

Operational Guidelines for Financial Institutions

The IOLA Fund created this manual to explain as simply as possible 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.

UPDATED AUGUST 2009

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- The Dishonored Check Rule (22 N.Y.C.R.R. Part 1300)

1. Things to Know Before You Can Offer IOLA Accounts

Can my bank just start offering IOLA accounts whenever we want?

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

Must we charge fees on IOLA accounts?

Of course not! 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).

A charge for the *initial* printing of basic checks for a new IOLA account may be taken from the total interest remitted to the Fund in a month, and must be noted on the remittance report.

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.

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! Except in the case of the initial checkbook printing (see above), 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.

3. Opening IOLA Accounts

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.

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. Since 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. The Fund takes a dim view of attorneys who would abuse the benefits of IOLA accounts (free initial check printing, maintenance fees paid by the Fund) for their own bookkeeping convenience.

4. Remitting Interest

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.

Oops! We 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

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. The Dishonored Check Rule (22 NYCRR Part 1300) is included in the appendix to this document.

New York Codes, Rules and Regulations

TITLE 21. MISCELLANEOUS

CHAPTER LXIX. INTEREST ON LAWYER ACCOUNT FUND

PART 7000. TRUSTEES' REGULATIONS AND PROCEDURES

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Section 7000.1 Purpose of fund.

The purpose of the Interest on Lawyer Account Fund is to provide funding for providers of civil legal services in order to ensure effective access to the judicial system for all citizens of the State and to provide stable, economical and high quality delivery of civil legal services to the poor throughout the State. The fund is authorized to receive funds from any source for disbursement to nonprofit legal services providers for charitable purposes, including the delivery of legal services in civil matters to poor persons. The fund will receive interest or dividends earned by qualified client funds held by attorneys in unsegregated interest-bearing or dividend-bearing accounts at banking institutions to the extent that such institutions choose to offer and receive the benefits of providing IOLA accounts, and will utilize the interest or dividends so received for the above-stated purposes.

Section 7000.2 Definitions.

- (a) Banking institutions are banks, trust companies, savings banks, savings and loan associations, credit unions or foreign banking corporations whether incorporated, chartered, organized or licensed under the laws of this State or the United States, provided that such banking institutions have a banking office in this State.
- (b) Eligible bank or eligible banking institution means a banking institution that maintains IOLA

accounts that comply with section 497 of the New York Judiciary Law, section 97-v of the New York State Finance Law and the criteria provided in these regulations, and has been approved by the Board of Trustees to maintain IOLA accounts.

- (c) Funds received in a fiduciary capacity are funds received by an attorney or a law firm from a client or third person in the course of the practice of law, including but not limited to funds received in an escrow capacity, but not including funds received as trustee, executor, administrator, guardian or receiver in bankruptcy.
- (d) Interest on Lawyer Account or IOLA account means an unsegregated interest-bearing or dividend-bearing account, as approved by the Board of Trustees of the IOLA fund, maintained in an eligible bank for the deposit by an attorney or law firm as a fiduciary of qualified funds.
- (e) Qualified funds are moneys received by an attorney or a law firm in a fiduciary capacity from a client or a third person and which, in the sole discretion and judgment of the attorney or law firm, are too small in amount or are reasonably expected to be held for too short a time to generate sufficient income to justify the expense of administering a segregated account for the benefit of the client or third person and cannot earn income for a client or third person in excess of the costs incurred to secure such income. Qualified funds do not include those moneys which are deposited for the particular client or client's matter on which the interest will be paid to the client or an interest-bearing trust account at a banking institution with provision by the bank or by the depositing attorney or law firm for computation of interest earned by the client funds and the payment thereof to the client.
- (f) New York Interest on Lawyer Account fund or IOLA fund means the fiduciary fund established by subdivision (1) of section 97-v of the New York State Finance Law and administered by the IOLA Board of Trustees.
- (g) IOLA board of trustees, board of trustees or board means the body of individuals appointed by the Governor pursuant to subdivision (2) of section 97-v of the New York State Finance Law that is authorized to administer the IOLA fund.

Section 7000.3 Organization.

