

No. 1988-59

AN ACT

SB 426

Providing that attorney trust funds may be placed in interest-bearing accounts and that the interest generated on such accounts be used to provide legal services for the indigent; and establishing a mechanism for the funding.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Interest on Lawyers' Trust Accounts Act.

Section 2. Legislative findings.

The General Assembly hereby finds that:

(1) There is a need to provide equal access to the system of justice for individuals who seek redress of grievances.

(2) The availability of civil legal services to indigent persons is essential to the due administration of justice.

(3) Due to a reduction in Federal funds, the programs providing legal assistance in civil matters to indigent persons lack resources to adequately meet the needs of these persons, and it is necessary to provide a supplemental funding mechanism to accomplish this purpose.

(4) The funding of legal assistance programs for those who are unable to afford legal counsel will serve the ends of justice and the general welfare of all Pennsylvania citizens.

(5) In current practice, attorneys do not deposit certain funds held in a fiduciary capacity in interest-bearing accounts because insufficient interest would be earned to justify the expense of administration. When pooled, funds which would be unproductive as individual accounts will generate income, the beneficial interest in which may be made available through this act for charitable purposes.

(6) It is the purpose of this act to create a supplemental funding mechanism for providers of civil legal assistance to the indigent in order to ensure effective access to the legal process of all citizens of the Commonwealth to the extent practicable. Nothing in this act shall be construed as affecting or impairing the disciplinary powers, responsibilities or prerogatives of the Supreme Court of Pennsylvania with respect to the conduct of attorneys admitted to practice in this Commonwealth.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Attorney.” An individual attorney, partnership, professional association or professional corporation engaged in the practice of law.

“Board.” The Lawyer Trust Account Board.

“Depository institution.” A bank, bank and trust company, trust company, savings bank, savings and loan association, credit union or foreign banking corporation, whether incorporated, chartered, organized or licensed under the laws of this Commonwealth or the United States, doing business in Pennsylvania and insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration or an alternate share insurer.

“Eligible client.” Any person unable to afford the cost of private legal assistance who satisfies the financial eligibility standards established in the Federally funded Statewide legal services system.

“Interest on Lawyer Trust Account” or “IOLTA.” An unsegregated interest-bearing deposit account with a depository institution for the deposit of qualified funds by an attorney.

“Legal assistance.” Civil legal services for eligible clients, including advice, counsel, direct representation, training, research coordination with private attorneys and other activities necessary to insure the cost-effective delivery of quality legal services.

“Qualified funds.” Moneys received by an attorney in a fiduciary capacity which, in the good faith judgment of the attorney, are nominal in amount or are reasonably expected to be held for such a short term that sufficient interest income will not be generated to justify the expense of administering a segregated account. Qualified funds include moneys received from any client or beneficial owner which are too small in amount or are expected to be held for too short a period of time to generate at least \$50 of interest annually.

“Qualified recipients.” Not-for-profit entities incorporated in Pennsylvania, tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), or any successor provision, which operate within this Commonwealth for the primary purpose of providing civil legal services without charge, and which:

- (1) operate to provide such civil legal services to eligible clients and victims of abuse under contract with the Department of Public Welfare for the expenditure of funds appropriated by the General Assembly for the provision of legal services; or
- (2) provide direct specialized legal services primarily to individuals who are elderly, disabled or homeless; are seasonal farmworkers; or are victims of crime or abuse.

Section 4. Establishment of Lawyer Trust Account Board.

(a) Establishment.—There is hereby established the Lawyer Trust Account Board as an independent not-for-profit corporation. The board shall be responsible for administering the IOLTA fund and shall receive and distribute moneys in the IOLTA fund to qualified recipients as further specified in this act.

(b) Source of fund revenues.—The IOLTA fund will receive the interest generated by qualified funds deposited by attorneys in unsegregated interest-bearing accounts designated IOLTA accounts.

(c) **Ownership.**—The board shall hold the beneficial interest in trust accounts participating in the IOLTA program.

(d) **Open meeting law.**—The meetings of the board shall be subject to the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

Section 5. Attorney participation.

(a) **Participation.**—Each attorney shall participate under the provisions of this act and shall place all qualified funds in an IOLTA account, unless an election not to participate is submitted in writing to the board at times and under conditions as specified by the board.

(b) **Liability.**—No attorney shall be liable in damages or held to have breached any fiduciary duty or responsibility because of a deposit of moneys to an IOLTA account pursuant to a judgment in good faith that the moneys were qualified funds.

(c) **Other investments.**—Nothing in this act shall be construed as regulating the ability of an attorney to invest nonqualified funds in any other investment vehicle specified by the client or beneficial owner or as they and the attorney may agree upon.

Section 6. Establishment of funding mechanism.

(a) **Establishment.**—An attorney may establish and maintain an IOLTA account by designating the account as “(name of attorney or law firm IOLTA account)” and notifying the board in such manner as may be prescribed in the bylaws.

