

# The IOLTA Program Hits the Mark

By John D. Jurcyk, McAnany, Van Cleave & Phillips P.A., Roeland Park, Kansas Bar Foundation president

IOLTA stands for Interest on Lawyers' Trust Account. These programs were first established in Australia and Canada in the late 1960s and early 1970s. In the United States, Florida was the first bar association to establish an IOLTA program. That program was launched in 1981. In Kansas, the IOLTA program was approved by the Supreme Court in 1984 and is primarily aimed at funding programs that provide civil legal services for low-income people and law-related charitable public service projects. In the past, 70 percent of the funds have gone for civil legal services to low-income people, with the largest share going to provide direct legal services for victims of domestic violence. This truly meets one of the goals of the program, which is to increase access to the judicial system for those who can least afford it.

Today, all 50 states, the District of Columbia, and the U.S. Virgin Islands operate IOLTA programs. The legal cloud over the legality of the programs has been resolved. In March 2009, the U.S. Supreme Court upheld the legality of IOLTA programs in *Brown v. Legal Foundation of Washington*.

Lawyers are required to maintain trust accounts by our ethical rules. The lawyer in possession of a client's funds and property is a fiduciary. The lawyers' obligations regarding keeping these funds and properties are set out in the Kansas Rules of Professional Conduct. Traditionally, those accounts, which held trust funds that were nominal in amount or kept for short periods of time, paid no interest. The establishment of an IOLTA program allowed the interest to move to charitable works of the Bar rather than being retained by the financial institutions.

In 2009, the Kansas Bar Foundation (Foundation) awarded more than \$260,000 in grants from funds generated through the IOLTA program. All grants are reviewed by the Foundation's IOLTA Committee, which is made up of appointees from the Foundation, the Kansas Bar Association (KBA), the Kansas Supreme Court, the Kansas Association for Justice, the Kansas Association of Defense Counsel, and the governor's office. The committee forwards its recommendations to the Foundation's Board of Trustees for final approval. The need for funds in Kansas at this time is acute. The request for funding exceeded three quarters of a million dollars and many worthwhile programs did not receive funding because of the lack of availability of funds. Despite this acute need, the program provided benefits to a wide variety of needy citizens throughout the state.

Funding was provided to the Kansas Coalition Against Sexual and Domestic Violence. The grant helped with the cost of printing and Spanish translation of materials, which increases access for the needy. Court Appointed Special Advocates (CASA) programs in Shawnee and Sedgwick County also received assistance from the IOLTA program. CASA protects the young and vulnerable and are a needed resource for the children to have meaningful access to the judicial process. To educate young people, the Topeka Youth Project and the Olathe Youth Court Program received partial funding for

their needs, and the KBA Young Lawyers Section Mock Trial Program was also supported by your IOLTA dollars.

In connection with the courts, IOLTA dollars are funding the Rule of Law Civics Education Program, as well as the KBA Law-Related Education Program. That program funds the publishing of *Law Wise*, which is made available on request at no cost to K-12 school teachers or anyone interested in law-related education. These programs meet the IOLTA goal of education.

These are just a few of the good works IOLTA supports. As the economy continues to improve, the needs of our citizens remain high. Unfortunately, IOLTA proceeds are not constant and fluctuate with the amount of dollars flowing through trust accounts and the available interest rates. What can we do?

The biggest thing every lawyer can do to assist those in need is to participate. The effort and work necessary to maintain an IOLTA is no more than that involved in management of all other ethically mandated trust accounts. Ask your banker to participate in IOLTA. The application to convert an existing trust account to an IOLTA is available on the KBA Web site under the Kansas Bar Foundation link. The staff at the KBA will be happy to offer any assistance and answer any questions your banker may have.

With questions about the constitutionality of IOLTA programs being completely resolved, every lawyer should take this small step to assist the needy by participating in the process. ■

## About the Author

*John D. Jurcyk, McAnany, Van Cleave & Phillips P.A., Roeland Park, is a longtime member of the KBF and became a member of the Kansas Bar Association in 1984.*



*He represents employers and their insurance carriers in all areas of workers' compensation and general corporate defense. He strongly defends owner-controlled and contractor-controlled insurance plans. He was the lead defense counsel for many contractors, including the Union Station renovation, the Nelson Gallery expansion, Zona Rosa, Kansas City International Airport renovations, and the Federal Reserve and Internal Revenue Service complex in Kansas City.*

*Jurcyk successfully defended the employer and insurance carrier in Boucher v. Peerless Products, a Kansas Supreme Court case decision that denied permanent disability to any employee disabled from employment for less than one week. He convinced the Kansas Court of Appeals that fear of AIDS was not a viable cause of action and obtained dismissal of Reynolds v. Highland Manor Inc.*