- (a) The IOLA fund shall be administered by a board of trustees appointed by the Governor.
- (b) The board of trustees shall consist of 15 members, at least eight of whom shall be attorneys licensed to practice in New York. Two of the appointments, at least one of whom shall be an attorney, shall be appointed on the recommendation of the President of the Senate; two of the appointments, at least one of whom shall be an attorney, shall be appointed on the recommendation of the Speaker of the Assembly; one appointment shall be on the recommendation of the Minority Leader of the Senate and one on the recommendation of the Minority Leader of the Assembly. Two of the appointments, both of whom shall be attorneys, shall be appointed on the recommendation of the Court of Appeals. The Governor shall designate one member of the board as chair. No member of the Senate or Assembly shall be eligible to serve as a member of the board.
- (c) The term of a trustee shall be three years. Of the trustees first appointed, five shall be appointed for terms expiring December 31, 1984; five shall be appointed for terms expiring December 31, 1985; and five shall be appointed for terms expiring December 31, 1986. As each term expires, each new appointment shall be for a term of three years. Vacancies shall be filled in the manner of the original appointment for the remainder of the term.
- (d) The trustees shall employ an executive director to serve as the chief administrative officer of the

fund.

- (e) The trustees shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the discharge of their duties.

Section 7000.4 Meetings.

- (a) The trustees shall meet at least quarterly each year at such locations, and in such manner, as the chair shall designate. Special meetings may be called by the chair, and shall be called by the chair upon the request of at least four trustees. The chair shall provide reasonable notice of all meetings.
- (b) Eight trustees shall constitute a quorum. A majority of the trustees present at any meeting of the board may exercise any powers held by the trustees, except as otherwise provided in this Part.

Section 7000.5 Powers and duties of trustees.

- (a) In the exercise of the authority granted the trustees, the trustees have the power to:
 - (1) receive, hold and distribute the moneys remitted to the IOLA fund pursuant to the provisions of section 497 of the Judiciary Law and to receive such other moneys and property received from any source, including voluntary contributions, together with any interest accrued thereon. All such revenue not distributed shall be secured and invested as required by the provisions of sections 97-v and 98 of the State Finance Law;
 - (2) require eligible banking institutions that apply to be considered eligible to accept the deposit of IOLA funds to verify their current compliance with New York Judiciary Law 497, New York State Finance Law 97-v and these regulations and determine eligibility for the deposit of IOLA funds;
 - (3) make available to the public the names of eligible banking institutions;
 - (4) allocate no less than 75 percent of the net funds distributed after covering administrative expenses in any fiscal year as grants and contracts to not-for-profit tax-exempt "qualified legal services providers," as defined by section 7000.12(a)(1) of this Part, for the provision of civil legal services to the poor allocated according to the geographic distribution of poor persons throughout the State based on the latest available figures from the United States Department of Commerce, Bureau of Census;
 - (5) allocate the remaining funds to "administration of justice providers," as defined by section 7000.12(a)(2) of this Part, for purposes related to the improvement of the administration of justice, including but not limited to the provision of civil legal services to groups currently underserved by legal services, such as the elderly and the disabled, and the enhancement of civil legal services to the poor through innovative and cost-effective means, such as volunteer lawyer programs and support and training services;
 - (6) adopt and amend regulations for the administration of the fund and procedures for the distribution of grants and contracts;
 - (7) review applications for grants and contracts using staff and other available resources;
 - (8) determine, pursuant to the provisions of section 97-v of the State Finance Law, the award of grants and contracts, including the amount to be awarded and the terms under which the awards of grants and contracts shall be made;
 - (9) employ and remove, at their pleasure, employees, agents and consultants and fix their compensation within the amounts available therefor, but in no event shall more than 10

percent of the funds available in any fiscal year be spent on personnel and related services, including necessary nonpersonnel administrative costs of the program; provided, however, that pursuant to section 97-v of the State Finance Law as amended by the Laws of 1984, such limitation may be waived by the board of trustees by the adoption of a resolution, and such waiver shall remain in effect until the board determines by a subsequent resolution that the program is fully operational;

(10) furnish the Governor, the Court of Appeals, the Legislature and the State Comptroller with an annual report of the activities and operations of the fund; and

(11) perform all other acts necessary or proper for the fulfillment of the purpose of the fund and its effective administration, including but not limited to the creation of subcommittees of the board and the appointment of officers other than chair.

