

## **Higher Interest Rates May Mean More Revenue For Legal Aid**

**by**

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On Dec. 21, 2006, the Minnesota Supreme Court adopted an amendment to Rule 1.15 of the Minnesota Rules of Professional Conduct, requiring that IOLTA accounts earn comparable interest rates or dividends generally available to non-IOLTA accounts at the same financial institution.

The amendment requires that financial institutions pay interest on IOLTA accounts that is no less than “the highest earnings rate generally available from the institution to its non-IOLTA customers on each IOLTA account that meets the same minimum balance or other eligibility qualifications.” In the alternative, financial institutions have the option of paying a “safe-harbor” rate that is “80 percent of the Federal Funds Target Rate.”

In addition, the amendment proscribes the practice of “negative netting” in which earnings from one IOLTA account are used to pay fees and charges associated with another account. Some financial institutions that maintain multiple IOLTA accounts report and remit a single payment of the earnings accrued on all accounts, after deducting the fees accrued on all accounts. The effect is that the IOLTA program bears the fees that exceed earnings on individual accounts. Amended Rule 1.15 now requires that “fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.”

The amendment also distinguishes between charges that are properly subtracted from account earnings and assumed by the IOLTA program from others that should properly be assumed by the lawyer maintaining the account or passed on to the client. Amended Rule 1.15 defines “allowable reasonable fees” that may be imposed by financial institutions for maintaining IOLTA accounts as “per check charges, per deposit charges, sweep fees and similar charges assessed against comparable accounts by the eligible financial institution.” All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. However, Rule 1.15(a)(1) permits lawyers to keep a nominal amount of their personal funds in the IOLTA account to cover service charges.

The new rules regarding interest rates in Minnesota follow closely on the heels of similar changes in other states such as Michigan, Florida and New Jersey. Other states that have instituted similar changes have seen increases in IOLTA revenue. The hope is that higher interest rates will eventually make more money available to the Lawyers Trust Account Board to allocate to legal services programs.

For example, the current federal funds target rate is 5.25 percent. If financial institutions implement the

“safe harbor” provision, interest on IOLTA accounts would be 4.2 percent, rather than the 1 percent to 2 percent or less that most financial institutions have paid on IOLTA accounts in the last five years. The amendment to Rule 1.15 goes into effect on July 1, 2007.

Lawyers will not be required to notify their financial institutions of the change. The Office of Lawyers Professional Responsibility will contact financial institutions directly about the changes. However, if you are contacted by your financial institution directly about the new rule, you can refer them to Judy Rehak, senior legal counsel at the Lawyers Trust Account Board, at (651) 297-7800 or e-mail her at [judy.rehak@courts.state.mn.us](mailto:judy.rehak@courts.state.mn.us). Lawyers with questions may contact the OLPR directly at (651) 296-3952.