

IC 33-44

ARTICLE 44. INTEREST BEARING ATTORNEY TRUST ACCOUNTS

IC 33-44-1

Chapter 1. Legislative Findings

IC 33-44-1-1

Legislative findings

Sec. 1. The general assembly finds that:

- (1) due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons do not adequately meet the needs of indigent persons;
- (2) the use of funds collected under this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government; and
- (3) the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and in the improvement of the administration of justice.

As added by P.L.98-2004, SEC.23.

IC 33-44-1-2

Purpose

Sec. 2. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons and to initiate new programs that will provide services to them.

As added by P.L.98-2004, SEC.23.

IC 33-44-2

Chapter 2. Application of Article

IC 33-44-2-1

Application of article; activities

Sec. 1. This article does not apply to an activity that is:

- (1) the practice of law; and
- (2) regulated by the judicial department of state government.

As added by P.L.98-2004, SEC.23.

IC 33-44-2-2

Investment of nonqualified funds; application of article

Sec. 2. This article does not apply to the investment of nonqualified funds by an attorney:

- (1) in any other investment specified by a client or beneficial owner; or
- (2) as agreed to by the client, beneficial owner, or attorney.

As added by P.L.98-2004, SEC.23.

IC 33-44-2-3

Disciplinary action

Sec. 3. An attorney is not subject to disciplinary action as a result of any action taken in accordance with this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-3

Chapter 3. Definitions

IC 33-44-3-1

Definitions; application

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-2

"Attorney"

Sec. 2. "Attorney" means an individual in good standing admitted to the practice of law in Indiana. The term includes a professional corporation (as defined in IC 23-1.5-1-10) formed by one (1) or more attorneys.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-3

"Board"

Sec. 3. "Board" refers to the Indiana attorney trust account board established by IC 33-44-4-1.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-4

"Depository financial institution"

Sec. 4. "Depository financial institution" means a bank, a bank or trust company, a credit union, an industrial loan and investment company, a savings bank, or a savings association, whether chartered, incorporated, licensed, or organized under Indiana law or the law of the United States that:

- (1) does business in Indiana; and
- (2) is insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund, the National Credit Union Administration, or an alternate share insurer.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-5

"Eligible client"

Sec. 5. "Eligible client" means a person:

- (1) who resides in Indiana; and
- (2) whose income:
 - (A) satisfies the eligibility standards established by a legal aid program or legal services program existing in Indiana on January 1, 1990, if the program's client eligibility standards provide that the client's income may not exceed one hundred fifty percent (150%) of the current poverty threshold established by the United States Office of Management and Budget;
 - (B) is not more than one hundred fifty percent (150%) of the current poverty threshold established by the United States

Office of Management and Budget; or
(C) satisfies the eligibility standard for Supplemental Security Income or free services under the Older Americans Act of 1965, as amended (42 U.S.C. 3001-3057) or Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6000-6083).

As added by P.L.98-2004, SEC.23.

IC 33-44-3-6

"Fee generating case"

Sec. 6. "Fee generating case" means a case or matter that, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably would be expected to result in payment of a fee for legal services from an award to a client from public funds or from the opposing party. A case is not considered a fee generating case if adequate representation is unavailable and if any of the following circumstances exist concerning the case:

(1) The qualified legal services provider that represents the indigent in the case has determined in good faith that free referral is not possible for any of the following reasons:

(A) The case has been rejected by the lawyer referral service serving the county of the eligible client's residence, or if there is no such service, by two (2) attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the lawyer referral service described in clause (A), if one exists, nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of a type that attorneys in private practice ordinarily do not accept or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the eligible client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a qualified legal services provider or its employee to represent the indigent in the case under a statute, a court rule, or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement is based on need.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-7

"Fund"

Sec. 7. "Fund" refers to the Indiana attorney trust account fund established by IC 33-44-7-1.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-8

"Interest bearing attorney trust account"

Sec. 8. "Interest bearing attorney trust account" means an account with a depository financial institution that is:

- (1) unsegregated;
- (2) interest bearing;
- (3) for the deposit of qualified funds by an attorney; and
- (4) capable of being drawn upon by the depositor in the same manner as a checking account that is not interest bearing.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-9

"Legal assistance"

Sec. 9. (a) "Legal assistance" means direct representation by an attorney of an eligible client in a civil matter pending in Indiana, including counsel, litigation, research, coordination with pro bono programs, support services, substantive and procedural training for attorneys and paralegals in poverty law subjects, and any other activity necessary to ensure the effective delivery of quality legal services in a civil matter.

(b) The term does not include representation of an eligible client in:

- (1) criminal matters; or
- (2) a fee generating case.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-10

"Qualified funds"

Sec. 10. "Qualified funds" means money received by an attorney from a client or beneficial owner in a fiduciary capacity that, in the good faith judgment of the attorney, is:

- (1) of such an amount; or
- (2) reasonably expected to be held for such a short term;

that sufficient interest income will not be generated to justify the expense of administering a segregated account.