(b) Powers and duties of officers. The duties of the officers of the fund shall be as follows:

(1) the chair shall preside at all meetings of the trustees, generally supervise the administration of the fund and exercise such other functions and duties that the trustees may assign or delegate, or that are customary to the office of the chair;

(2) the vice-chair shall assume the duties of the chair in the absence or disability of the chair;

(3) the treasurer shall maintain the financial records of the fund and, jointly with the chair, certify vouchers of the fund that authorize the State Comptroller to make payments of grants and contracts; and

(4) the executive director shall assist the trustees, supervise the implementation of regulations, coordinate the review of applications, supervise staff, serve as secretary at meetings and fulfill such other duties as may be assigned or delegated by the chair or the trustees.

Section 7000.6 Conflict of interest.

A trustee with a past or present affiliation with an applicant (including employee, officer, director, trustee, counsel or business relationship) for distribution of funds shall declare such affiliation to the trustees, and that trustee shall not participate in a vote on any matter relating directly to such applicant.

Section 7000.7 Reports.

(a) On or after the first day of April each year, the trustees shall prepare an annual report of the activities and operations of the fund during the preceding year. The report shall be transmitted to the Governor, the Legislature, the Court of Appeals and the State Comptroller.

(b) The trustees may issue periodic reports to the public concerning the activities and procedures of the fund.

Section 7000.8 Establishment of IOLA accounts by attorneys and law firms.

(a) Participation in IOLA is mandatory. Each attorney or law firm that receives qualified funds shall establish and maintain an IOLA account in an eligible banking institution of the attorney's or law firm's choosing. An attorney or law firm which receives qualified funds in the course of its practice of law and establishes and maintains an IOLA account shall (i) designate the account as "(name of attorney/law firm IOLA account)" with the approval of the banking institution and (ii) notify the IOLA fund within 30 days of establishing the IOLA account of the account number and the name and address of the eligible banking institution where the account is deposited. Such attorney or law firm:

(1) shall have discretion, in accordance with the code of professional responsibility, to determine

whether moneys received by the attorney or law firm in a fiduciary capacity from a client or third person shall be deposited in a nonsegregated IOLA account;

- (2) shall, if in the judgment of the attorney or law firm any moneys received are qualified funds, deposit such funds in an IOLA account;
- (3) shall, ordinarily, in determining the type of account into which to deposit particular funds held for a client or third person, take into consideration the following factors:
 - (i) the amount of the funds received, the interest or dividends the funds would earn during the period they are expected to be deposited, the expected duration of the deposit, the rates of interest or yield and service charges or fees at a banking institution where the funds may be deposited;
 - (ii) the cost of establishing and administering non-IOLA accounts for clients or third persons, including the cost of the lawyer or law firm's services, and including the cost of obtaining tax identification information, the necessity or propriety of completing tax reports and forms, and remitting interest to a client;
 - (iii) the capability of the banking institution, or attorney or law firm, to calculate and pay interest earned by each client's fund, net of any service charges, fees or other applicable costs, to the particular clients, including through the use of subaccounting;
 - (iv) any other circumstances that affect the ability of the funds to earn income for a client or third person in excess of the costs incurred to secure such income while the funds are held.

(b) Notwithstanding the deposit requirements of this subdivision, no attorney or law firm shall be liable in damages nor held to answer for a charge of professional misconduct because of a deposit of moneys into an IOLA account pursuant to the attorney's good faith judgment that such moneys were qualified funds.

(c) Attorneys with accounts in a financial institution which ceases for any reason to be an eligible banking institution for IOLA accounts shall move such accounts to an eligible banking institution.

(d) An attorney or law firm that establishes that compliance with the foregoing provisions of this section has resulted in any banking service charges or fees to such attorney or law firm shall be entitled to reimbursement of such charges or fees from the interest on the IOLA account of such attorney or law firm by filing a claim with supporting documentation with the IOLA fund within 90 days of the imposition of such charges or fees, as approved by the Board. In no event, however, shall the attorney or law firm be entitled to reimbursement in excess of the interest earned by such IOLA account.

Section 7000.9 Interest and dividends.

