Administrative Rules and Procedures of the Georgia Bar Foundation

The following rules and procedures are published by the Georgia Bar Foundation to convey to Georgia lawyers their responsibilities and the Foundation’s responsibilities in the implementation and support of Interest On Lawyer Trust Accounts (IOLTA) in Georgia in compliance with the orders of the Supreme Court of Georgia. Also included in this section is information about how IOLTA revenues are disseminated and reported to the Supreme Court of Georgia.

A. Mandatory Grants [Old Rules DR 9-102 (D)]
The Georgia Bar Foundation shall pay to the Georgia Civil Justice Foundation (GCJF) a grant of ten percent (10%) of all IOLTA revenues received, less administrative costs, during the immediately preceding calendar quarter. GCJF organization must maintain its tax-exempt charitable/educational status under Section 501(C)(3) of the Internal Revenue Code, and its purposes and activities must remain consistent with the exempt purposes of the Georgia Bar Foundation. If the Georgia Civil Justice Foundation is determined either by the Internal Revenue Service or by the Georgia Department of Revenue to be a taxable entity at any time, or the purposes and activities of GCJF become inconsistent with the exempt purposes of the Georgia Bar Foundation, then the Georgia Bar Foundation shall retain all IOLTA funds which would have been granted to the organization.

B. Reporting by Organizations [Old Rules DR 9-102 (E)]
As a condition to continued receipt of IOLTA funds, the Georgia Bar Foundation and the Georgia Civil Justice Foundation shall each present a report of its activities and an audit of its finances to the Supreme Court of Georgia annually.

C. IOLTA Account Confidentiality [Old Rules DR 9-102 (F)]
The Georgia Bar Foundation will protect the confidentiality of information regarding a lawyer’s or law firm’s trust account obtained in the course of managing IOLTA operations.

D. IOLTA Requirements for Lawyers [Old Rules DR 9-102 (C)]
All clients’ funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing IOLTA account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

1. With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with or without notice to his clients, create and maintain an interest-bearing trust account with any approved financial institution as defined in Rule 1.15(III)(C)(1) of the Georgia Rules of Professional Conduct, with the interest to be paid to the client. No earnings from such an account shall be made available to a lawyer or law firm.

2. With respect to funds which are nominal in amount or which are to be held for a short period of time, a lawyer shall create and maintain an interest-bearing, government-insured trust account (IOLTA) in compliance with the following provisions:
   a) No earnings from such an IOLTA account shall be made available to a lawyer or law firm;
   b) The account shall include all clients’ funds nominal in amount or to be held for a short period of time.
c) Funds in each interest-bearing trust account shall be subject to withdrawal upon demand, subject only to any notice period which the institution is required to reserve by law or regulation.

d) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposit funds so long as there is no impairment of the right to withdraw principal immediately, per D(2)(c) above.

e) Lawyers or law firms shall direct the depository institution:

(i) to remit to the Georgia Bar Foundation interest or dividends, net of any charges or fees on that account, on the average monthly balance in that account, or as otherwise computed in accordance with a financial institution’s standard accounting practice, at least quarterly. Any banking fees or charges in excess of the interest earned on that account for any month shall be paid by the lawyer or law firm in whose name such account appears, if required by the financial institution.

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the average monthly balance against which the interest is applied, the service charges or fees applied, and the net interest remittance.

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, the average account balance of the period for which the report is made, and such other information provided to non-lawyer customers with similar accounts.

(3) The Georgia Bar Foundation shall establish procedures to provide that no lawyer or law firm shall be required to maintain an interest-bearing trust account which:

(i) results in a significant cost to the lawyer or law firm; or

(ii) cannot reasonably be expected to or has not produced interest income exceeding the reasonable service charges or fees imposed by the financial institution.

(iii) The Foundation’s procedure in regard to 3(i) is as follows:

1) To require the applicant lawyer or law firm to write a letter to the executive director of the Foundation, explaining why having that pooled trust account in IOLTA is a significant cost to the firm.
2) The executive director reviews the request for exemption and either:
   a) forwards the request with a recommendation to the exemptions committee (which is made up of the officers of the Foundation) for review, or
   b) discusses with the applicant the need for further information and, depending upon the results of that discussion, forwards the request with appropriate recommendation to the committee for review.
3) The committee evaluates the request on an ad hoc basis and notifies the executive director of its decision.
4) The executive director then notifies the applicant of the decision by letter or, if promised, by telephone call followed by letter.

(iv) The Foundation’s procedure in regard to (3)(ii) is as follows:
1) To require the applicant lawyer or law firm to write a letter to the executive director of the Foundation, asking for the “Interest Too Small Exemption,” explaining the reason for the request, and providing copies of the last three monthly statements of the account.
2) If the account is not yet opened, the applicant must state in the letter that it is not expected for the interest generated by the account to be large enough to offset reasonable service charges and fees. Charges and fees excluded from “reasonable service charges and fees” are check printing fees, overdraft interest charges, NSF charges, account reconciliation charges, wire transfer fees, and courier fees.
3) The executive director reviews the request for exemption and either:
   a) forwards the request with a recommendation to the exemptions committee for review, or
   b) discusses with the applicant the need for further information and, depending upon the results of that discussion, forwards the request with appropriate recommendation to the committee for review.
4) If the average daily balance in the account typically is less than or equal to $5,000, then the executive director probably will recommend approval.
5) The committee evaluates the request and notifies the executive director of its decision.
6) The executive director then notifies the applicant of the decision by letter or, if promised, by telephone call followed by letter.

(4) Any lawyer or law firm who has in good faith applied for an exemption in 3 or 4 above, and has submitted sufficient material for determination by the Georgia Bar Foundation shall be entitled to the exemption and be authorized to maintain an interest-free trust account. Any exemption granted shall be valid for three (3) years, but may be granted for additional three (3) year periods upon the filing of supplemental requests.
(6) If the Georgia Bar Foundation determines that the lawyer or law firm is not entitled to the exemption applied for, it shall notify the lawyer or law firm involved, who or which shall have thirty (30) days to appeal the adverse determination to the Supreme Court of Georgia. Following a final
determination that an exemption is not justified, a new exemption may be applied for if, in the good faith determination of the lawyer or law firm, there has been a material change in circumstances since the final adverse determination.

(7) The Georgia Bar Foundation, subject to approval by the Supreme Court, shall establish reasonable procedures for the implementation of 3 through 6 above.