

## **Montana Justice Foundation Attorney Compliance Policy and Procedure**

I. Required Participation. IOLTA program participation is mandatory as provided by 1.18 of the Montana Rules of Professional Conduct. Every non-exempt lawyer admitted to practice in Montana, and/or every law firm composed of any such lawyers, which receives client funds, shall establish and maintain an interest-bearing trust account for pooled client funds, termed an "IOLTA Trust Account."

II. Filings. Each lawyer/firm shall file an annual certificate of compliance with or exemption from Rule 1.18 with the Montana Justice Foundation (MJF). The certification must include the name of the lawyer/firm listed on the account, the account number, and the financial institution name and address. The certification may be mailed by the State Bar of Montana and may be made in conjunction with the annual dues billing process.

III. Lawyer/Law Firm exemption. A lawyer/law firm is exempt from the IOLTA program if:

- (1) the nature of their practice is such that no client funds are ever received requiring a Trust Account;
- (2) the lawyer practices law in another jurisdiction and not in Montana;
- (3) the lawyer is a full-time judge, or government, military, or inactive lawyer; or
- (4) the Montana Justice Foundation's Board of Directors, on its own motion, exempts the lawyer/firm from participation in the program for a period of no more than two years when:
  - (A) service charges on the lawyer's/firm's Trust Account equal or exceed any interest generated; or
  - (B) no financial institution in the county where the lawyer/firm does business will accept IOLTA accounts.

IV. Annual Certificate Procedure. Once the MJF receives the annual attorney compliance certificates, the following procedure shall take place:

- (1) Forms will be sorted according to response;
- (2) IOLTA account information provided will be verified against the information contained in the IOLTA database;
  - (A) If the attorney/firm and/or account number cannot be verified, the listed financial institution shall be contacted to confirm that the account identified on the compliance certificate is an interest bearing account;
  - (B) If the financial institution indicates that the account is not registered as an IOLTA account, the attorney/firm shall be contacted to verify that it was meant to be an IOLTA account;
  - (C) The MJF will issue a request that the attorney/firm contact their financial institution to rectify any error and properly establish the account as an IOLTA within thirty (30) days of receipt;

(D) Once the attorney/firm has corrected the error, the MJF will confirm that the IOLTA is being reported on in the next remittance period.

(3) Remitted compliance certificates will be verified against the State Bar's current membership list to verify attorney reporting

V. Non-compliance. A non-exempt attorney's failure to establish an IOLTA or provide certification may result in suspension from practice of law in Montana until the lawyer complies with the requirements of Rule 1.18.

(1) If an attorney/firm certificate has not been received by December 15, the MJF will issue a "reminder" to return the form within fourteen (14) days of receipt.

(2) Attorneys who have not responded to compliance requests made under Article V (1) and/or Article IV of this policy will be reported to the Office of Disciplinary Counsel.

**Approved by the Board of Directors on 5/08/09.**