(a) To be considered presumptively eligible for the deposit of IOLA funds, an IOLA account shall pay an interest or dividend rate on IOLA accounts which is not less than the highest rate available among the following types of accounts, as paid by the banking institution to its best customers on accounts maintained at that institution which are determined to be similar to its IOLA accounts:

- (1) A money market account with or tied to check writing capability;
- (2) A government (such as for municipal deposits) checking account;

- (3) An open-end money market fund investment offered through the banking institution that is (i) tied to check writing capability at the institution, (ii) and which fund is solely invested in, or fully collateralized by, U.S. Government securities and (iii) has total assets of at least \$250,000,000; or
 - (4) Any other interest- or dividend-paying product with or tied to check-writing capability at the institution.
- (b) As alternatives to the foregoing, the institution requesting designation by the trustees of an account as eligible to accept the deposit of IOLA funds may offer:
 - (1) The greater of 60% of the Federal Funds Target Rate or 1% paid on an interest-bearing checking account; or
 - (2) A yield specified by the IOLA fund, if it so chooses, which is agreed to by the financial institution and would be in effect for a period to be mutually agreed upon.
- (c) The following additional provisions are applicable. As indicated by their terms, some apply only to one or some of the options set forth above.
 - (1) The Federal Funds Target Rate referenced in paragraph (1) of subdivision (b) shall be calculated as of the first day of each month.
 - (2) A bank may elect to offer the highest rates that it pays on government or high-yield money market accounts on another qualifying IOLA checking account, instead of actually offering such account.
 - (3) Institutions may elect to pay a higher interest or dividend rate than provided for in this section.
 - (4) All participating financial institutions shall report, in the form and manner prescribed by the IOLA fund, on the best rate paid to their best customers for each of the types of accounts they offer within the definitions specified in paragraphs (1) through (4) of subdivision (a) above. To enable attorneys and law firms to open and maintain an IOLA account, an eligible banking institution shall, within 60 days of the effective date of these regulations and as requested thereafter, provide to the IOLA board information that demonstrates compliance with the provisions of this section.
 - (5) Where there is reasonable cause to believe a financial institution is willfully misrepresenting its best rate information, the IOLA fund may condition continued approval status on a finding by the institution's auditor that its certifications have been accurate.
- (d) The IOLA Board shall periodically monitor the effectiveness of this standard.

Section 7000.10 Eligible banking institutions.

With respect to IOLA accounts, eligible banking institutions that choose to offer, establish, accept or maintain IOLA accounts:

- (a) shall have no duty to inquire or determine whether deposits consist of qualified funds;
- (b) shall charge only equitable service charges or fees against the interest earned on IOLA accounts which shall not be greater than it imposes on similar accounts maintained at the institution and shall be limited to per check charges, per deposit charges, monthly maintenance fees, a fee in lieu of a minimum balance, federal deposit insurance fees, or a service charge for the preparation and issuance of reports required by this section, as approved by the trustees of the fund. All other fees for special services requested by the account-holder are the responsibility of, and may be charged

to, the lawyer or law firm maintaining the IOLA account;

- (c) may elect to waive any charges or fees on IOLA accounts;
- (d) shall remit at least quarterly any interest earned on IOLA accounts to the IOLA fund, after deduction of equitable service charges or fees, if any;
- (e) shall not take any equitable service charges or fees in excess of the interest or dividends earned on an IOLA account for any month or quarter from interest or dividends earned on another IOLA account or from the principal of the account and such charges or fees in excess of the interest or dividends earned on an IOLA account may be carried over to the next remitting periods and deducted from interest or dividends earned in such account;
- (f) shall transmit to the IOLA fund with each remittance a report that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average balance for each IOLA account for the period in which the report is made;
- (g) shall transmit to each attorney or law firm who maintains an IOLA account a report in accordance with the normal procedures for reporting to its depositors;
- (h) shall have no liability for any claims by any person or entity for payments from an IOLA account to or upon the order of the attorney or law firm maintaining the account;
- (i) shall have no liability for any claims by any person or entity for any remittance of interest to the IOLA fund pursuant to the provisions of section 97-v of the State Finance Law; and
- (j) shall not be subject to any action solely by reason of its opening, offering or maintaining an IOLA account, accepting any funds for deposit to any such accounts or remitting any interest to the IOLA fund. If in the sole discretion of the board of trustees of the IOLA fund, a banking institution has, because of a mistake of fact, error in calculation or erroneous interpretation of section 97-v of the State Finance Law, section 497 of the Judiciary Law or of this Part, remitted to the IOLA fund any moneys not required by such provision to be remitted, the board of trustees shall refund such moneys upon application of any aggrieved party. Any such refund shall be paid from the IOLA fund without interest and without the deduction of any service charge and shall constitute a full satisfaction and discharge of any claim for such refund.

