

# **IOLA Fund of the State of New York**

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## **Operational Guidelines for Financial Institutions**

The IOLA Fund created this manual to explain what is required of banks that offer IOLA accounts to facilitate a uniform IOLA program throughout the state and compliance with IOLA's statutes and regulations. If your institution wishes to modify or change any of the procedures described in this booklet, or needs any further assistance or clarification, please contact the Fund at (646) 865-1541.

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#### **Appendix: Laws and regulations governing IOLA**

- State Finance Law §97-V
- Judiciary Law §497
- Trustees' Regulations (21 N.Y.C.R.R. Part 7000)

- Rules of the Professional Conduct (22 N.Y.C.R.R. Part 1200, Rule 1.15)
- The Dishonored Check Rule (22 N.Y.C.R.R. Part 1300)

## **1. THINGS TO KNOW BEFORE YOU CAN OFFER IOLA ACCOUNTS**

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### ***Can my bank start offering IOLA accounts whenever we choose?***

No, in order to become an IOLA Participating Bank, you will have to submit an application. Only after your application is approved can you start to offer IOLA Accounts to lawyers. To get an application packet, visit the **Banks** section of our website or contact Odette McNeil at our offices.

### ***How do we set up the IOLA account type in our system?***

Once you have been approved for participation, please ensure that you follow these tips to set up the account in your system:

- Flag all IOLA accounts for the same closing date.
- The **Tax Identification Number** used for all IOLA accounts must be the Fund's: **13-3246797**. Under no circumstances should your institution use an attorney's Social Security number or a law firm's Employer Identification Number. All forms related to the account must include its full title and the TIN of the Fund.
- If possible, dispense with the issuance of IRS Form 1099. The Fund is the beneficial owner of the interest generated on IOLA accounts and is a tax-exempt instrumentality of the State of New York. No Form 1099 or other reports of interest should be prepared or submitted to the IRS for any IOLA account.
- If reporting to the IRS cannot be suppressed, the information submitted must include the name: "Interest on Lawyer Account Fund" in the second name field in order to prevent a "TIN/Name Mismatch." Any 1099 Form that is generated should be sent directly to the IOLA Fund, 11 East 44th Street, Suite 1406 New York, NY 10017-0055, not to the attorney or law firm.

### ***How do we set the interest rate on IOLA accounts?***

The Trustees' Regulations provide a standard of "comparability" which requires that IOLA accounts pay no less than the highest rate paid on comparable accounts at the bank.

To determine which accounts at your bank are comparable, see **Section 7000.9** of the Trustees Regulations, or contact the Fund for assistance.

## 2. SERVICE CHARGES AND FEES

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### ***Must we charge fees on IOLA accounts?***

No, many financial institutions waive all service charges and fees on IOLA accounts. Few banks view IOLA account service charges as a significant income stream, and understand that every dollar of service charges is a dollar that does not go to help provide legal service to the citizens of New York State.

Furthermore, attorneys are encouraged to take all of their business to banks that waive fees and provide high interest rates on IOLA accounts – waiving IOLA fees may make more sense to your bottom line by attracting the large attorney or firm operating accounts.

What service charges and fees can be taken from the interest on an IOLA account? Your financial institution may charge only equitable service charges or fees against the interest earned on an IOLA account, which shall not be greater than it imposes on similar accounts maintained at the institution and are limited to:

- per check charges,
- per deposit charges,
- monthly maintenance fees,
- a fee in lieu of a minimum balance or Federal Deposit Insurance fees.
- a fee for the preparation and issuance of reports required by the Fund, (if approved in advance by the Fund during the participation approval process).

### ***What fees must the attorney pay?***

All other fees are the responsibility of the lawyer or law firm maintaining the IOLA account and may not be deducted from the interest earned by an IOLA account. These include, but are not limited to: any special service, non-routine activity or event, such as:

- wire transfers
- cashier's checks
- certified checks
- stop payment orders
- account reconciliation services
- overdrafts
- Non-Sufficient Funds (NSFs) or returned checks.

Beginning January 1, 2011, attorneys who open new IOLA accounts will be responsible for the charge for printing the initial checkbook as IOLA will no longer assume the cost after that date.

Upon opening an IOLA account, attorneys and law firms must be notified that such special or non-routine charges and fees are their responsibility.

***How can we collect non-allowed fees?***

Fees on IOLA accounts may NEVER be taken from client funds. Usually, arrangements are made to take such fees from the attorney's operating account, while some attorneys deposit some of their own funds into their IOLA account to cover non-allowed fees.

***What if the service charges on an account exceed the interest earned on that account? Can we take the difference from the total interest earned on all IOLA accounts?***

No, so-called "Negative Netting" is not allowed. If the bank desires, leftover fees on an account may be carried forward to the next remittance period and deducted from interest earned in the same account.

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### **3. OPENING IOLA ACCOUNTS**

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***What is required to open an IOLA account?***

Any attorney licensed to practice in New York State may open an IOLA account at a participating bank and deposit funds immediately. The bank should not create procedural obstacles to the swift creation of IOLA accounts.

