

THE WEST VIRGINIA STATE BAR
IOLTA ADVISORY COMMITTEE
STATE BAR CENTER - CHARLESTON
MARCH 20, 2013 - 11:00 A.M.

MINUTES

1. Call to Order

A meeting of the IOLTA Advisory Committee of The West Virginia State Bar was called to order by Chairperson Thomas V. Flaherty on March 20, 2013, at The State Bar Center in Charleston. Committee members appearing in person were James Martin, Chairperson Flaherty, Bren Pomponio and Jennifer Massey. Joyce McConnell and Charles DiSalvo appeared by phone. Supreme Court of Appeals' Finance Director, Sue Racer-Troy, appeared on behalf of Committee member Steven D. Canterbury. Also appearing were State Bar Finance Director Sarah Harper-Jones, Miranda Vance, Robert Baker and State Bar Executive Director Anita Casey.

Minutes are in the order the items appeared on the Agenda, not necessarily in the order in which the items were presented.

2. Review of Minutes of Last Committee Meeting – December 12, 2012

A motion was made to accept the Minutes of the December 12, 2012, IOLTA Advisory Committee Meeting, as presented. Following a proper second, the motion passed by a unanimous vote.

3. Report from Legal Service Programs –

Mr. Martin reported on the anticipated loss of \$130,000 to \$150,000 in federal funding due to sequestration. He reported that another \$150,000 in funding would likely be lost due to the decrease in census figures in West Virginia. He reported, however, that since this census loss figure was anticipated, Legal Aid had accounted for the same in its current and upcoming fiscal year budgets. He reported that state grants would likely be renewed for the upcoming fiscal year without any cuts. As a result of good fiscal planning, he anticipated that Legal Aid of West Virginia would be able to weather the losses. Mr. Pomponio stated that he had no information to add to Mr. Martin's report.

4. Report from Special Grantees –

Professor DiSalvo reported as follows on behalf of the IOLTA special grantees:

- A. WV CASA Network – 234 volunteers supplied approximately 3,000 hours of service. Approximately 90 people participated in the CASA conference held at the end of

November, 2012.

- B. West Virginia Senior Legal Aid, Inc. – Over 300 clients were served during the last quarter. Informational booklets for seniors, which have been prepared annually for the past 14 years, are in the process of being updated. West Virginia Senior Legal Aid is also working with a number of entities to prepare informational booklets on landlord tenant law in West Virginia. Legal Aid of West Virginia is participating in the compilation and distribution of that publication. Representatives of Senior Legal Aid have met with several groups who have indicated a willingness to work with the coordination of legal services to West Virginia seniors.
- C. ChildLaw Services of Mercer County – Cathy Wallace is now supervising this organization. Her report indicated that 846 children had been served and over 200 hours of pro bono services had been provided.
- D. Appalachian Center for Law and Public Service – The recent Public Interest Auction raised over \$24,000, and monies are still coming in. Commendations for running a well-organized and executed auction were given to law student Michael Nissan-Sabat, who recently accepted a position with Mountain State Justice upon graduation.
- E. West Virginia Fund for Law in the Public Interest, Inc. – It is anticipated that 15 to 20 fellowships will be available this summer.

5. Financial Report –

Sarah Harper-Jones reported that the IOLTA accounts, as of the date of the meeting, were as follows:

Interest bearing account -	\$77,038.75
Reserve account -	\$21,523.30
Operating account -	<u>\$13,220.74</u>
Total	\$111,782.79

This leaves available monies for distribution of \$89,282.79. Ms. Harper-Jones discussed the fact that the IOLTA interest bearing account was now incurring service charges in excess of the interest earned. Thereafter, a motion was made to close the interest bearing account, giving Ms. Harper-Jones authority to re-open the same, without further action by this Committee, if and when interest rates go back up. The motion received a proper second and passed by a unanimous vote. After discussions were held on the proposed distributions for the third quarter of the fiscal year, a motion was made to distribute the sum of \$70,000 at the end of March. The motion received a proper second and passed by a unanimous vote.