Section 7000.11 Confidentiality.

- (a) All records, documents or other information identifying an attorney or law firm, client or third person of an IOLA account shall be confidential and shall not be disclosed by a banking institution except with the consent of the attorney or law firm maintaining the account or as required by law, regulation, administrative requirement or compulsory legal process.
- (b) The board of trustees shall maintain all papers, records, documents or other information identifying an attorney or law firm, client or third person of an IOLA account on a private and confidential basis, and shall not disclose such information unless such disclosure is (1) necessary to accomplish the purposes of section 497 of the Judiciary Law and section 97-v of the State Finance Law or (2) made pursuant to compulsory legal process.

Section 7000.12 Qualified recipients.

- (a) Qualified recipients shall be not-for-profit entities, tax-exempt under section 501(a) of the Internal Revenue Code, or any successor provision, eligible to receive distributions of IOLA funds pursuant to one or both of the following categories:

- (1) Qualified legal services providers which shall be an entity which operates within New York State and provides direct civil legal services without charge to poor persons within a geographical area in New York State; or
 - (2) Administration of justice providers which shall be an entity which operates within New York State and which:
 - (i) enhances civil legal services to the poor through innovative and cost-effective means;
 - (ii) provides direct civil legal services either to groups of clients currently underserved by legal services, such as the elderly or the disabled, or in an area of representation, whether substantive or geographical, that cannot be or is not effectively served by individual qualified legal services providers;
 - (iii) provides legal, management or operational training, or legal, management, support service, or technical assistance, or direct legal assistance, informational advocacy or litigation support to qualified legal services providers; or
 - (iv) which otherwise promotes the improvement of the administration of justice.
- (b) All qualified recipients shall:
- (1) ensure that the funds received are expended in accordance with the provisions of section 97-v of the State Finance Law, section 497 of the Judiciary Law and this Part;
 - (2) preserve the attorney-client privilege in all cases;
 - (3) ensure that no one shall interfere with any attorney funded in whole or in part by IOLA funds in fulfilling a professional responsibility to a client as established by the code of professional responsibility and the provisions of section 97-v of the State Finance Law, section 497 of the Judiciary Law and this Part; and
 - (4) prohibit discrimination, as defined by the applicable laws of the United States and the State of New York, against (i) any person applying for employment or employed by the qualified recipient; or (ii) any person seeking participation in, or the benefits or proceeds of, a program or programs supported in whole or in part by IOLA funds.
- (c) Recognizing that the IOLA funds available for distribution may not be sufficient to make distributions to all qualified recipients submitting applications for such funds which merit funding, the board of trustees shall from time to time establish funding priorities. Among the factors to be considered by the board of trustees in establishing the priorities shall be:
- (1) if there are two or more qualified recipients in a geographical area who have applied for IOLA funding, the board shall distribute available funds annually based upon a determination by the board in its discretion of the merits of the applications of the qualified recipients and the impact that distribution to the qualified recipients will have on ensuring the delivery of stable, economical and high quality civil legal services to that area;
 - (2) absent special circumstances, qualified recipients shall have substantial sources of income used for the provision of civil legal services to the poor in addition to the funds requested;
 - (3) expansion and improvement of existing qualified recipients shall be preferred over requests to provide IOLA funding to establish new qualified recipients, except in instances of unique and difficult to serve areas and groups;
 - (4) requests shall be encouraged for applications for IOLA funds which will result in the

development and strengthening of pro bono programs which generate the provision of substantial voluntary legal services to the poor;

- (5) the level of professional standards and efficiency and quality of services;
- (6) the provisions for client participation in program planning, priority setting and operation;
- (7) provisions which prohibit attorneys employed full time in legal assistance activities supported all or in part by IOLA funds from engaging in any compensated outside practice of law;
- (8) the encouragement of cooperative proposals from multiple qualified recipients in a given service area;
- (9) the level of client and community support for the services for which IOLA funds are being sought;
- (10) whether a qualified support and training provider applicant seeking IOLA funds to provide training and support services to qualified legal service providers has obtained the approval of a majority of the programs it seeks to assist; and
- (11) qualified support and training provider applicants seeking IOLA funds to provide direct legal services either to groups of clients currently underserved by legal services or in areas of representation that cannot effectively be serviced by individual qualified legal services providers shall demonstrate the need for such services.

