

Annex A

PENNSYLVANIA RULES FOR THE MINOR JUDICIARY INTEREST ON TRUST ACCOUNTS PROGRAM

Preamble: Statement of Purpose

The Minor Judiciary Interest on Trust Accounts Program (the “MJ-IOTA Program”) was established by Order of the Supreme Court of Pennsylvania dated August 3, 2004. The judges and justices of all courts created pursuant to Article V, Sections 6 and 7 of the Pennsylvania Constitution are subject to MJ-IOTA. These include District Justices, judges of the Philadelphia Municipal Court, judges of the Traffic Court of Philadelphia and judges of the Pittsburgh Magistrates.

The MJ-IOTA Program generates income where formerly there was none. This income aids the citizens of the Commonwealth of Pennsylvania. Interest earned on MJ-IOTA accounts may be used only for educational legal clinical programs and internships administered by law schools located in Pennsylvania, delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and for the administration and development of the MJ-IOTA program.

Section 1: Definitions

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

AOPC. The Administrative Office of Pennsylvania Courts.

AOPC District Justice Case Reporting System. The computerized docket activity tracking and accounting system developed by the AOPC for use by the District Justices throughout the state.

Beneficial Owner. The third party whose funds are in the custody of a judicial official.

Board. The Pennsylvania Interest on Lawyer Trust Account Board.

Custodial Account. Any account maintained in a depository institution in which or with respect to which a judicial official holds the funds of a beneficial owner.

Custodial Capacity. The capacity in which the judicial official holds funds of a beneficial owner received by a judicial official in his or her capacity as a judicial official.

Custodial Funds. Funds, whether cash, check, money order, or other negotiable instrument, received by a judicial official in his or her capacity as a judicial official.

Depository Institution. A financial institution in which a member of the minor judiciary holds funds of beneficial owners in a custodial account.

Good Faith. Honesty in fact in the conduct or transaction concerned.

Judicial Official. Each judge and justice of all courts created pursuant to Article V, Sections 6 and 7 of the Pennsylvania Constitution are judicial officials. These include District Justices, judges of the Philadelphia Municipal Court, judges of the Traffic Court of Philadelphia and judges of the Pittsburgh Magistrates Court.

MJ-IOTA Account. An un-segregated interest-bearing account with a depository institution for the deposit of qualified funds by a judicial official, the interest from which is beneficially owned by the Board.

MJ-IOTA Order. The Order of the Supreme Court of Pennsylvania dated August 3, 2004 which established the Minor Judiciary Interest on Trust Account Program.

Qualified Funds. Funds, whether cash, check, money order, or other negotiable instrument received by a judicial official in his or her capacity as a judicial official which, in the good faith judgment of the judicial official, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of earning interest to benefit the beneficial owner of the funds.

Regulations. These regulations adopted by the Board, and approved by the Supreme Court of Pennsylvania, as they may be amended from time to time.

Section 2: Scope

The MJ-IOTA program applies to each custodial account maintained by, or on behalf of, a judicial official in the performance of his or her official duties.

Section 3: Custodial Funds

- (a) Custodial funds must be deposited in a custodial account.
- (b) Qualified funds are custodial funds that, in the good faith judgment of the judicial official, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of earning interest to benefit the beneficial owner of the funds. With few exceptions, custodial funds handled by judicial officials will be qualified funds.
- (c) The judicial official, in the exercise of good faith judgment, should apply an economic benefits test to determine whether particular custodial funds are not qualified funds and hence the beneficial owner of the funds should receive interest on those funds.
 - (1) If the anticipated cost of administering a segregated account for the benefit of the beneficial owner of the funds is more than the interest expected to be generated on the funds, then the funds are qualified funds.
 - (2) Custodial funds that when considered alone are not large enough to earn interest for the beneficial owner thereof are qualified funds.
 - (3) Funds which are not expected to be held for a sufficient time to provide interest for the beneficial owner are qualified funds.
- (d) Factors which should be used to determine whether custodial funds are qualified funds include:
 - (1) the cost of establishing and maintaining separate account(s) benefiting beneficial owners;

