maximized. We call on all Ohio lawyers, as effective fiduciaries of their clients' funds and as effective stewards of OLAF revenues, to monitor the interest rates paid on their trust accounts and place their IOLTA accounts with banks that pay the highest available rates. If you need help determining if your current IOLTA bank is paying an appropriate rate of return, please contact OLAF. Staff members will discuss the rates applicable to your account and provide information on alternative depositories.

The Impact on Improved Rates of Interest on IOLTA Income

Average Monthly Balance	Interest Rate	Annual Interest Income
\$100,000	0.20%	\$200
\$100,000	1.00%	1,000
Annual Legal Aid Fund Gain: \$800		
\$1,000,000	0.20%	\$2,000
\$1,000,000	1.00%	10,000
Annual Legal Aid Fund Gain: \$8,000		

What you can do:

Review your firm's most recent IOLTA statement. Determine the rate paid and the amount of fees deducted from interest. If the rate paid was less than 1 percent or the amount of fees deducted was more than \$50, then contact Karen McCall at OLAF at (614) 728-6927 to find a more favorable bank. Or contact your bank and request that your fees be waived and that they pay a higher rate of return. ■

As an alternative, lawyers should contact their banks if the rates paid on their IOLTA or IOTA accounts are unreasonably low to request that the rates be raised. While OLAF staff has encouraged *all banks* to pay the highest commercially reasonable rates, some have refused. They may be more inclined to respond to the requests of their lawyer-customers. Banks must also be encouraged to minimize or waive fees on IOLTA and IOTA accounts. Many already offer free IOLTA banking but others assess fees that, along with low interest rates, can reduce the effective yield on trust accounts to zero.

"Many of our members may say that their individual IOLTA or IOTA accounts aren't large enough to make a difference," said OSBA President Barbara J. Howard. "This is one of those times when all the small accounts do make a difference. I encourage each lawyer to find out what interest rate his or her bank is paying. Where the rate is unreasonably low, lawyers in each community can and should present a united front to the bank, threatening to move their accounts unless the interest rates are increased. It's the least we can do to help fund legal services for the needy."

Your time spent (likely less than an hour) moving to a more favorable bank or negotiating with your current IOLTA bank for

a better rate or lower fees will have a direct and significant impact on our profession's ability to help those most in need. Contact OLAF today to learn what you can do. ■

Author bios

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Doolittle and Burroughs where he is chair of the firm's Litigation Group. He is a member of the Ohio Legal Assistance Foundation board of trustees and a former president of the Akron Bar Association. Jeffrey Forkamp is an associate director of the Ohio Legal Assistance Foundation and supports the various policy, strategic and initiatives of the Foundation.

Endnotes

- ¹ Ohio Rules of Professional Conduct, Rule 1.15 Safekeeping Property.
- ² R.C. 4705.09 and 4705.10; R.C. 3953.231.
- ³ R.C. 120.52.
- ⁴ Erik Eckholm, "Interest rate drop has dire results for legal aid," *New York Times*, Jan. 19, 2009, at A12.