(b) **Interest.**—The rate of interest payable on any IOLTA account shall not be less than the rate paid by the depository institution on Negotiable Order of Withdrawal (NOW) or Super Negotiable Order of Withdrawal Accounts as permitted under 12 United States Code § 1832(a) (relating to withdrawals by negotiable or transferable instruments for transfers to third parties) or any successor provision and maintained at that institution.

(c) **Duties of depository institution.**—With respect to each IOLTA account, the depository institution shall:

(1) Remit at least quarterly any interest earned on the account to the IOLTA fund.

(2) Transmit to the IOLTA fund with each remittance a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted from the account.

(3) Transmit to the attorney who maintains the IOLTA account a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted from the account.

(4) Be permitted to impose reasonable service charges for administration of such accounts.

(5) Have no duty to inquire or determine whether deposits consist of qualified funds.

(d) **Payment from account.**—Payment from an IOLTA account to or upon the order of the attorney maintaining the account shall be a valid and sufficient release of any claims by any person or entity against any depository institution for any payments so made.

(e) **Payment of interest.**—Any remittance of interest to the IOLTA fund by a depository institution under this section shall be a valid and sufficient release and discharge of any claims by any person or entity against the depository institution for any payment so made, and no action shall be maintained against any depository institution solely for opening, offering or maintaining an IOLTA account, for accepting any funds for deposit to any IOLTA account, or for remitting any interest to the IOLTA fund.

(f) **Limitation of liability.**—The depository institution shall not be subject to any action solely by reason of its opening, offering or maintaining an IOLTA account, accepting any funds for deposit to any such accounts or remitting any interest to the IOLTA fund.

(g) **Confidentiality.**—All papers, records, documents or other information identifying an attorney, client or beneficial owner of an IOLTA account shall be confidential and shall not be disclosed by a depository institution except with the consent of the attorney maintaining the account or as permitted by law or Supreme Court rule.

Section 7. Uses of funds; restrictions.

(a) **Uses.**—The IOLTA fund may be used only for the following purposes:

(1) Delivery of legal assistance to eligible clients.

(2) Delivery of legal assistance to individuals who are elderly, disabled, homeless, seasonal farmworkers, or victims of crime or abuse.

(3) Administration and development of the IOLTA program.

(b) **Restrictions.**—Funds made available to grantees under this act may not be used to:

(1) Provide legal assistance with respect to any fee-generating case as defined by the board.

(2) Provide legal assistance with respect to the defense of any criminal prosecution.

(3) Provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an official of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction.

(4) Contribute to or be made available to any political party or association, or the campaign of any candidate for public or party office or similar political activities or to support or oppose candidates for public or party office or to support or oppose any ballot questions.

(5) Provide for capital expenditures.

(c) **Lobbying.**—In addition to the restrictions listed in subsection (b), no IOLTA funds may be used, directly or indirectly, to support activities intended to influence the issuance, amendment or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the introduction, amendment, passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that:

(1) A qualified recipient of IOLTA funds may engage in such activities in response to a request from a governmental agency, legislative body, committee, member or staff thereof made to the qualified recipient, consistent with the Code of Professional Responsibility.

(2) A qualified recipient may engage in such activity in the provision of legal services to an eligible client on a particular application, claim or case, which directly involves that client's legal rights and responsibilities. This shall not be construed to permit a qualified recipient to solicit a client, in violation of the Code of Professional Responsibility, for the purpose of making such representation possible.

(d) Abortion.—

(1) In addition to the restrictions listed in subsections (b) and (c), no IOLTA funds may be used, directly or indirectly, to do any of the following:

(i) Advocate the freedom to choose abortion or the prohibition of abortion.

(ii) Provide legal assistance with respect to any proceeding or litigation which seeks to procure or prevent, or procure or prevent public funding for, any abortion.

(iii) Provide legal assistance with respect to any proceeding or litigation which seeks to compel or prevent the performance or assistance in the performance of any abortion, or the provision of facilities for the performance of any abortion.

(2) Nothing contained in this subsection shall be construed to prevent the rendering of advice to a client with respect to that client's legal rights. Nothing contained in this subsection shall preclude representation in a proceeding to procure or prevent public funding for abortion where the funding is allowed by law.

Section 8. Lawyer Trust Account Board of Directors.

(a) Members.—The board shall consist of 13 members, all of whom shall be knowledgeable and supportive of the delivery of civil legal services to the indigent. Two members shall be appointed by the Governor; one must be a representative of a depository institution and one must be a public member who is not an attorney. One member shall be appointed by each of the following: the Speaker and Minority Leader of the House of Representatives, and the President pro tempore and Minority Leader of the Senate; two shall be attorneys and two shall be public members who are not attorneys. One member shall be appointed by each of the chief executive officers of the Pennsylvania Bar Association, the Philadelphia Bar Association and the Allegheny County Bar Association. Four members shall be appointed by the President of the Board of Directors of the Pennsylvania Legal Services Corporation, at least two of whom must be eligible clients. The members of the board shall elect a chairperson at their first meeting.

(b) Term of office.—The term of office and the manner of filling vacancies shall be as provided in the bylaws, which shall be adopted by a majority vote of the board within six months of the effective date of this act, except for the legislative and gubernatorial appointees, whose terms shall be concurrent with the term of the appointing officer.

