

**HAWAII JUSTICE FOUNDATION**  
**P. O. Box 4750**  
**Honolulu, Hawaii 96812-4750**  
**(tel) 808•537-3886 (fax) 808•528-1974**  
**Website: [www.hawaiijustice.org](http://www.hawaiijustice.org) E-Mail: [hj@hawaii.rr.com](mailto:hjf@hawaii.rr.com)**

## COMPLYING WITH RULE 11—YOUR IOLTA TRUST ACCOUNT

You will find the process of establishing an IOLTA account easier than you probably now imagine. Your IOLTA account is commonly referred to as your “client trust account,” since the funds in the IOLTA account are held by you in trust for your client until fees and costs are earned and billed to the client, at which time they can then be transferred to another appropriate location. Please work directly with your bank to establish your IOLTA account. Please fax, mail, or email to the HSBA a copy of a voided check or deposit slip, once you have your new IOLTA account established.

**1. WHAT IS IOLTA?** The Interest on Lawyers' Trust Accounts Program ("IOLTA") is a requirement of Hawaii Supreme Court Rule 11. Under this rule, attorneys who hold nominal or short-term client funds in trust must maintain an IOLTA account at any of Hawaii's participating financial institutions. At each bank, interest payments from these small, pooled accounts are aggregated and sent to the Hawaii Justice Foundation ("HJF") to be used for the charitable purposes authorized by Rule 11. Attorneys seeking more information on the IOLTA process are encouraged to review the source materials, which are Rule 11 of the Rules of the Hawaii Supreme Court, Rule 1.15 of the Hawaii Rules of Professional Conduct, the Hawaii Rules Governing Trust Accounting at [http://www.courts.state.hi.us/docs/court\\_rules/rules/rgta.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/rgta.pdf) and the HJF website at [www.hawaiijustice.org](http://www.hawaiijustice.org). You also may contact the Office of Disciplinary Counsel for further information.

One of the biggest errors attorneys sometimes make is using the IOLTA account as a “bank” for a short-term loan. This is always a mistake. Any unearned fees or advancement of court or other costs should always be deposited in the IOLTA account. Funds can be removed by the attorney after billing the client for earned fees or payment of costs, and withdrawals from the IOLTA account should be deposited into the attorney’s business account. Funds can then be withdrawn by the attorney.

## **2. WHICH FINANCIAL INSTITUTIONS PROVIDE IOLTA ACCOUNTS?**

Currently, nine banks participate in the IOLTA program. They are: **American Savings Bank, Bank of Hawaii, cbb bank, Central Pacific Bank, First Foundation Bank, First Hawaiian Bank, Hawaii National Bank, Home Street Bank (to be purchased by Sunflower Bank in Summer 2004), and Royal Business Bank.** You are free to choose any of these nine banks that you wish. Of these nine banks, five are “Prime Partner Banks,” which means these five banks remit interest to HJF at the rate of 70% of federal funds target rate without fees. Monthly service fees on IOLTA accounts are paid by the bank or by HJF, not by the attorney. However, HJF

does not pay for service charges such as insufficient funds costs, stop payment charges, wire fees, or check printing charges. These special charges are the responsibility of the attorney.

**3. WHAT IS THE HAWAII JUSTICE FOUNDATION AND HOW IS IOLTA MONEY USED?** Hawaii Justice Foundation is a tax-exempt charitable organization established in 1969 by members of the Hawaii State Bar. In 1983 it was selected by the Supreme Court to administer IOLTA. The HJF is governed by a 21-member Board of Directors. Membership in the Foundation is open to any attorney or others who make proper application. The Foundation monitors Rule 11 and disburses IOLTA funds in the form of competitive grants to non-profit agencies that provide direct legal services to the poor, that help to educate the public and the legal profession, or that work to improve the administration of justice in Hawaii.

