

## IOLTA Grant Use Provisions

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### 2000.1 Fee-Generating Cases

#### (a) Definition

"Fee-generating case" means any case or matter, which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

#### (b) Prohibition

No Recipient shall use IOLTA Board grant funds to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. To ensure that Recipients do not use scarce grant resources when private lawyers are available to provide effective representation all Recipients shall establish procedures for the referral of fee-generating cases.

#### (c) Authorized Representation in a Fee-Generating Case

IOLTA Board grant funded representation can be provided in a Fee-Generating Cases when:

1. Other adequate representative is deemed to be unavailable. Such representation is deemed unavailable when:

The Recipient has determined and documented that representation by a private lawyer is not possible because:

- i. The case has been rejected by the local lawyer referral service, or by two private attorneys, or the Recipient's experience within the previous six months with similar cases is that the current case will not be accepted by a private attorney; or
  - ii. Neither the referral service nor two private lawyers will consider the case without payment of a consultation or other fee; or
  - iii. 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; or
2. Recovery of damages is not the principal object of the Recipient's client's case and

substantial statutory attorneys' fees are not likely to be available; or

3. A court appoints a Recipient or an employee of a Recipient to provide representation in a case pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or
4. An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401, et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381, et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled.

**(d) Acceptance of Fees**

A Recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if the requirements of sub-section 2000.1 (c) are met.

**(e) Acceptance of Reimbursement**

When a case or matter subject to this sub-section results in a recovery of damages, other than statutory benefits, a Recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if:

1. The requirements of sub-section 2000.1 (c) are met, and
2. The client has agreed in writing to reimburse the Recipient for such costs and expenses.

**(f) Applicability**

Nothing in this part shall prevent a Recipient from:

1. Requiring a client to pay court fees when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction; or
2. Acting as a co-counsel with a private attorney when the case meets the standards set forth in sub-section 2000.1 (c) and accepting part of any fees that may result from a shared case.

**2000.2 Defense of Criminal Prosecutions**

**(a) Definitions**

"Criminal proceeding" means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law and punishable by death, imprisonment, a jail sentence, or a fine.

**(b) Prohibition**

IOLTA funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by sub-section 2000.2 (c).

**(c) Authorized Representation**

Legal assistance may be provided with respect to a criminal proceeding;

1. Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the Recipient after a determination that it is consistent with the Recipient's primary responsibility to provide legal assistance to clients in civil matters; or
2. When professional responsibility requires representation in a criminal proceeding arising out of transaction with respect to which the client is being, or has been, represented by a Recipient.

**2000.3 Actions Attacking Criminal Convictions**

No IOLTA funds shall be used to 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.

However, this sub-section does not prohibit legal assistance pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the Recipient after a determination that it is consistent with the primary responsibility of the Recipient to provide legal assistance to eligible clients in civil matters.

**2000.4 Prohibited Political Activities**

No IOLTA funds shall be used to 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.

**2000.5 Capital Expenditures**

**(a) Definition**

"Acquisition Cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in the acquisition cost.

"Capital Expenditures" means the acquisition cost of non-expendable tangible real or personal property or their improvements having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the Recipient for financial statement purposes, or \$5,000. Capital expenditures include such items as land, buildings, equipment, furniture, furnishings and computer software.

**(b) Limited Authorization**

IOLTA funds may be used to provide for capital expenditures that are reasonable and necessary for the provision of legal services upon advance approval of the IOLTA Board. No IOLTA funds may be used to provide for new building construction, renovation of a building, or land or building acquisition.

### **2000.6 Lobbying**

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:

- (a) A 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 Recipient, consistent with the Rules of Professional Conduct; and
- (b) A Recipient may engage in such activity in the provision of legal services to a 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 Conduct, for the purpose of making such representation possible.

### **2000.7 Abortion Representation**

- (a) No IOLTA funds may be used, directly or indirectly, to do any of the following:
  1. Advocate the freedom to choose abortion or the prohibition of abortion.
  2. 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.
  3. 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.

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

### **2000.8 Right to Counsel**

IOLTA funds cannot be used to support representation in cases where there is a statutory or constitutional right to counsel.