As added by P.L.98-2004, SEC.23.

IC 33-44-3-11

"Qualified legal services provider"

Sec. 11. "Qualified legal services provider" means a nonprofit organization organized in Indiana and operating exclusively in Indiana that, as its primary purpose and function, provides legal assistance without charge to eligible clients in civil matters only.

As added by P.L.98-2004, SEC.23.

IC 33-44-4

Chapter 4. Indiana Attorney Trust Account Board

IC 33-44-4-1

Attorney trust account board established

Sec. 1. The Indiana attorney trust account board is established.
As added by P.L.98-2004, SEC.23.

IC 33-44-4-2

Members

Sec. 2. The board consists of eleven (11) members.
As added by P.L.98-2004, SEC.23.

IC 33-44-4-3

Appointment of members; chief justice

Sec. 3. The chief justice of the supreme court shall appoint six (6) members to the board.
As added by P.L.98-2004, SEC.23.

IC 33-44-4-4

Appointment of members; government officials

Sec. 4. The following officials shall each appoint one (1) member to the board:

- (1) The governor.
- (2) The speaker of the house of representatives.
- (3) The minority leader of the house of representatives.
- (4) The president pro tempore of the senate.
- (5) The minority floor leader of the senate.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-5

Considerations by chief justice in appointing members

Sec. 5. The chief justice shall consider the following factors as favorable in appointing a member under section 3 of this chapter:

- (1) Whether the individual is a dean of an Indiana law school.
- (2) Whether the individual is a director or board member of an Indiana legal services or legal aid program.
- (3) Whether the individual is a member of the Indiana State Bar Association.
- (4) Whether the appointment of the individual would result in representation on the board from the first district, second district, and third district of the court of appeals.
- (5) Whether the individual is a representative of a depository financial institution.
- (6) Whether the individual is an eligible client.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-6

Political affiliation of members

Sec. 6. Not more than four (4) of the members appointed by the

chief justice may be members of the same political party.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-7

Term of members

Sec. 7. A member of the board serves a term of four (4) years.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-8

Vacancies

Sec. 8. The appointing authority shall fill a vacancy on the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-9

Chairperson; appointment by chief justice

Sec. 9. The chief justice shall appoint a member of the board to serve as chairperson not later than December 1 of each year.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-10

Term of chairperson

Sec. 10. The term of a chairperson begins January 1 following the chairperson's appointment under section 9 of this chapter.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-11

Compensation of members who are not state employees; salary; reimbursement of expenses

Sec. 11. A member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided by the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-12

Compensation of members who are state employees; reimbursement of expenses

Sec. 12. A member of the board who is a state employee is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided by the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-13

Administration of fund

Sec. 13. The board shall administer the fund in accordance with

IC 33-44-7.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-14

Receipt and management of property

Sec. 14. The board may receive, hold, and manage property.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-15

Adoption of rules

Sec. 15. The board may adopt rules under IC 4-22-2 to implement this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-4-16

Development of programs

Sec. 16. The board shall develop programs to:

- (1) educate attorneys and depository financial institutions concerning this article; and
- (2) encourage attorneys to create and maintain interest bearing attorney trust accounts.

As added by P.L.98-2004, SEC.23.

IC 33-44-5

Chapter 5. Participation by Attorneys

IC 33-44-5-1

Application of chapter

Sec. 1. Except as provided in section 2 of this chapter, each attorney is subject to this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-2

Attorneys not subject to article

Sec. 2. An attorney is not subject to this article if the attorney:

- (1) does not place any qualified funds in an interest bearing attorney trust account; and
- (2) submits a written statement to the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-3

Written statement of attorney; procedure

Sec. 3. The statement submitted under section 2 of this chapter must:

- (1) be filed in accordance with rules adopted under IC 4-22-2 by the board; and
- (2) state that the attorney is acting under section 2 of this chapter to exempt the attorney from the application of this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-4

Presumption if written statement not filed

Sec. 4. If an attorney does not act under section 2 of this chapter, the board shall presume that the attorney has elected to be subject to this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-5

Placement of funds; interest bearing attorney trust account

Sec. 5. An attorney subject to this article shall place all qualified funds in an interest bearing attorney trust account.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-6

Qualified funds; determination by attorney

Sec. 6. An attorney subject to this article shall determine if money received from a client or beneficial owner constitutes qualified funds.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-7

Determination of qualified funds; considerations

Sec. 7. In making the determination under section 6 of this chapter, the attorney shall consider the following:

- (1) The amount of interest the money would earn during the period the money is expected to be deposited.
- (2) The cost of establishing and administering the account.
- (3) The capability of the depository financial institution to calculate and pay the interest earned by each client's funds, after deduction of any service charges, to the client.

