

THE TOP THINGS YOU NEED TO KNOW ABOUT IOLTA AMENDED RULE 217

A new IOLTA rule went into effect on January 16, 2010, as set forth in a Nevada Supreme Court order amending Rule 217 governing IOLTA accounts.

IOLTA is a major source of funding for the Nevada legal aid providers highlighted in this issue. The rule amendments came after over a year of intensive research and discussions by the Access to Justice Commission and the Nevada Law Foundation, culminating in a public hearing, in order to help defray the tremendous shortfalls in critical IOLTA revenues being seen across the country.

WHAT DOES THE RULE DO?

In summary, the rule has four new elements:

1. Minimum Interest Benchmarks: lawyers must place IOLTA trust accounts only in participating banks that provide at least one of three identified benchmark interest rates:

- The 30-day LIBOR minus .50 percent or, the Federal Discount Rate plus .50 percent, whichever is greater; or
- Equal to the Federal Fund Target Rate, or, the Federal Discount Rate plus .50 percent, whichever is greater; or
- Equal to or greater than a flat interest rate (currently 1.2 percent APY), which rate shall be reviewed and approved by the Access to Justice Commission twice annually and made public at least 30 days prior to the effective date.

The above equates to two available rates under the rule at current indices:

- **1 percent floor** under (a) and (b), or
- **1.2 percent** under (c).

No fees are allowed (directly related to the holding and regular processing of IOLTA funds).

2. Waiver for rural firms: There is an automatic exemption for lawyers with no participating bank within 20 miles.

3. Lawyer verification: Lawyers must now verify, at least annually, along with state bar dues statements that IOLTA accounts are with participating banks as reported on the State Bar of Nevada website based on information provided by the Nevada Law Foundation.

4. Monitoring and Administration: The Nevada Law Foundation administrates the new IOLTA program and is in the process of notifying banks, implementing new and easier monthly reporting formats for participating banks, and rolling out the new program.

LAWYER COMPLIANCE AND REPORTING:

While the rule is in effect now, lawyers are not required to begin reporting until the 2011 dues statements on a form to be provided by the state bar. This was intentionally done to allow time for the Nevada Law Foundation to work with Nevada banks. The Nevada Law Foundation is in the process of notifying banks of the rule,

In the interim, lawyers are in compliance with the new rule as long as IOLTA funds continue to be maintained as before in banks listed on the state bar's website under Rule 78.5. Members should check back with the state bar website at least monthly and watch for the weekly E-Newsletter and *Nevada Lawyer* magazine alerts as the program develops.

WHO DOES THE NEW RULE GOVERN?

This rule regulates lawyers and lawyers only. Every banking institution in Nevada is being notified of the new program and given the opportunity to participate.

IOLTA accounts only gain interest because they are pooled for the purpose of generating interest for the public good and sent to the Nevada Law Foundation for distribution based on granting guidelines. Lawyers may still maintain interest-bearing trust accounts for other than nominal amounts or short-term holding for the benefit of the client; the rule amendments do nothing to change that. Further, lawyers may continue to use any bank they wish for accounts other than IOLTA.

STILL HAVE QUESTIONS?

All administrative inquiries regarding the new IOLTA program should be directed to the Nevada Law Foundation at (702) 384-1204. This includes the new IOLTA program as well questions about how to administratively set up a trust account. (You can, however, find forms on the State Bar of Nevada IOLTA page on www.nvbar.org.) ■

MORE ONLINE!

The order, complete text of the rule and updates on the IOLTA program are all available on the state bar's website at www.nvbar.org.