6. Old Business –

- A. Review of Audit - Chairperson Flaherty reported that the State Bar had received a clean audit of the IOLTA accounts it was administering on behalf of the IOLTA Program. He

discussed the issues addressed in the auditor's Management Letter. He noted that the issues raised in the Letter were being properly handled by the State Bar's staff, despite difficulties in trying to fully comply with the auditor's recommendations, due to the small size of the State Bar staff. It was suggested that contact be made with BB&T to determine if changes could be made to the system to insure that no employee had access to both physical assets and the related accounting records on all phases of a transaction. Ms. Harper-Jones offered to contact BB&T to make that inquiry.

7. New Business –

A. Permanent replacement of Steven Canterbury as Advisory Committee Member with Sue Racer Troy

It was discussed that Mr. Canterbury did not wish to be permanently replaced on the Committee but wished to have authority to send Sue Racer-Troy in his place and stead, with his proxy, for any Committee meeting he was unable to attend. A motion was made to allow the proxy to extend to Ms. Racer-Troy for any and all meetings Mr. Canterbury could not attend. The motion received a proper second and passed by a unanimous vote.

B. Update on status of data entry into IOLTA2 Database and contacts being made with attorneys and banks to confirm accuracy of records

Chairperson Flaherty introduced Miranda Vance, the IOLTA clerk hired by the State Bar on a temporary basis, to input and update IOLTA2 information for both attorneys and participating banks. Ms. Vance discussed the IOLTA2 database and the work she had been undertaking to get the database fully populated. She gave a demonstration of how the system works and reported on efforts being made to coordinate and, when possible, integrate the IOLTA database with the new State Bar member database. She discussed the work she and Executive Director Casey were doing to insure that all attorneys and banks were properly participating in the IOLTA program. Following a discussion of efforts being made to insure that banks, which had not been properly transferring and reporting interest to the Program, were in compliance, a motion was made authorizing Executive Director Casey to negotiate, without further specific directives from the Committee, with these banks to insure that all past due payments were properly submitted to the IOLTA Program. The motion received a proper second and passed by a unanimous vote. Ms. Massey advised of the advantages the Program could gain, through the reduction of service fees, if individual accounts at a bank were consolidated into one master IOLTA account. Ms. Massey offered to meet with Ms. Vance and Executive Director Casey before the Committee's next meeting to explore the possibility of consolidating accounts at the participating banks.

C. Discussion of Proposed Amendment to Rule 1.15 to include sanctions for failure to file annually required Notice of Compliance

Mr. Martin discussed the task assigned to him at the December 2012 meeting - to draft rules to enforce a requirement that all attorneys report their IOLTA account information, or exemption status, to the State Bar annually or suffer penalties and, possible, suspension for failure to do

so. Mr. Martin presented his suggested modifications to Rule 1.15 of the Rules of Professional conduct for Lawyers and the West Virginia State Bar's Operating Regulations and Procedures for the Comprehensive IOLTA Program. A motion to accept the proposed amendments received a proper second and passed by a unanimous vote. Executive Director Casey was directed to send the proposed amendments to the Office of Disciplinary Counsel and the State Bar Board of Governors for review and approval prior to submission to the Supreme Court.

D. Inclusion of only 5 years of IOLTA minutes and distribution on State Bar website and archiving of earlier Information

Following a discussion of the amount of information which was contained on the State Bar's website concerning IOLTA, a motion was made to post only the distributions and minutes for the past five (5) years and archive information of earlier distributions and minutes. The motion received a proper second and passed by a unanimous vote.

8. Next Meeting –

June 25, 2013, at 11:00 a.m. Dates for future meetings, all beginning at 11:00 a.m., have been set on September 19 and December 11.

9. Adjournment –

A motion to adjourn was accepted by acclamation.

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