

**Rule Summary and Fiscal Analysis (Part A)****Ohio Legal Assistance Foundation**

Agency Name

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**180-2-01**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Criteria for eligible depository institutions participating in the  
state's interest on lawyers' trust accounts (IOLTA) program.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **120.52**

5. Statute(s) the rule, as filed, amplifies or implements: **120.52, 4705.09, 4705.10**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Sections 4705.09 and 4705.10 of the Revised Code establish the state's Interest on Lawyers' Trust Accounts (IOLTA) program. Pursuant to section 4705.09 of the Revised Code, the supreme court may adopt and enforce rules of professional conduct that pertain to IOLTA accounts. Rule 1.15 of the supreme court of Ohio's rules of professional conduct requires that a lawyer establish and maintain an IOLTA account with an eligible depository institution as required by sections 4705.09 and 4705.10 of the Revised Code or any rules adopted by the Ohio legal assistance foundation pursuant to section 120.52 of the Revised Code. The purpose of this rule is to establish the criteria for an eligible depository institution with

which an IOLTA account shall be established and maintained.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The proposed rule outlines the requirements for a depository participating in the IOLTA program. Depository participation in the IOLTA program is voluntary, but those depositories that choose to offer and maintain an IOLTA account must adhere to the provisions set forth in section 4705.10 of the Revised Code. The General Assembly charged the Ohio legal assistance foundation with the administration of the state's IOLTA program. The Ohio legal assistance foundation's IOLTA rule, which is authorized by section 120.52 of the Revised Code, amplifies Revised Code section 4705.10 and is designed to ensure that participating depositories provide products that are reasonable, equitable, and in compliance with the public policy. This rule also amplifies the long-standing practice and policy of the foundation in administering how IOLTA accounts are established and how and what proceeds from IOLTA interest flow to the legal aid fund.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

This rule is being refiled. The refiled version of the rule is substantively similar to the initial filing of this rule, which was filed and then 'tabled' in the fall of 2009. The foundation has made significant effort to solicit stakeholder input and cooperation in making revisions to the 2009 proposed rule. Based on input and feedback from the rule's stakeholders, the changes to the 2009 version of the rule that are now contained in the refiled version of the rule. These changes include a more clear purpose statement, more accurate definitions, simplified requirements for compliance with rates of interest and fees, more specific instructions for depository reporting and remittances, and streamlined notice of non-compliance procedures.

These changes to the 2009 proposed rule do not make the refiled rule inconsistent with the first public hearing notice provided with the original rule filing. However, in the spirit of transparency and full-disclosure, there will be a second hearing on the refiled rule (even though a second hearing is not required). The date of this hearing is Monday, November 1, 2010, 2:00 pm at the Riffe Center's Board Meeting Room, 31st floor.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

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This rule should have no immediate fiscal impact on the revenue or expenditure of the Ohio legal assistance foundation or the Ohio legal aid fund during the current

biennium. Since the provisions of the proposed rule have been in effect since 2002, as policies adopted by the foundation's board of trustees, and prior to 2002, as a matter of long-standing practice and policy of the Ohio legal assistance foundation, the implementation of this rule should not significantly increase or decrease revenues or expenditures.

Participating IOLTA depositories have generally complied with the key provisions of the proposed rule (e.g., rates of return and service charges) since before 2002 and thus the foundation does not expect a significant increase or decrease in revenues or expenditures when the proposed rule becomes effective. The foundation did incur expenditures and did realize revenue increases as a result of the adoption of its rules in 2002. However, any anticipated new increases or decreases in agency revenue or expenditures most likely will result from on-going, uniform implementation of existing practices, not from the promulgation of a new administrative rule.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The rule directly affects IOLTA depositories. The cost to participating depositories is the cost to comply with section 4705.10 of the Revised Code and the rules of the Ohio legal assistance foundation. Depositories incur specific costs when establishing an IOLTA account, which are not unique to the normal and regular cost to establish and maintain any deposit account. Depositories also incur unique and specific costs to comply with the regular remittance of IOLTA interest proceeds and account information. Recognizing that there is a cost, IOLTA participation is not an un-funded mandate for depositories. Consistent with federal banking laws, which permit banks to assess service charges and fees, section 4705.10 of the Revised Code and the Ohio legal assistance foundation's IOLTA rule permit depositories to assess a fee for the cost incurred in complying with the state law and regulation of IOLTA. Specifically, the rule permits the deduction from interest earned on IOLTA a charge to help off-set the unique costs to comply with the requirements of the IOLTA Program. Further, the depository may assess and collect from the account-holder any other business-related fees or charges, which may not be deducted from IOLTA interest income. Since the requirements in the proposed rule are the same as the requirements that have been in place since 2002, as a matter of policy, there should be no new, additional cost to an IOLTA depository (that is, current bank policy and practice should already be in compliance with the proposed rules, thus there should be no new or additional

cost(s) to comply with the rule).

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**