Section 7000.13 Use of funds.

(a) No IOLA funds distributed pursuant to section 97-v of the State Finance Law, section 497 of the Judiciary Law and this Part may be used for any of the following purposes:

- (1) the provision of legal services with respect to any fee-generating case unless adequate representation is unavailable;
 - (i) for the purposes of this subparagraph, fee-generating case shall mean any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party;
 - (ii) other adequate representation is deemed unavailable if any one of the following factors are met:
 - (a) it has been determined that free referral is not possible for any of the following reasons:
 - (1) the case has been rejected by the local lawyer referral service or by two attorneys in private practice who have experience in the subject matter of the case;
 - (2) neither the referral service nor at least two attorneys in private practice who have experience in the subject matter of the case will consider the case without payment of a consultation fee;
 - (3) case is of the type which attorneys in private practice in the area ordinarily do not accept without prepayment of a fee;
 - (4) emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with

the code of professional responsibility, referral will be attempted at a later time;

- (b) recovery of damages is not the principal object of the case and a request for damages is ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims;
 - (c) a court has appointed a qualified recipient or an attorney employed by a qualified recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction;
 - (d) the case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.
- (b) Criminal proceedings. No funds distributed pursuant to this Part shall be used for the provision of legal assistance with respect to any criminal proceeding or any action in the nature of habeas corpus collaterally attacking a criminal conviction.
- (c) Prohibition on the use of funds for political purposes. No funds distributed pursuant to this Part shall be used either directly or indirectly to contribute to any political party or association, or any candidate for public or party office, and no political test or qualification shall be used in making any decision, taking any action, or performing any function under these regulations.

Section 7000.14 Client financial eligibility for services.

- (a) A person eligible to receive legal services from funds allocated pursuant to this Part must have an income that does not exceed 125 percent of the official poverty threshold as defined by the United States Office of Management and Budget, except in the following circumstances:
- (1) the person is seeking legal assistance to secure benefits provided by a governmental program for the poor;
 - (2) person would be eligible but for the receipt of benefits provided by a governmental income maintenance program; or
 - (3) the person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in subdivision (b) of this section.
- (b) In addition to income, a recipient shall consider other relevant factors in determining whether a person is eligible to receive legal assistance. Factors to be considered shall include:
- (1) current income, taking into account seasonal variations in income;
 - (2) liquid assets;
 - (3) fixed debts and obligations, including Federal and local taxes and medical expenses;
 - (4) child care, transportation, mandatory payroll deductions and other expenses necessary for employment;
 - (5) age or physical infirmity of resident family members;
 - (6) the cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;
 - (7) the consequences for the individual if legal assistance is denied; and
 - (8) any other factors related to financial inability to afford legal assistance.

- (c) A recipient may provide legal assistance to a group, corporation, or association if it:
 - (1) is primarily composed of persons eligible for legal assistance under these regulations; or
 - (2) has as its primary purpose the furtherance of the interests of persons in the community who are unable to afford legal assistance; and
 - (3) provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.
- (d) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it in a manner consistent with the attorney-client relationship. Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client without the express written consent of the client.
- (e) If an eligible client becomes ineligible due to a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for a period which will enable the client to retain private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibility.

Section 7000.15 Applications for grants and contracts.

- (a) The board of trustees shall seek submissions of grant and contract applications on a regular and periodic basis, and distribute available IOLA funds, after the payment of administrative expenses, to qualified recipients pursuant to the provisions of this Part on the basis of the merits of the applicants. The board of trustees may delegate the screening of the funding applications to its staff or other entity it deems appropriate.
- (b) All applicants seeking funds pursuant to this Part shall:
 - (1) submit a written grant proposal;
 - (2) respond adequately to the recommended grant proposal format and any additional requests for information;
 - (3) agree to carry out the program for which funds are requested, report on its progress and results, and return any funds not utilized in accordance with the grant;
 - (4) cooperate with all data collection and evaluation activities requested and submit annually an audited financial statement by a certified public accountant and a report of the programs on which the IOLA funds were expended.
- (c) All grant and contract applications submitted to the board of trustees shall include the following information:
 - (1) community characteristics demonstrating the need for legal services and describing the affiliation with existing legal services providers, volunteer lawyer programs and local bar associations;
 - (2) organizational structure of the applicant, including policy board composition, sources and amounts of other funding, planning and priority setting processes, and client and community input and support;
 - (3) description of the applicant, including community outreach, office and staffing patterns, staff

qualifications, specialty units, client statistics, client screening, intake and referral procedures, systems of quality control (case assignment and review, supervision and follow-up training, technical assistance and other support), client grievance procedures and staff and program evaluation;

