

NOTICE TO THE BAR

RE: IOLTA AND IMPLEMENTATION OF "BEST CUSTOMER" STANDARD

As detailed in its Administrative Determination of November 15, 2005, which is being published contemporaneously with this Notice, the Supreme Court has acted favorably in respect of the key recommendations contained in the report submitted by the Joint Working Group on IOLTA and Financial Institutions. Consistent with the Working Group's report, the Court has adopted a new return standard designated the Best Customer Standard. The new standard will be used to evaluate the reasonableness of the net yield on IOLTA accounts. In addition, the Court directed that a Notice be published to remind the Bar about handling bank service charges in the context of IOLTA accounts.

Best Customer Standard

The Best Customer Standard replaces the Reasonable Return Standard as the method for IOLTA to evaluate the reasonableness of returns provided by banks. Financial institutions must implement the new standard no later than January 31, 2006. Attorneys should be aware that:

- The Best Customer Standard applies only to IOLTA accounts with average balances of \$100,000 or more. The yield on accounts with average balances of less than \$100,000 must be comparable to that of similarly situated non-IOLTA accounts; and
- Attorneys with accounts in financial institutions which cease for any reason to be an approved depository for attorney trust accounts under Rule 1:21-6 shall move those accounts to an institution ranked in the highest yielding 50% of participating banks (that is, in the first and second quartiles as identified by IOLTA). IOLTA will assist attorneys in this process should it become necessary.

Bank Charges

IOLTA wishes to remind the Bar and participating financial institutions of the following:

- IOLTA has no objection to paying reasonable fees, provided the net return on high balance accounts meets the approved standard. IOLTA will cover per check paid, per item deposited and per deposit fees or a reasonable flat fee per month, up to but not more than the gross interest earned by the individual account. Fees in excess of interest earned can be waived by the bank or carried over to the next month. IOLTA will not pay for wire transfers, check printing, cash management services, official bank checks or overdraft charges. These may be billed to the attorney in a manner agreed on by the attorney and the financial institution. The fees must be comparable to the fees charged to other, non-IOLTA, accounts.
- Attorneys are permitted to keep a small sum of their own money in a trust account to cover bank fees. The Random Audit Program of the Office of Attorney Ethics has adopted a standard of \$250 as the maximum amount "reasonably sufficient" to pay bank charges.

- Questions in respect of the Best Customer Standard and IOLTA-related bank fees should be directed to:

The IOLTA Fund of the Bar of New Jersey
New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901-1520
(732) 247-8222

Stephen W. Townsend, Esquire
Clerk of the Supreme Court

Dated: November 15, 2005