**4. WHO BENEFITS FROM IOLTA?** You do. In fact, everyone does. Attorneys and cooperating banks benefit from the true goodwill that is generated by the program. Not-for-profit law-related organizations derive benefit by having additional money for needed projects, services, and activities. The community as a whole benefits by having more resources available for essential low-income legal services for those who often have no other place to receive legal assistance.

**5. WHICH ATTORNEYS MUST COMPLY WITH IOLTA?** Compliance is required by all members of the Hawaii State Bar doing any practice involving State of Hawaii legal issues and who hold nominal or short-term funds in trust for clients or third persons, except as provided in Supreme Court Rule 11(e)(4). Attorneys are exempted who certify that they (a) receive no client funds that would require a general trust account; (b) who do not practice law in Hawaii; (c) who are full-time judges, government attorneys, or military attorneys; or (d) who are inactive. Separate interest-bearing accounts set up for large amounts or funds or held for longer periods of time funds are not affected by IOLTA and may be created by the attorney if so desired. It is critical that attorneys be aware of the requirements for establishing and maintaining an IOLTA account.

**6. HOW DO YOU COMPLY?** Compliance is an annual event. Your yearly HSBA compliance process contains an "IOLTA CERTIFICATION" portion. This IOLTA CERTIFICATION information is confidential and is available only to the HSBA, the Office of Disciplinary Counsel, and HJF. Alternatively, if you or your firm are opening an IOLTA account for the first time, or if you are changing the location of your IOLTA account, please fax, mail, or email to the HSBA a copy of a voided check or deposit slip, once you have your new IOLTA account established. Once the account is established, each November or December you will provide updated information as part of your annual HSBA attorney registration process.

**7. WHAT IF YOU DON'T COMPLY?** The HJF and HSBA have combined their annual registrations to make this process as user-friendly as possible. However, failure to complete the HJF portion of the registration and certification (or any other portion of the HSBA registration

process) within the specified HSBA registration time will result in administrative suspension from the practice of law in the State of Hawaii.

**8. WHAT ARE THE TAX IMPLICATIONS OF IOLTA INTEREST EARNED?**

There are none for participating attorneys and firms. W-9 forms are required by the IRS to be filed by financial institutions with each interest-bearing account. The W-9 form lists the Hawaii Justice Foundation as "Payee", bears the Foundation's taxpayer identification number, and certifies that the IOLTA account is not subject to backup withholding. The HJF's federal identification number is 23-7047345 and may be given by the bank to the IRS for each IOLTA account.

**9. MAINTENANCE OF YOUR IOLTA ACCOUNT.** Each month, each participating bank provides HJF with the aggregate interest earned from all IOLTA accounts held by that bank. All other accounting aspects of handling the IOLTA account are the responsibility of the attorney.

**10. WHO HAS ACCESS TO YOUR IOLTA RECORDS?** The Foundation has access only to the information provided by the lawyer or law firm on the Registration and Certification and on the monthly aggregate reports submitted to HJF from each bank. These monthly bank reports to the Foundation do not show any client deposits or withdrawals from the lawyer's IOLTA account. These monthly reports list all attorney accounts with that bank, the average daily balance upon which interest is calculated, the percentage of interest applied to the average daily balance, the gross amount of interest earned, any service charges to HJF, and the net interest earned. The Foundation's policy has always been to protect the confidentiality of the IOLTA account information. The Office of Disciplinary Counsel does have the right to audit IOLTA accounts in the event of an attorney's involvement in the disciplinary process.

**11. HOW DO YOU REACH THE HAWAII JUSTICE FOUNDATION?**

Correspondence to the Foundation should be addressed to Hawaii Justice Foundation, P. O. Box 4750, Honolulu, Hawaii 96812-4750. The HJF can also be reached by e-mail at [hjff@hawaii.rr.com](mailto:hjf@hawaii.rr.com), via telephone at 808•537-3886, or facsimile at 808•528-1974. E-mail is our preferred method of communication.