- (4) description of the program for which IOLA funding is sought;
- (5) program budget which sets forth the proposed use of the requested IOLA funds and a timetable and self-assessment plan to monitor the implementation and operation of the proposed program;
- (6) the documentation to be provided by the applicants shall include: (i) tax-exempt status; (ii) latest audited financial statements; (iii) affirmative action policy; (iv) current professional liability coverage; and (v) approval of the proposal by the applicant's board of directors; and
- (7) any other relevant information requested by the executive director.

Section 7000.16 Processing applications.

Review and approval of the grant and contract applications shall be completed within three months of the date set for the submission of the funding application, and if the amount to be distributed differs from the funds requested, within 30 days after notification of such proposed distribution, each qualified recipient shall submit a modified budget and narrative explaining how the funds will be utilized.

Section 7000.17 Payment of grants and contracts.

All payments from the IOLA fund shall be made by the State Comptroller upon certification and authorization of the trustees of the fund.

Section 7000.18 Denial of grants and contracts.

- (a) The board of trustees shall have the power to determine that an applicant for funding is not qualified to receive funding or is not the most meritorious of competing applicants, to deny or reduce future funding, or to terminate existing funding.
- (b) In reaching a decision, the board of trustees shall take into consideration the amount of funds available for distribution, the continuity, competence and cost-effectiveness of the services provided, the provider's compliance with the terms and conditions of the grant and the requirements of these regulations, the standing of the recipient in the client community being served, the viability of an alternate provider of services and the disruption of services caused by a change in the identity of the provider. If a decision is made to terminate or deny refunding of a grant, the board of trustees may authorize temporary funding if necessary to enable a grant recipient to close or transfer current matters in a manner consistent with its professional responsibilities to its current clients. Where the board of trustees has funded an applicant for general operating support on a recurring basis, a decision to terminate funding or deny refunding will normally only be based on:
 - (1) a substantial failure to comply with the terms and conditions of the grant or the requirements and restrictions of these regulations;
 - (2) a substantial failure to use the grant to provide economical and effective legal assistance as measured by generally accepted professional standards and the provisions of these regulations; or
 - (3) a lack of sufficient funds available for distribution pursuant to these regulations.
- (c) The provisions of subdivision (b) of this section shall not apply to any grant awards which the

board of trustees designates, at the time such award is made, as onetime in nature.

Section 7000.19 Advisory council.

The board of trustees may from time to time establish one or more advisory councils made up of representatives of qualified recipients and members of the private bar and communities serviced in order to assist in the promotion of IOLA accounts and to provide advice in the development and implementation of the programs initiated by this Part. The members of the advisory council will receive no compensation for their services but, in the discretion of the board, may be entitled to receive reimbursement for their actual and necessary expenses incurred in the discharge of their duties.

Section 7000.20 Adoption and amendment of regulations.

New regulations may be adopted, and any regulation may be amended or repealed, by the trustees at any regular or special meeting, provided that notice of the proposed adoption, amendment or repeal has been given to all trustees at least seven days before the meeting and, provided further, that any amendment of a provision of this Part, which by its terms requires action by a special vote, shall become effective only if adopted by such special vote. In addition, any such regulation proposed by the board of trustees to be adopted, amended or repealed may be so adopted, amended or repealed only in accordance with Article 2 of the State Administrative Procedure Act. Copies of all regulations shall be made available to the public at all offices of the fund.

Section 7000.21 Construction of regulations.

This Part shall be liberally construed to accomplish the objectives of the fund and the policies of the trustees.

Section 7000.22 Fiscal year.

The fund's fiscal year shall begin April 1 and end March 31.

Rules of Professional Conduct

22 N.Y.C.R.R. Part 1200

[As amended, effective April 1, 2009]

RULE 1.15:

Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records

(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

(b) Separate Accounts.

- (1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained.
- (2) A lawyer or the lawyer's firm shall identify the special bank account or accounts required by Rule 1.15(b)(1) as an "Attorney Special Account," "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate, provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or the lawyer's firm.
- (3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.
- (4) Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.

