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Informal Opinion 07-02

When Client Funds Are Ineligible for IOLTA-Account Deposit

You ask what funds are eligible for deposit into an IOLTA account. The only funds not eligible for deposit into an IOLTA account are funds in an amount of \$10,000 or more that you anticipate holding for more than 60 business days. All other funds are eligible for IOLTA.

A brief discussion of the history of the IOLTA program in Connecticut will provide context for our analysis. The program was created to expand access to justice by funding legal services and law school scholarships for the poor. The idea was to pool funds that would not earn much interest alone, such as small sums held in lawyers' trust accounts as well as larger sums held in lawyers' trust accounts for short periods of time, so that the interest generated by those funds, in the aggregate, could help to meet the unmet legal needs of people of limited means. The Connecticut Bar Foundation has administered Connecticut's IOLTA program from the program's inception. "The Connecticut Bar Foundation Board of Directors awarded IOLTA/IOTA grants and scholarships to nine non-profit legal services organizations and three law schools in the amount of \$11,746,913 for the 2007 grant year. Since becoming mandatory, IOLTA/IOTA has awarded over \$130 million in grants and scholarships, funding the largest portion of legal services for the poor in Connecticut." <http://cbf.ctbar.org/>, last visited 1/3/07.

As you correctly note, Rule 1.15, "Safekeeping Property," amended effective September 1, 2006, governs lawyers' IOLTA participation. It is to Rule 1.15(g)'s provisions that we must turn for answers to the questions you pose.

Rule 1.15(g) states, in pertinent part:

(g) Notwithstanding subsections (b), (c), (d), (e) and (f), a lawyer or law firm shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for (i) the delivery of legal services to nonprofit corporations whose principal purpose is providing legal services to the poor and (ii) law school scholarships based on financial need. Lawyers and law firms shall only place a client's or third person's funds which are less than \$10,000 in amount *or* expected to be held for a period of not more than sixty business days in an IOLTA account and shall establish IOLTA accounts at eligible institutions that meet the following requirements: (emphasis supplied)

....

(2) The account shall include only clients' or a third person's funds, which are less than \$10,000 in amount *or* are expected to be held for a period of not more than sixty business days (Emphasis supplied.)

At the outset, we note that although Rule 1.15(g) plainly mandates lawyer participation in the IOLTA program (“a lawyer or law firms (sic) shall participate in the statutory program . . .”), it does not require lawyers to place client or third-party funds in IOLTA accounts. In fact, it expressly authorizes lawyers to deposit client and third-party funds into other accounts established on behalf of and for the benefit of clients or third persons. Rule 1.15(g)(7) (“Nothing in this subsection (g) shall prevent a lawyer or law firm from depositing a client’s or third person’s funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person.”).

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The Rule, however, does *permit* lawyers to deposit client and third-person funds into IOLTA accounts, provided one of two conditions is met. The Rule identifies two, independent categories of client- and third-party funds that are eligible for IOLTA-account deposit: 1) funds totaling less than \$10,000, and 2) funds that the lawyer does not expect to hold for more than sixty business days (in other words, funds that *do* total \$10,000 or more, but that the lawyer *does not* expect to hold for a period in excess of sixty business days, or approximately three calendar months).

In twice announcing that funds that fall into either one or the other of these two categories are the “only” funds eligible for IOLTA deposit, Rule 1.15(g) also implicitly identifies a third and final category of funds: those that do not fit into either of the two designated categories, and therefore are ineligible for deposit into IOLTA accounts. Lawyers must maintain such funds – that is, those that total \$10,000 or more and that the lawyer *does* expect to hold for more than sixty business days – in separate accounts in accordance with other relevant subsections of Rule 1.15. (*See* Rule 1.15(b) – (f) and (g)(8).)

In sum, then, we conclude that only where a lawyer expects to hold funds that total \$10,000 or more for a period in excess of sixty business days does Rule 1.15 mandate that the lawyer deposit those funds into a separate trust account, outside of his or her IOLTA account.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wesley W. Horton, Chair