- (2) the account and bank service charges of the depository institution in which the account is maintained;
 - (3) the minimum deposit requirements of the depository institution in which the account is maintained;
 - (4) accounting fees incurred in connection with the funds;
 - (5) tax reporting requirement costs incurred in connection with the funds; and
 - (6) the length of time the funds are expected to be on deposit and the rate of interest that will be earned on the funds.
- (e) Examples of qualified funds include:
- (1) funds collected which represent fines and costs that are awaiting payment to the appropriate governmental entity;
 - (2) funds collected which represent posting of collateral by individuals who plead not guilty to a charged offense, unless those funds are of such a magnitude that the costs of administering a separate account for those funds, including service charges and other charges, will be less than the interest anticipated to be earned;
 - (3) funds collected which represent posting of bail by or on behalf of an individual awaiting a hearing, unless those funds are of such a magnitude that the costs of administering a separate account for those funds, including service charges and other charges, will be less than the interest anticipated to be earned;
 - (4) funds collected which represent restitution to victims pending the payment of the funds to the victims; and
 - (5) funds collected which represent payment of filing fees and other costs pending payment to the appropriate persons or entities.

Section 4: Special Provisions Applicable to Custodial Accounts of District Justices

- (a) Each district justice must use the statewide computerized reporting system of the AOPC for reporting all transactions which occur through his or her custodial account. As of the date of these regulations, the AOPC District Justice case reporting system is incapable of handling more than one custodial account per district justice, meaning that each district justice may maintain only one custodial account.
- (b) Custodial funds received by a district justice will generally be qualified funds. District Justices, however, may determine that particular custodial funds received are not, in fact, qualified funds, applying the criteria set forth in Section 3.
- (c) Each district justice is permitted to exercise his or her judgment as to whether custodial funds received by that district justice are qualified funds. If, in the good faith judgment of the district justice, custodial funds are not qualified funds, the district justice may request a refund of interest with respect to those custodial funds. See Section 7 - Refunds.
- (d) If, in the future, the AOPC district justice case reporting system permits handling of multiple custodial accounts for each district justice, the provisions of this section shall no longer apply, although district justices shall remain subject to the remaining provisions of these regulations.

Section 5: Requirements Applicable to MJ-IOTA Accounts

- (a) Unless an exemption has been granted to the judicial official, each judicial official shall establish a MJ-IOTA account at the depository institution of his or her choice. If local county policies and procedures concerning accounts established by the judicial official exist, nothing herein shall be construed as relieving the judicial official of complying with such policies and procedures, except to the extent inconsistent herewith.
- (b) In order to qualify as a MJ-IOTA Account, the depository institution must:
 - (1) Remit monthly any interest earned on the account to the Board, or if that is not possible, remit the interest earned at least quarterly; and

- (2) Transmit to the Board with each remittance a statement showing not less than the following information: the name of the account, the account number, the service charges and/or fees deducted, if any, from the account, the amount of interest remitted from the account, and if available, the average daily collected balance in the account for the period reported.
- (c) The following additional requirements apply to MJ-IOTA accounts:
- (1) The rate of interest paid on MJ-IOTA Accounts shall be not less than the highest rate of interest generally available from the depository institution to depositors generally for accounts with the same minimum balance and other account eligibility requirements.
 - (2) Under no circumstances may the rate of interest payable on a MJ-IOTA account be less than the rate paid by the depository institution on negotiable order of withdrawal accounts or super negotiable order of withdrawal accounts.
 - (3) The accounts must continue to be collateralized by the assets of the depository institution in accordance with current practice and Act 72 of 1971.
- (d) Depository institutions may impose reasonable service charges for the administration of MJ-IOTA accounts.
- (1) A depository institution may deduct service charges such as maintenance fees and transaction charges against the amount of interest to be paid on the MJ-IOTA account to which service charges apply.
 - (2) All costs associated with check printing, overdraft charges, charges for a temporary extension of credit and similar bank charges shall not be assessed against funds in or interest earned on a MJ-IOTA account.
 - (3) All costs for services such as overdrafts on deposited items, stopped payments, certified checks, and wire transfers shall not be assessed against funds in or interest earned on a MJ-IOTA account.

