

180-1-03

**Definitions.**

(A) "Foundation" means the Ohio legal assistance foundation, established pursuant to Chapter 120 of the Revised Code.

(B) "Legal aid fund" means the monies deposited with the treasurer of state by clerks of courts from filing fee surcharges and by financial institutions from interest on lawyers trust account and title insurance agents interest on trust account programs. Pursuant to section 120.53 of the Revised Code, revenues from the legal aid fund are used to provide financial assistance to those Ohio legal aid societies that are eligible applicants and to support the mission of the Ohio legal assistance foundation. The legal aid fund is established pursuant to section 120.52 of the Revised Code.

(C) "Eligible applicants" for financial assistance from the legal aid fund include those legal aid societies that meet the requirements of sections 120.51 to 120.55 of the Revised Code and the rules adopted by the Ohio legal assistance foundation.

(D) "Legal aid society" means a nonprofit corporation:

(1) Chartered to provide general legal services to the poor;

(2) Incorporated and operated exclusively in the state of Ohio;

(3) Having a board of trustees, or a board of directors, in which:

(a) A majority of which are attorneys, and

(b) At least one-third of which, when selected, are eligible to receive legal services from the legal aid society;

(4) Having a primary purpose of providing civil legal services, without charge, to indigents;

(5) That, in addition to providing civil legal services to indigents, may provide legal training or technical assistance to other legal aid societies in the state of Ohio or, provide civil legal services to special population groups such as migrant farm workers; and,

(6) That is the primary provider of civil legal services to indigents in a geographic service area, as determined by the Ohio legal assistance foundation, pursuant to rule 180-3-02 of the Administrative Code.

(E) "General legal services" means a full range of civil legal services provided across the spectrum of matters and conflicts faced by indigents, including but not limited to: contract and other transactional or consumer matters; bankruptcies and credit counseling; family matters such as adoption, custody, divorce, support and dissolution of marriage; housing issues including landlord-tenant disputes and

foreclosures; administrative advocacy as well as representation in matters requiring litigation; and, employment and income maintenance issues.

- (F) "Civil legal services" means a full range of legal advocacy and assistance to address the needs of persons eligible for legal assistance in non-criminal matters and conflicts, including, but not limited to, advice, counsel, negotiation, litigation, mediation, community legal education, policy advocacy, community economic development, and other types of assistance and advocacy.
- (G) "Primary purpose of providing civil legal services, without charge," means that most of the legal services provided by a legal aid society do not require a client to pay attorneys fees for legal services; it does not, however, prohibit a payment system for some applicants, such as a modest application fee, a sliding-scale fee arrangement based on income levels, a donation or contribution request, or the collection of attorneys fees paid by the opposing party or permitted by statute.
- (H) "Persons eligible for legal assistance" means indigents with civil, that is non-criminal, cases that are not fee-generating. Groups may be eligible for legal assistance if a majority of their members are indigent or if their primary purpose is the furtherance of interests of indigents unable to afford legal assistance and the group has no practical means of retaining private counsel.
- (I) "Indigent" means a person or persons whose income is not greater than one hundred twenty-five per cent of the current poverty threshold established by the United States office of management and budget.
- (J) "Income" means a person's actual current annual total cash receipts before taxes. A legal aid society may adopt policies to deduct expenses such as: medical expenses; fixed debts and obligations, including unpaid federal, state and local taxes from prior years, child and/or spousal support payments and garnishments; child care, transportation, and other work-related expenses; and expenses associated with age or physical infirmity of resident family members.
- (K) "Total cash receipts" may include, pursuant to policies adopted by the legal aid society: money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance, social security, unemployment, and workers compensation; strike benefits from union funds; veterans benefits; training stipends; spousal support; child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

(L) "Fee generating case" means any case or matter which, if undertaken on behalf of an indigent by an attorney in private practice, reasonably would be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered a fee generating case if adequate representation is unavailable or if any of the following circumstances exist concerning the case:

(1) The legal aid society that represents the indigent in the case has determined that free referral is not possible for any of the following reasons:

(a) The case has been rejected by the lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case;

(b) Neither the local lawyer referral service, if one exists, nor any attorney will consider the case without payment of a consultation fee;

(c) The case is of a type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee; or

(d) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time;

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief, or inclusion of a claim requesting damages is necessary for effective defense or because of applicable rules governing joinder of claims;

(3) A court has appointed a legal aid society or its employee to represent the indigent in the case pursuant to a statute, or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement is based on need.

(M) "Interest on Lawyers' Trust Account," or "IOLTA," means an interest-bearing account established in an eligible, participating, depository institution by an attorney, law firm, legal professional association, or ancillary business related to the practice of law, pursuant to section 4705.09 of the Revised Code, for the deposit of funds of clients or third persons that are subject to withdrawal upon request, or as soon as is permitted by federal law.

(N) "Interest on Trust Account," or "IOTA," means an interest-bearing trust account established in an eligible, participating, depository institution by a title insurance

agent pursuant to section 3953.231 of the Revised Code, for the deposit of funds of clients or third persons that are subject to withdrawal upon request or as soon as permitted by law and meet the requirements of sections 1349.20 to 1349.22 of the Revised Code.

- (O) "Funds that are nominal in amount or to be held for a short period of time" describes funds of a client or third person that the attorney, law firm, legal professional association, or ancillary business related to the practice of law has determined cannot be placed at interest for the benefit of the client or third person.
- (P) "Eligible depository institution" means a financial institution that is a federally insured bank or savings and loan association authorized to do business in this state and meets the requirements of sections 3953.231, 4705.09, and 4705.10 of the Revised Code and the rules established by the Ohio legal assistance foundation.
- (Q) "Interest-bearing account" includes standard negotiable order of withdrawal (NOW) accounts and accounts paying higher rates or dividends because deposits exceed quantity qualifications such as "sweep accounts," "investment accounts," tiered deposit special accounts, or other special promotional higher interest accounts.
- (R) "Reasonable service charges" include only monthly maintenance, fees applied on accounts that do not meet quantity qualifications for waiver. Reasonable service charges do not include, among others, fees or charges for: check printing, stop payment orders, accounting services, non-sufficient funds withdrawals, and wire transfers.
- (S) "Sweep account," for purposes of IOLTA/IOTA, means a cash management product, or repurchase agreement sweep program, used to generate higher yields on available funds. At the end of each business day after all deposits, checks, and charges have cleared against an account, the depository institution electronically transfers the excess funds out of the account into a higher yield investment. At the start of the next business day, the depository institution electronically returns the excess funds to the account and posts the interest earned.
- (T) "Repurchase agreement," as it pertains to sweep accounts defined in paragraph (S) of this rule, means an overnight investment of pre-determined IOLTA/IOTA deposits in which the underlying security consists solely of direct obligations of the United States government or agency thereof, with an eligible depository institution which is determined to be "well capitalized" or "adequately capitalized" as defined in applicable federal statutes and regulations.
- (U) "Tiered pricing" means the application of a range of interest rates by participating depository institutions to IOLTA/IOTA deposits based on the amount on deposit in each account.
- (V) "Yield," stated as a percentage, means the rate actually earned on deposits net of service charges.

(W) "Ancillary business related to the practice of law" has the same meaning as that set forth in the Code of Professional Responsibility adopted by the supreme court of Ohio.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 120.52  
Rule Amplifies: 120.51, 120.52, 120.521, 120.53, 120.54, 120.55,  
1901.26, 1907.24, 2303.201, 3953.231, 4705.09,  
4705.10