



THE WEST VIRGINIA STATE BAR

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TO: IOLTA Participating Financial Institutions

FROM: The West Virginia State Bar

DATE: March 2020

The West Virginia State Bar (hereinafter “Bar”) is requesting your help with identifying IOLTA trust accounts whose owners cannot be identified or located. The Supreme Court of Appeals of West Virginia issued Rule 10.09 regarding the disposition of IOLTA funds whose owners cannot be located or identified. See attached Rule.

The Bar and the West Virginia Treasurer’s Office (hereinafter “Treasurer’s Office”) work in collaboration to identify IOLTA trust accounts to ensure the funds go to programs that assist West Virginia’s low income citizens with legal issues. So that the Bar and the Treasurer’s Office can continue to efficiently identify IOLTA trust accounts and the Treasurer’s Office can be placed on notice of the proper disposition of the funds, the Bar requests that your office notify the Bar before IOLTA trust account funds are remitted to the Treasurer’s Office.

Please feel free to contact our IOLTA Administrative Assistant, Patricia Schoolcraft, at schoolcraftp@wvbar.org or 304- 553-7239, with questions regarding the IOLTA program, or the Bar’s Director, Anita Casey, at caseya@wvbar.org or 304-553-7228, with any legal questions regarding the IOLTA program.

Rule 10.09 Disposition of IOLTA Funds Whose Owners Cannot Be Located or Cannot Be Identified

(a) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure holds funds in an IOLTA account for a client or third party, and cannot locate that client or third party after four or more months of reasonable efforts to do so, it shall pay the funds to the West Virginia State Bar, while at the same time notifying the Executive Director, under oath, of the efforts made to locate the owner, whether client or third party.

(b) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure cannot identify the owner or owners of funds in an IOLTA account, whether client or third party, after four or more months of reasonable efforts to do so, the lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall petition the Supreme Court of Appeals for leave to pay the funds to the West Virginia State Bar, together with a statement, under oath, of the efforts made to identify and locate the owner or owners.

(c) The executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall have a continuing responsibility for returning the funds to the owner or owners. If the owner of such funds remitted to the West Virginia State Bar is identified and located within two years after the funds have been remitted to the West Virginia State Bar, then the lawyer, law firm, or trustee shall notify the West Virginia State Bar IOLTA Advisory Committee; and request, pursuant to procedures adopted by the West Virginia State Bar IOLTA Advisory Committee for that purpose, a refund of the amounts paid. The lawyer, law firm, or trustee shall be responsible for proper distribution of any funds that are refunded.

(d) The procedures in Rule 10.09(a) and (b) shall apply in cases where the amount of the funds is \$500 or more. In cases where the amount of the funds is \$500 or less, the executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or the lawyer, law firm or trustee appointed under the Rules of Lawyer Disciplinary Procedure, shall remit the funds directly to the West Virginia State Bar.

Rule 10.10 Distribution of IOLTA Funds by the West Virginia State Bar

All IOLTA funds remitted to the West Virginia State Bar shall be distributed by that entity as follows:

(a) an annual fee not to exceed thirty thousand dollars shall be retained by the West Virginia State Bar, for administration of the fund, with a detailed annual accounting of services performed in consideration for such fee to be filed for public inspection with the Supreme Court of Appeals;

(b) special grants not to exceed fifteen percent of the fund's annual receipts to WV CASA Network, coordinating agency for court-appointed special advocate programs, in the amount of 43.5 percent of special grant funds available; to the West Virginia Fund for Law in the Public Interest, Inc., in the amount of 19.3 percent of special grant funds available; to the Appalachian Center for Law and Public Service, in the amount of 7.72 percent of special grant funds available; to West Virginia Senior Legal Aid, Inc., in the amount of 24.125 percent of special grant funds available; and to ChildLaw Services of Mercer County 5.355 percent of special grant funds available; and

(c) Seventy-five percent (75%) of the remaining funds to Legal Aid of West Virginia and twenty-five percent (25%) of the remaining funds to Mountain State Justice or such other method of distribution as may hereinafter be adopted by order of the Supreme Court of Appeals. Any