Please remind attorneys when they open their account that it is their responsibility – not the bank's – to mail a signed **Enrollment Form** to the Fund within 30 days of opening the account. This form (the "Lawyer's or Law Firm's Notice to Financial Institution to Establish an IOLA Account" form) is available at [www.iola.org](http://www.iola.org).

***What should the account title look like?***

There are three required parts of an IOLA account's title:

1. The attorney or firm **name**
2. One of the following phrases:
  - a. **Attorney Trust Account**
  - b. **Attorney Escrow Account**
  - c. **Attorney Special Account**
3. The acronym "**IOLA**"

**For example:**

- John Doe Esq. Attorney Trust Account / IOLA
- Lennon McCartney Harrison & Starr PC Attorney Escrow Account IOLA

***Can attorneys or firms open multiple IOLA accounts?***

This is strongly discouraged. Because the IOLA concept assumes the pooling of ALL of a lawyer's or firm's qualified deposits in one account, opening multiple accounts undermines the entire purpose of the program. Many banks have tiered rate structures that pay higher rates at higher balances, so multiple accounts would end up harming the Fund and the programs it supports.

#### 4. REMITTING INTEREST

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##### ***How often should we remit the interest to the Fund?***

The institution must remit all net interest earned on each IOLA account on either a monthly or quarterly basis by the 10th of the following month or 10 days after the closing date of the cycle for which you are remitting.

If your institution pays interest monthly, but elects to remit quarterly, a separate IOLA account should be established to act as a holding account for the interest earned until you send your remittance.

##### ***How do we remit the interest to the fund?***

Interest should be remitted to the Fund electronically via ACH or wire transfer. Once your participation has been approved, please contact the Fund for the bank account information necessary to remit interest.

##### ***We made an error and sent too much. What do we do?***

If an error resulted in an excess remittance to the Fund, the excess amount may be deducted from a subsequent remittance or a bill may be submitted to the Fund, but only with the Fund's advance approval. Call the Bank Liaison at the Fund.

#### 5. REPORTING REQUIREMENTS

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##### ***What are the reporting requirements associated with IOLA accounts?***

A single electronic **remittance report** for all accounts at the bank must be submitted for each remittance period (monthly or quarterly), whether or not interest has been earned on accounts held at your institution.

##### ***How should we format our electronic remittance report?***

The **remittance report** should be a **text file** with **tab-separated values** using the following fields, formatted as follows:

- trustaccount**= The account number just as it appears in the bank database – no hyphens or spaces. Include any leading zeros in the account number, but do not add extra leading zeros.
- firmname** = The firm name, attorney name, or account title, just as it appears in your database.
- bankprbal** = The monthly average balance (with actual decimal point)
- gross** = The gross interest earned by the account for the remittance period

- handling** = Use this to report all charges taken from the account for the remittance period, even if you call them “maintenance” or “service” charges.
- net** = The net interest earned on the account for the remittance period.
- earningstart** = The start date of the remittance period, in the format **MM/DD/YYYY**
- earningend** = The end date of the remittance period, in the format **MM/DD/YYYY**
- rate** = The interest rate earned by the account for the reporting period.  
**IMPORTANT:** the **rate** must be expressed as a percentage but without the percent sign:
- an APR of 1.50% should appear on the report as **1.50**
  - an APR of 0.35% should appear on the report as **0.35**

### ***How do I name the file?***

The remittance report’s filename should include the bank name and indicate the remittance period covered by the report (**bank\_name\_remittanceperiod.txt**). The filename is just for ease of handling by the Fund – it does *not* need to be as formally exact as the fields in the file itself.

examples: **jpmorgan\_chase\_jan2009.txt**  
**community\_national\_bank\_na\_3Q2009.txt**  
**Webster\_bank\_apr-jun09**

### ***How do we submit our electronic report?***

Reports are submitted using the secure dropbox on the Fund’s website:

1. Go to **www.iola.org/banks**
2. Click **Remittance Report Dropbox**
3. Login using the username and password provided to you by the Fund (if you don’t have this, please contact the Bank Liaison at the Fund)
4. Enter the summary information for the remittance period into the form.
5. Click **Browse** to locate your report on your system.
6. Click **Send Document Report**.

Other Electronic Formats:

For our internal reference, the IOLA Fund refers to the above format as “SC1st.txt”. If you cannot provide a report in this format (e.g. if you need to report other kinds of charges), please call the Bank Liaison at the Fund to discuss using another electronic format. If you already provide electronic reports to an IOLTA program in another state, you may be able to use that format to remit to IOLA.

If you have any questions about the formatting of this report, please contact the Bank Liaison at the Fund.

### ***What other events require the fund’s notification?***

You must notify the Fund when:

- an IOLA account closes (see Remittance Report Form);
- the institution's IOLA liaison changes;
- the institution acquires, merges with, or is acquired by another financial institution.

***What about dishonored checks?***

All participating banks must agree to provide dishonored check reports to the **Lawyers' Fund for Client Protection** in the event of an overdraft or NSF on an IOLA account. For details, please refer to the Lawyer's Fund's website, [www.nylawfund.org](http://www.nylawfund.org). The Dishonored Check Rule (22 NYCRR Part 1300) is included in the appendix to this document.