

## TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS

Adopted July 2007

### 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 sweep fee.
- (B) A "Client" is a person or a group of persons that has engaged the attorney or firm for a common purpose.
- (C) "Comparably conservative" in Business and Professions Code 6213(j) includes, but is not limited to, securities issued by Government Sponsored Enterprises.
- (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 Lawyers' Trust Account as defined in Business and Professions Code section 6213(j).
- (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.

*Rule 2.100 adopted effective January 12, 2008.*

#### 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. 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.
- (B) 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.

*Rule 2.110 adopted effective January 12, 2008.*

#### 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.
- (B) A member should not designate an exempt account<sup>1</sup> as an IOLTA account.

*Rule 2.111 adopted effective January 12, 2008.*

#### Rule 2.112 Review of funds in an IOLTA account

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<sup>1</sup> 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 2.112 adopted effective January 12, 2008.*

#### 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 expenses 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 that the error be corrected.

*Rule 2.113 adopted effective January 12, 2008.*

#### Rule 2.114 Reporting to the State Bar

A member must report compliance with these rules.

*Rule 2.114 adopted effective January 12, 2008.*

#### Rule 2.115 Consent to reporting

By establishing funds in an account, a member consents to the eligible institution's furnishing account information to the State Bar as required by these rules, State Bar guidelines, and the State Bar Act.

*Rule 2.115 adopted effective January 12, 2008.*

#### Rule 2.116 Liquidity requirements

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 the notification requirement does not exceed thirty days.

*Rule 2.116 adopted effective January 12, 2008.*

#### 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 2.117 adopted effective January 12, 2008.*

#### Rule 2.118 No change to other duties and obligations of a member

Nothing in these rules shall be construed as affecting or impairing the duties and obligations of a member 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 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.

*Rule 2.118 adopted effective January 12, 2008.*

### Chapter 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 Professional 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 the Established Compliance 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 2.130 adopted effective January 12, 2008.*

#### Rule 2.131 Payments to the State Bar

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

*Rule 2.131 adopted effective January 12, 2008.*