HB

557

# STATE OF ALASKA
# THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary 3/17/86 1:30PM
" " 3/3/86 1:30 PM

# COMMITTEE REPORT

(7)

Date referred: 2/10/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered HB 557

"An Act relating to interest on attorney trust accounts; and providing for effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Robin L. Taylor (No Rec)

no rec

Chairman

Original sponsors: Duncan, Clocksin, Gruenberg and Wallis

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 557 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to interest on attorney trust accounts; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.08 is amended by adding a new section to article 5 to read:

Sec. 08.08.243. INTEREST ON ATTORNEY TRUST ACCOUNTS. (a) An attorney or law firm may establish and maintain an interest bearing insured demand trust account in a depository institution and deposit in that account all client funds that are nominal in amount or are to be held for a short time.

(b) The depository institution shall be directed by the attorney or law firm establishing the account to

(1) remit interest on the account to a foundation designated by the Board of Governors of the Alaska Bar; and

(2) transmit with each remittance a statement showing the name of the attorney or law firm for whom the remittance is made and the rate of interest applied, with a copy of the statement to be transmitted to the attorney or the law firm.

(c) All funds received by the foundation designated by the Board of Governors of the Alaska Bar shall be expended to provide civil legal services to indigent persons.

* Sec. 2. This Act takes effect upon the adoption of a resolution by the Board of Governors of the Alaska Bar Association implementing the program established in AS 08.08.243 and designating the foundation to

receive funds under this Act.


January 27, 1986

Mary K. Hughes, President
Alaska Bar Foundation
Post Office Box 279
Anchorage, Alaska 99510

Dear Mary:

The suggestion of the Alaska Supreme Court that only clients' funds in the amount of $250 or less be deposited in an IOLTA account and that funds of a greater amount be invested for the benefit of the client is totally unworkable. Under no set of realistic circumstances can $250 return a net profit to the client. Moreover, limiting IOLTA-eligible funds to $250 or less will produce very little income for your program.

The problem is with the Court's focus on the principal deposited -- $250 -- instead of the net interest income to be produced. Indeed, none of the 40 supreme courts and state legislatures that have adopted an IOLTA program have focused exclusively on the principal to be invested. They have instead focused primarily on the net interest income. And, with good reason. Allow me to explain.

There are many typical types of client deposits which exceed $250 but which realistically cannot produce income to the client. For example, assume an attorney, representing the seller of a small piece of property, receives $500 to be held in escrow. At closing, some 30-60 days later, the deposit is applied to the sales price. If closing does not take place, depending on the sales contract and other factors, either the buyer or seller may be entitled to the deposit. The interest on the deposit, $2.19 per month, would not justify the expense required to draw up and negotiate provisions relating to the payment of interest or to set up a separate NOW account.

Many sums far greater than $500 are also not suitable for investment on behalf of the client. For example, assume that a lawyer receives $50,000 for a client on a Monday. The lawyer's trust account check is mailed to the client that day. It is received and deposited by the client on Wednesday. It clears the lawyer's bank on Friday. Everything has proceeded

expeditiously, more expeditiously than likely. If the attorney's trust account were an IOLTA account, some $28.76 would be earned. Yet, the nature of this transaction precludes payment of the interest generated to the client.

IOLTA works (and does not violate the taking clause of the fifth amendment) because nominal or short term funds simply cannot produce income net of expenses. But the definition of nominal or short term can only be established using a sliding scale that factors in a wide range of components, including (1) the size of the deposit, (2) the length of time the deposit is expected to be held, (3) the costs incurred by the lawyer to administer the deposit, (4) the charges that the lawyer's financial institution will impose, (5) the costs that the client will incur if income is generated, (6) whether the client can use NOW accounts, and (7) the types of investment vehicles available if the client cannot use a NOW account.

Two hundred and fifty dollars is far too small a principal amount to produce income net of expenses. Invested in a NOW account (assuming the client's funds are eligible for deposit in a NOW account) at the standard rate of 5 ¼ %, a principal amount of $250 will produce monthly gross income of $1.10.

There are three elements of cost that must be offset by the deposit's gross income if the fund is to be productive for the client: The lawyer's cost to administer the account; the charges imposed by the lawyers' financial institution; and the costs that the client itself will incur. Individually, each of these cost elements far exceeds the gross income of $1.10.

1. Lawyer's Cost of Administration. The best empirical research currently available with respect to law firm costs was developed in Maryland. An informal study found that it cost law firms at least $50 to establish a separate interest-bearing account for a client. Subsequently, New Jersey estimated the cost at between $70 and $90. Maryland, using the results of its study to establish a safe harbor benchmark, constructed a table showing how much principal was necessary for how long in order to earn more than $50.

| Principal Deposit | Number of Days Required To Generate $50.00 of Interest at 5 ¼ Compounded Daily |
|---|---|
| $ 500 | 654 |
| 1,000 | 335 |
| 2,000 | 169 |
| 5,000 | 69 |
| 10,000 | 34 |

| | |
|---|---|
| 20,000 | 17 |
| 30,000 | 12 |

It costs a lawyer at least $50 because of a wide range of costs that must be incurred to make a client's funds productive. These costs include: (1) the time needed, presumably that of the lawyer and client, to determine whether investment is warranted, (2) the time necessary to obtain the client's social security or tax identification number and other relevant information required for such investments, (3) the time necessary, probably of support staff, to open a separate account for the client whose funds are to be invested, (4) the cost of internal law firm bookkeeping, on a periodic basis, to account for clients' earnings, (5) the cost of preparing and furnishing IRS Form 1099, and (6) the time necessary to close the account, a task more complicated than the simple drawing of a check when client funds are kept in an aggregated, interest-free account.