As added by P.L.98-2004, SEC.23.

IC 33-44-5-8

Good faith judgment concerning deposit of funds; attorney liability

Sec. 8. An attorney:

- (1) does not breach a fiduciary duty;
- (2) is not liable in damages; and
- (3) is not subject to disciplinary action;

because of a deposit of money in an interest bearing attorney trust account if the attorney acted in accordance with a good faith judgment that the money constituted qualified funds.

As added by P.L.98-2004, SEC.23.

IC 33-44-6

Chapter 6. Interest Bearing Attorney Trust Accounts

IC 33-44-6-1

Trust accounts containing qualified funds; transition to interest bearing attorney trust account

Sec. 1. If the depositor and depository financial institution agree, a trust account that contains qualified funds held by an attorney subject to this article may be made an interest bearing attorney trust account.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-2

Terms and conditions

Sec. 2. The terms and conditions of an interest bearing attorney trust account, except as required under this chapter, shall be determined by the depositor and the depository financial institution. A depository financial institution is not required to offer an interest bearing attorney trust account.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-3

Interest accrued by account; board ownership of beneficial interest

Sec. 3. The board owns the beneficial interest in the interest accrued by an interest bearing attorney trust account of an attorney who is subject to this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-4

Remittance of interest earned on account

Sec. 4. Except for amounts deducted under terms or conditions agreed upon under section 2 of this chapter, a depository financial institution shall remit any interest earned on an interest bearing attorney trust account to the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-5

Remittance of interest; procedure

Sec. 5. A depository financial institution shall make the remittance required under section 4 of this chapter not less frequently than quarterly and not later than fifteen (15) days after the end of the remittance period.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-6

Statement of depository financial institution required upon remittance

Sec. 6. A depository financial institution shall transmit a statement to:

- (1) the board; and

(2) the attorney who maintains the interest bearing attorney trust account;
when the depository financial institution remits interest under section 4 of this chapter.
As added by P.L.98-2004, SEC.23.

IC 33-44-6-7

Contents of statement of depository financial institution

Sec. 7. The statement described in section 6 of this chapter must contain the following information:

- (1) The name of the account.
- (2) The amount of interest remitted from the account.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-8

Duty of institution to determine or inquire into type of funds deposited

Sec. 8. A depository financial institution is not required to determine or inquire whether a deposit includes qualified funds.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-9

Release and discharge of depository financial institution

Sec. 9. The remittance of interest by a depository financial institution to the board from an interest bearing attorney trust account is a valid and sufficient release and discharge of a claim by an entity against the depository financial institution for the remittance.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-10

Limitation on actions against depository financial institution

Sec. 10. An entity may not maintain an action against a depository financial institution solely for:

- (1) offering, opening, or maintaining an interest bearing attorney trust account;
- (2) accepting funds for deposit in an interest bearing attorney trust account; or
- (3) remitting interest to the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-11

Confidentiality of information identifying beneficial owner of account

Sec. 11. A paper, a record, a document, or other information identifying an attorney, a client, or a beneficial owner of an interest bearing attorney trust account is confidential.

As added by P.L.98-2004, SEC.23.

IC 33-44-6-12

Disclosure of account information by board or institution

Sec. 12. The board or a depository financial institution may not disclose information described by section 11 of this chapter except:

- (1) with the consent of the attorney maintaining the account; or
- (2) as permitted by:
 - (A) law; or
 - (B) rule adopted by the judicial department of state government.

As added by P.L.98-2004, SEC.23.

IC 33-44-7

Chapter 7. Indiana Attorney Trust Account Fund

IC 33-44-7-1

Establishment

Sec. 1. The Indiana attorney trust account fund is established as a trust fund to be used solely as provided under this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-2

Administration

Sec. 2. The fund shall be administered by the board in accordance with rules adopted under IC 4-22-2 by the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-3

Deposit of interest remitted

Sec. 3. The board shall deposit the interest remitted under IC 33-44-6-4 into the fund.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-4

Public fund

Sec. 4. The money in the fund consists of public funds.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-5

Investment of funds

Sec. 5. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-6

Nonreversion of money in fund

Sec. 6. Money in the fund at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-7

Income received by board from remittance of interest not taxable to attorney or client

Sec. 7. For purposes of Indiana law, income received by the board from the remittance of interest is not taxable to:

- (1) the attorney maintaining the interest bearing attorney trust account; or
- (2) the client whose funds are deposited in the interest bearing attorney trust account.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-8

Disbursements; limitations

Sec. 8. The board may not disburse money in the fund except for:

- (1) the delivery of civil legal assistance to eligible clients;
- (2) programs or projects in the public interest that assist in the improvement of the administration of justice; and
- (3) administrative costs.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-9

Order and amount of disbursements

Sec. 9. During each year the board shall disburse money from the fund for the payment of administrative costs to the extent permitted under section 14 of this chapter. After the payment of administrative costs, any money disbursed by the board from the fund during that year shall be disbursed as follows:

- (1) Ninety percent (90%) of the funds shall be disbursed to provide legal assistance to eligible clients by:

- (A) qualified legal services providers; or
- (B) law school clinics in Indiana that provide free civil legal assistance to eligible clients.

