

THE NEW REQUIREMENTS FOR FIDUCIARY IOLTAs

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OBJECTIVES

- Review the legislative history of Amended H.B. 223
- Requirements for depositing funds into a fiduciary IOLTA
- Requirements for setting

LEGISLATIVE HISTORY OF AMENDED H.B. 223

- Introduced in May, 2017, H.B. 223 proposed to modify the requirements for the transfer of structured settlement payment rights by a payee
- When passed by the House a month later, the bill still was all about the transfer of structured settlement payments rights.

LEGISLATIVE HISTORY CONTINUED

- The bill then was introduced in the Senate, where it was assigned to the Judiciary Committee and that is where the magic began to happen.
- On November 28, 2017, the Judiciary Committee met. During that meeting, State Senator Kevin Bacon, District 3 (part of Franklin County) and chair of the committee, moved to amend Am. H.B. 223 to add Section (C) to R.C. 2109.41 to provide for the deposit of fiduciary funds into IOLTA accounts.
- The following day, Senator Bacon reported to the full Senate that his committee recommended passage of the bill with the above amendment.

LEGISLATIVE HISTORY CONTINUED

- On December 13, 2017, the Senate again considered Am. H.B. 223 and further amended the legislation by adding subsection (b) to R.C. 4705.09(A)(1) to create a separate category of IOLTA accounts for fiduciary funds. The amendment was approved and the bill passed unanimously.
- The same day, the bill was presented to the House for its concurrence as to the amendments. The House agreed to the bill as amended by the Senate and sent it to the Governor for signature.
- The Governor signed the legislation on December 22, 2017 and it became effective on March 23, 2018.

R. C. 2109.41 (C)

(C) A fiduciary of a trust or estate may transfer funds received by the fiduciary in the fiduciary's name as such fiduciary to the fiduciary's attorney for deposit in an interest on lawyer's trust account under division (A)(1)(b) of section 4705.09 of the Revised Code that is maintained by the attorney if both of the following conditions are satisfied:

- (1) The attorney, in consultation with the fiduciary, has determined that the funds are nominal in amount and will be held in the interest on lawyer's trust account for a short period of time.
- (2) The probate court, upon petition by the fiduciary, has approved the deposit.

Sample Motion and Judgment Entry

Jun. 19. 2018 1:34PM Mahoning County Common Pleas No. 4483 P. 2

**IN THE PROBATE COURT OF MAHONING COUNTY, OHIO
JUDGE ROBERT N. RUSU, JR.**

IN THE MATTER OF THE CASE NO.: _____
 ESTATE
 GUARDIANSHIP
 TRUST

OF: _____

**MOTION TO DEPOSIT FUNDS INTO
LAWYER'S TRUST ACCOUNT**
(R.C. § 2109.41)

Now comes _____, as _____ of the
Appellant Name Title of Fiduciary
 within matter and after consultation with undersigned Counsel and states the following:

1. That I am in possession of the following funds: *(describe funds in detail including amount)*

2. That these funds are nominal in amount;
3. That I request that these funds be allowed to be held in my lawyer's Trust account (IOLTA) for a short period of time as authorized by R.C. § 2109.41; and
4. That I estimate that these funds will be distributed by _____
Date

Counsel Signature

Counsel Printed Name

Street Address

City, State, Zip Code

Telephone Number

Registration Number: _____

Fiduciary Signature

Fiduciary Printed Name

Street Address

City, State, Zip Code

Telephone Number

M.C. Form _____

Jun. 19. 2018 1:34PM Mahoning County Common Pleas No. 4483 P. 3

**IN THE PROBATE COURT OF MAHONING COUNTY, OHIO
JUDGE ROBERT N. RUSU, JR.**

IN THE MATTER OF THE CASE NO.: _____
 ESTATE
 GUARDIANSHIP
 TRUST

OF: _____

JUDGEMENT ENTRY

For good cause shown, the within Fiduciary is authorized to deposit the funds listed in the accompanying *Motion* into the lawyer's Trust account established under R.C. §4705.09(A)(1)(b). If said funds cannot be distributed by _____, then the Court shall be notified by the Fiduciary in writing of why the funds cannot be distributed and a new date of distribution provided.

Dated: _____

Honorable Robert N. Rusu, Jr., Judge

M.C. Form _____

R. C. 4705.09(A)(1)(b)

(b) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing funds received by a client, in the client's name as fiduciary of a trust or estate, with any bank, savings bank, or savings and loan association that is authorized to do business in this state and is insured by the federal deposit insurance corporation or the successor to that corporation, or any credit union insured by the national credit union administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751, or insured by a credit union share guaranty corporation established under Chapter 1761. of the Revised Code. Each account established under this division shall be in the name of the attorney, firm, or association that established and is maintaining it and shall be identified as an IOLTA or an interest on lawyer's trust account. ***The name of the account shall contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, firm, or association and to distinguish it from an IOLTA established and maintained under division (A)(1)(a) of this section.***

R. C. 4705.09(A)(1)(b)

(Continued)

No funds received by a client, in the client's name as fiduciary of a trust or estate, shall be deposited into an IOLTA established under division (A)(1)(b) of this section unless the deposit has been approved by the probate court under section 2109.41 of the Revised Code.

Notwithstanding any contrary provision in Chapter 2109. of the Revised Code, a probate court examining a trust or estate may only access the account information of an IOLTA created under this section for purposes of obtaining information related to that particular trust or estate and shall not access records of the IOLTA that pertain to assets of any other estate or trust held in the IOLTA.

KEEP RECORDS...

REQUIRED BY RULE 1.15 AND NECESSARY TO COMPLETE THE REQUIRED RECONCILIATION

- For each **fiduciary** - record and retain:
 - the name of the fiduciary (and the estate);
 - the date, amount, and source of all funds received on behalf of such fiduciary;
 - the date, amount, payee, and purpose of each disbursement made on behalf of such fiduciary;
 - the current balance for such fiduciary.
- For each **bank account** you maintain - record and retain:
 - account name and depository;
 - the date, amount, and fiduciary/estate affected by each credit and debit;
 - the balance in the account.

RECONCILE ACCOUNT RECORDS MONTHLY

- Reconcile Monthly Using Three Documents:
 - Bank Statement
 - General Account Ledger
 - Individual Clients' Ledger
- Let the software do the work
 - CLIO
 - Zola Suite
 - Practice Panther
 - Tabs 3 Trust Accounting
 - Quickbooks

REGISTER IOLTA ACCOUNTS WITH THE SUPREME COURT

- Initially and then every two years with Supreme Court's Certificate of Registration
- If changes occur or establish new account(s) between registrations, use the online registration at www.olaf.org
- Contact the Ohio Legal Assistance Foundation with any questions or concerns