Section 6: Exemptions from MJ-IOTA Participation

- (a) The Board may grant exemptions from participation in the MJ-IOTA Program. Exemptions are not automatic. The Board may declare a judicial official exempt from the requirements of maintaining a MJ-IOTA account. Alternatively, a judicial official may submit a written request for exemption. All requests by a judicial official must be made on the judicial official's official letterhead, and all requests must set forth in reasonable detail the basis for the requested exemption.
- (b) Exemptions may be granted only with respect to the maintenance of a MJ-IOTA account for qualified funds. The Board is not empowered to handle other types of exemptions. Judicial officials exempt from maintenance of a MJ-IOTA account are reminded that the judicial official remains subject to other requirements pertaining to custodial funds.
- (c) Exemptions will be routinely granted in the following situations:
 - (1) Low balance account: Any custodial account which historically, generally based upon 12 consecutive months of activity, has an average daily balance of three thousand five hundred (\$3,500) Dollars or less will be exempt from being a MJ-IOTA account. The Board may exempt from MJ-IOTA, without application, a low balance account. A judicial official requesting an exemption based on a low balance account must, as a part of the written request for exemption, include an account analysis or written statement that demonstrates the amount of the average daily balance.
 - (2) Account service charges routinely exceed interest: Some custodial accounts may have an average daily balance of more than \$3,500, but account service charges routinely exceed interest earned on the account. A judicial official requesting an exemption under this subsection, as part of the written request for exemption, must include an account analysis or written statement that clearly shows the interest earned, or the interest that would have been earned, on the account each month for the past 12 months, plus the account service charges imposed on the account for each of the last 12 months. Only account-related service charges will be considered for the purpose of whether an exemption will be granted.
 - (3) Extreme impracticality: Under limited circumstances it may be unduly burdensome for a judicial official to maintain a MJ-IOTA

account. When claiming undue hardship, the judicial official should provide appropriate detail demonstrating undue hardship. An example includes the lack of a depository institution that offers MJ-IOTA accounts in the judicial official's geographical location.

- (4) Other compelling and necessitous reasons: A judicial official who demonstrates a compelling and necessitous reason for not complying with MJ-IOTA may request an exemption. A philosophical objection to MJ-IOTA does not constitute a compelling and necessitous reason for an exemption.
- (d) If the Board denies a judicial official's request for an exemption from maintenance of a MJ-IOTA account, the judicial official may, within 30 days of written notice of denial from the Board, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail additional facts, if any, not brought before the Board in the request for exemption, as well as the reasons, if any, why an exemption should be granted.
- (e) If the Board has determined that a judicial official's custodial account is exempt from MJ-IOTA status, the judicial official may, within 30 days of written notice from the Board that the judicial official is exempt, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail facts, if any, why the judicial official should maintain a MJ-IOTA account, and the manner, if any, in which the Board and the purposes of the MJ-IOTA program will be furthered by the judicial official's maintenance of a MJ-IOTA account.
- (f) Notice shall be deemed to have been given to a judicial official under the provisions of this Section upon the deposit by the Board, postage prepaid, with the United States Postal Service of its written determination regarding the exemption, if any, of the judicial official from the MJ-IOTA Program.
- (g) The Board may delegate to its staff or to a committee of the Board the authority to determine exemptions from MJ-IOTA or to reconsider exemption denials or determinations.

Section 7: Refunds

- (a) Upon application of a judicial official, the Board may return interest paid to it. For example, if a judicial official mistakenly places custodial funds which are not qualified funds in an MJ- IOTA account, interest earned on those funds may be refunded.
- (b) At the time of the issuance of these regulations, all custodial funds handled by District Justices are anticipated to be qualified funds. District Justices occasionally may determine that certain custodial funds maintained in their custodial account do not meet this presumption, and are not qualified funds. Upon application of the District Justice, the Board may return interest paid to it applicable to the funds which were not qualified funds.
- (c) The following guidelines apply to requests for refund of interest:
 - (1) All requests by a judicial official must be made on the judicial official's official letterhead, and all requests must set forth in reasonable detail the basis for the requested refund;
 - (2) The request must be accompanied by verification of the interest paid with respect to the funds mistakenly placed in the MJ-IOTA account. Verification must be made by the depository institution in which the MJ-IOTA account is maintained. As needed for auditing purposes, the Board may request additional documentation;
 - (3) The request must be made within six months after the beneficial owner's funds have been disbursed from the MJ- IOTA account;
 - (4) Refunds will be remitted to the beneficial owner and the Board will issue an IRS (Internal Revenue Service) form 1099 to the beneficial owner;
 - (5) If the depository institution has imposed a service charge with respect to the MJ-IOTA account, only the net amount of interest paid to the Board (i.e., the interest reduced by applicable service charges) will be refunded; and
 - (6) The Board may impose and deduct a processing charge from the refund.