- (2) Ten percent (10%) of the funds shall be disbursed for programs or projects in the public interest that assist in the improvement of the administration of justice, including the following:

- (A) Guardian ad litem and court appointed special advocate programs that provide guardians ad litem or court appointed special advocates for appointment by the court:

- (i) under IC 31-17-2-12 to conduct an investigation and prepare a report in a custody proceeding; or
- (ii) under IC 31-33-15-1, IC 31-34-10, or IC 31-40.

- (B) Lawyer referral services in Indiana that provide:

- (i) a referral to an attorney in private practice without a charge for the referral; and
- (ii) an initial consultation with an attorney in private practice without a charge for the consultation;

in a fee generating case.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-10

Receipt of disbursed funds for legal assistance to eligible clients; eligibility for other funds

Sec. 10. An entity that receives funds disbursed under section 9(1) of this chapter during a year is not eligible to receive funds disbursed under section 9(2) of this chapter during that year.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-11

Receipt of disbursed funds for programs assisting in improvement of administration of justice; eligibility for other funds

Sec. 11. An entity that receives funds disbursed under section 9(2) of this chapter during a year is not eligible to receive funds disbursed under section 9(1) of this chapter during that year.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-12

Contracts; award of grants

Sec. 12. The board shall periodically:

(1) enter into contracts with; and

(2) award grants to;

qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice to carry out the purpose of the fund.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-13

Considerations in making disbursements

Sec. 13. In making disbursements from the fund under section 9(1) of this chapter, the board shall primarily consider the geographic distribution by county of persons with incomes of not more than the current poverty threshold established by the United States Office of Management and Budget, as indicated in the most current report published by the Bureau of the Census. However, the board may use other considerations in making disbursements from the fund when demonstrable legal needs are documented by a qualified legal services provider.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-14

Total administrative costs; maximum

Sec. 14. Total administrative costs, including payments to board members under IC 33-44-4-11 and IC 33-44-4-12, costs for employees under IC 33-44-8, and all other costs of managing and administering the fund and otherwise performing all responsibilities of the board, may not exceed fifteen percent (15%) of the amounts received into the fund from interest bearing attorney trust accounts.

As added by P.L.98-2004, SEC.23.

IC 33-44-7-15

Annual audit of fund; audits of providers receiving fund disbursements

Sec. 15. The state board of accounts shall conduct an audit of the fund at least one (1) time during each year to ensure that the fund is administered as required by this chapter. The state board of accounts may conduct audits of qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice as the state board of accounts considers necessary to ensure that the money distributed to qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the

administration of justice is being used as required by this article.
As added by P.L.98-2004, SEC.23.

IC 33-44-8

Chapter 8. Board Employees

IC 33-44-8-1

Executive director; appointment

Sec. 1. The board may appoint an executive director to carry out this article.

As added by P.L.98-2004, SEC.23.

IC 33-44-8-2

Powers of executive director

Sec. 2. The executive director may:

- (1) employ persons; or
- (2) contract for services;

upon approval by the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-8-3

Employees serve at pleasure of board

Sec. 3. An employee of the board serves at the pleasure of the board.

As added by P.L.98-2004, SEC.23.

IC 33-44-9

Chapter 9. Annual Report

IC 33-44-9-1

Annual report; format

Sec. 1. The board shall file a report with:

- (1) the governor;
- (2) the legislative council; and
- (3) the chief justice of the supreme court;

before December 31 of each year. The report filed with the legislative council must be in an electronic format under IC 5-14-6. *As added by P.L.98-2004, SEC.23.*

IC 33-44-9-2

Contents of annual report

Sec. 2. The report filed under section 1 of this chapter must include the following information for the annual period ending June 30:

- (1) The number of eligible clients served.
- (2) The amount of interest paid into the fund by the board during the year as remittances by depository financial institutions and the amount of interest deposited in the fund during the year from investments by the treasurer of state.
- (3) The amount disbursed, by category, for direct legal services, to law school clinics, to programs or projects in the public interest that assist in the improvement of the administration of justice, administrative costs, and for educational purposes.
- (4) The number of attorneys subject to this article.
- (5) The number of attorneys submitting written statements under IC 33-44-5-2.
- (6) The identity of qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice to whom grants have been made or with whom contracts have been executed and the amounts disbursed to each.

As added by P.L.98-2004, SEC.23.