(c) **Compensation.**—The members shall receive no compensation for their services as members but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

Section 9. Powers and duties of board.

(a) **Powers.**—The board shall exercise the powers conferred upon not-for-profit corporations under Title 15 of the Pennsylvania Consolidated Statutes (relating to corporations and unincorporated associations).

(b) **Management of funds.**—The board shall have the power to receive, hold and manage any moneys and property received under this act. It shall enter into contracts or make grants with qualified recipients on a regular and periodic basis.

(c) **Executive director.**—The board may appoint an executive director to carry out the purposes of this act and to be paid compensation as the board shall fix which shall be reasonable in relation to other expenses incurred consistent with the administration expense limitation established by section 10(c). The director may employ persons or contract for services as the board approves. Employees will serve at the pleasure of the board. All expenses of the operation of the board shall be paid from moneys the board receives from the IOLTA fund.

(d) **Adoption of bylaws.**—The board shall adopt bylaws for the administration of the IOLTA fund to carry out the purposes and provisions of this act.

(e) **Confidentiality of records.**—Notwithstanding any statute or rule to the contrary, the board shall maintain all papers, records, documents or other information identifying an attorney, client or beneficial owner of an IOLTA account on a private and confidential basis and shall not disclose such information except with the consent of the attorney maintaining the account or as permitted by law or Supreme Court rule.

(f) **Government interest.**—Moneys received in the IOLTA fund are not State or Federal funds and are not subject to Article VI of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, or the act of June 29, 1976 (P.L.469, No.117), entitled “An act relating to the fiscal affairs of the Commonwealth concerning duties of the Governor, the Secretary of Revenue and the Budget Secretary, with respect to the submission of and signing the budget for any fiscal year; and, after a budget is enacted, regulating the issuance of warrants by the State Treasurer for certain requisitioned funds and imposing duties on persons authorized by law to issue requisitions for the payment of moneys from the State Treasury; and prescribing that Federal funds received by the Commonwealth shall be deposited in the General Fund account with certain exceptions.”

(g) **Investigations, audits and hearings.**—The board shall conduct, or cause to be conducted, such investigations, audits and hearings as are necessary to assure that the funds allocated from the IOLTA fund are expended in accordance with section 7.

Section 10. Distribution of IOLTA funds.

(a) **Allocation of funds generally.**—After deducting allowable administrative costs, the funds available to the board for grants in any fiscal year

shall be allocated to qualified recipients for the purpose of delivering legal assistance to eligible clients, the elderly, the disabled, the homeless, victims of abuse and seasonal farmworkers. Such funds shall be allocated according to the geographical distribution of persons eligible for such legal assistance throughout this Commonwealth.

(b) Allocation to qualified recipients.—After computing allocation of local option funds by bar foundations, the funds available to the board shall be allocated to assure that at least 75% of the total IOLTA funds raised, after deducting administrative costs, are allocated to qualified recipients who operate to provide civil legal services to eligible clients and victims of abuse under contract with the Department of Public Welfare for the expenditure of funds appropriated by the General Assembly for the provision of legal services. No more than 25% of the total IOLTA funds raised, after deducting administrative costs, shall be allocated to provide direct specialized legal services primarily to individuals who are elderly, disabled or homeless; are seasonal farmworkers; or are victims of crime or abuse.

(c) Allocation for administration.—The board shall determine an appropriate allocation, not to exceed 10% of the funds available in any fiscal year, for administration of the program, including, but not limited to, payment of the personnel expenses of an executive director, board employees and the development of the program throughout this Commonwealth, except that in the first year of implementation, the board may use such additional funds as are reasonably necessary to initiate the program.

(d) Local option.—An attorney or law firm may designate a bar foundation to receive no more than 20% of the total funds which that attorney or firm generates, if the following conditions are met:

- (1) The bar foundation is approved by the board.
- (2) No funds are used for administrative purposes or support services.
- (3) All funds collected are distributed as grants to qualified recipients and are timely reported to the board as required.
- (4) All grants are awarded in a manner which is consistent with the purposes of this act.

All bar foundations which establish funds shall make an annual report to the board and are subject to audit by the board.

Section 11. Audit; report to General Assembly.

(a) Audits.—The IOLTA fund, administered by the board, shall be audited annually. These audits shall be performed in accordance with generally accepted auditing standards by independent certified public accountants.

(b) Report to General Assembly.—The board shall make an annual report to the Supreme Court, the Governor, the President of the Pennsylvania Bar Association, both houses of the General Assembly and the Chairman of the Board of Pennsylvania Legal Services Corporation on the status of the IOLTA fund, reflecting the number of eligible clients served, the number and status of all audits, investigations and hearings conducted pursuant to section 9(g), the attorney participation rate and the development of the program. A summary of the findings of the audit shall be included in this report.

Section 12. Effective date.

This act shall take effect as follows:

- (1) Sections 4, 8 and 9 shall take effect immediately.
- (2) The remainder of this act shall take effect in six months.

APPROVED—The 29th day of April, A. D. 1988.

ROBERT P. CASEY