A lawyer shall:

- (1) promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest;
- (2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them; and

- (4) promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer that the client or third person is entitled to receive.

(d) Required Bookkeeping Records.

- (1) A lawyer shall maintain for seven years after the events that they record:
 - (i) the records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer's practice of law; these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement;
 - (ii) a record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;
 - (iii) copies of all retainer and compensation agreements with clients;
 - (iv) copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf;
 - (v) copies of all bills rendered to clients;
 - (vi) copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed;
 - (vii) copies of all retainer and closing statements filed with the Office of Court Administration; and
 - (viii) all checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.
- (2) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.
- (3) For purposes of Rule 1.15(d), a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(e) Authorized Signatories.

All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account.

(f) Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.

- (1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account, who shall be a member of the bar in good standing and admitted to the practice of law in New York State.
- (2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or

special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this Rule.

- (3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(h) Dissolution of a Firm.

Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance, by one of them or by a successor firm, of the records specified in Rule 1.15(d).

(i) Availability of Bookkeeping Records: Records Subject to Production in Disciplinary Investigations and Proceedings.

The financial records required by this Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto, and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this Rule shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the attorney client privilege.

(j) Disciplinary Action.

A lawyer who does not maintain and keep the accounts and records as specified and required by this Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

Dishonored Check Reporting Rule

Banks in New York State which offer fiduciary accounts to attorneys are required to report all instances of bounced checks on attorney trust, special and escrow accounts.

The reports are forwarded to the **New York Lawyers' Fund for Client Protection**, which serves as a statewide clearing house for these reports.

Banks have 10 days to withdraw reports that have been issued in error. If not withdrawn, the reports are sent to the appropriate Attorney Grievance Committee for investigation.

A bounced-check report generally triggers an audit of the attorney's trust, special or escrow account.

The Appellate Divisions' uniform court rule is reported at 22 NYCRR Part 1300.1.

NY Codes, Rules, and Regulations, Part 1300

Dishonored Check Reporting Rules for Attorney Special, Trust and Escrow Accounts

22 NYCRR 1300.1 Dishonored check reports.

- A.** Special bank accounts required by Disciplinary Rule 9-102 (22 NYCRR 1200.46) shall be maintained only in banking institutions which have agreed to provide dishonored check reports in accordance with the provisions of this section.
- B.** An agreement to provide dishonored check reports shall be filed with the Lawyers' Fund for Client Protection, which shall maintain a central registry of all banking institutions which have been approved in accordance with this section, and the current status of each such agreement. The agreement shall apply to all branches of each banking institution that provides special bank accounts for attorneys engaged in the practice of law in this State, and shall not be cancelled by a banking institution except on 30 days' prior written notice to the Lawyers' Fund for Client Protection.
- C.** A dishonored check report by a banking institution shall be required whenever a properly payable instrument is presented against an attorney special, trust or escrow account which contains insufficient available funds, and the banking institution dishonors the instrument for that reason. A properly payable instrument means an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of New York.
- D.** A dishonored check report shall be substantially in the form of the notice of dishonor which the banking institution customarily forwards to its customer, and may include a photocopy or a computer-generated duplicate of such notice.
- E.** Dishonored check reports shall be mailed to the Lawyers' Fund for Client Protection, 119 Washington Avenue, Albany, NY 12210, within five banking days after the date of presentment against insufficient available funds.
- F.** The Lawyers' Fund for Client Protection shall hold each dishonored check report for 10 business days to enable the banking institution to withdraw a report provided by inadvertence or mistake; except that the curing of an insufficiency of available funds by a lawyer or law firm by the deposit of additional funds shall not constitute reason for withdrawing a dishonored check report.
- G.** After holding the dishonored check report for 10 business days, the Lawyers' Fund for Client Protection shall forward it to the attorney disciplinary committee for the judicial department or district having jurisdiction over the account holder, as indicated by the law office or other address on the report, for such inquiry and action that attorney disciplinary committee deems appropriate.
- H.** Every lawyer admitted to the Bar of the State of New York shall be deemed to have consented to the dishonored check reporting requirements of this section. Lawyers and law firms shall promptly notify their banking institutions of existing or new attorney special, trust, or escrow accounts for the purpose of facilitating the implementation and administration of the provisions of this section.

text is current through February 29, 2008