Any one of these costs will obviously exceed the $1.10 produced by a $250 principal.

2. **Bank Service Costs or Charges.** A National IOLTA Clearinghouse survey showed that most financial institutions imposed monthly service charges on NOW accounts when the average daily balance fell below $1,000 to $1,500. Even the smallest monthly service charge imposed by any of the financial institutions surveyed far exceeded the $1.10 that a $250 principal deposit could earn. On top of the monthly fee, whenever the account balance fell below the required average daily balance, the financial institution imposed an individual transaction charge, generally between 25¢ and 50¢ per item. Last but not least, opening a separate account for an individual client probably requires payment for check printing.

3. **Client Costs.** Like the lawyer, the client will also incur bookkeeping and administrative costs. While perhaps of no concern to the individual client, such costs will be relevant to the business client.

Any fair assessment of the true costs will quickly conclude that $250 cannot be made productive for any client.

More importantly, the size of the principal amount is only half the equation necessary to determine what amount is appropriately invested either in an IOLTA account or for the benefit of the client. You cannot determine whether the client's funds can earn income net of expenses unless the expected amount of time the funds will be held is factored in. The Maryland table accomplishes that task. Examination of the table shows that what at first glance appear to be very large sums of money,

in reality, do not produce income when held for short periods of time.

In addition to the cost factors, it must be remembered that NOW accounts cannot be utilized by profit-making entities other than sole proprietors. Thus, money from partnerships or corporate clients cannot be placed in a NOW account (unless the income goes to an IOLTA program). There are investment vehicles for corporate and other non-NOW account eligible funds. However, those vehicles are even more costly to utilize than NOW accounts. They usually require large initial deposits and limit the number of withdrawals which can be made by check. Only where a lawyer must hold a large sum of money on a long-term basis can such investment vehicles can be utilized.

Sub-accounting, while it might reduce the overall costs, will not eliminate them. Nor, at this point, is sub-accounting a realistic option. First, no financial institution in the country currently offers sub-accounting in a manner useful for a lawyer's trust account. In Arizona, where the IOLTA program is mandatory, one of the state's larger banks offered to provide sub-accounting -- so long as the trust account's average daily balance was at least $5 million. Other sub-accounting offers have been similarly hedged. Secondly, if the lawyer performs the sub-accounting, the lawyer's costs will be far more than the $50 Maryland safe harbor benchmark. Third, for non-NOW account eligible funds, discussion of sub-accounting is irrelevant.

Let me suggest that what the Court needs to do is establish guidelines for when a client's deposit should be considered nominal or short-term. Those guidelines need to take into account the cost of producing income and to compare the cost of producing income with the principal amount of the deposit in order to determine whether the client's funds can be invested productively. Enclosed is a copy of the California guidelines. They furnish a good model. In addition, several recently adopted IOLTA programs have included administrative procedures designed to permit a client to recover the interest generated by funds that should properly have been invested for the benefit of the client. I enclose a copy of such a procedure, about to be adopted by the Wisconsin Supreme Court.

The Clearinghouse would be happy to assist you in convincing the Court that a $250 guideline is unworkable from both the standpoint of an IOLTA program and from the standpoint of an attorney investing money for his clients. Any equation used to determine a dollar figure must factor in both the length of time the funds are held and the cost to administer those funds. A

flat dollar amount for the principal invested simply will not work.

Very truly yours,

Peter M. Siegel

PMS:dmc
enclosure

M E M O R A N D U M

December 26, 1985


TO: Harry Branson, President
Alaska Bar Association

INFO: Deborah O'Regan
Executive Director
Mary Hughes, President
Alaska Bar Foundation

FROM: Chief Justice Rabinowitz

SUBJECT: Bar - Bar Foundation Matters

This will serve to confirm our recent conversations during which I attempted to advise you of decisions reached by the Supreme Court of Alaska in regard to various Bar Association or Bar Foundation proposals. In recent weeks the Supreme Court of Alaska took the following action:

1. The Court agreed to the adoption of an IOLTA rule that would have the following features:

(a) the program would be voluntary;

(b) only clients' funds in the amount of $250 or less would be deposited in the attorney's IOLTA account; and

(c) earnings from such an account, net of any service charges or fees, are to be remitted to the Alaska Bar Foundation Inc., or such other IRS approved IOLTA fund approved by the Board of Governors of the Alaska Bar Association.

(d) The Court was of the further view that the Board of Governors of the Alaska Bar Association should consider an amendment to DR 9-102 which would provide that all funds of a client in excess of $250 be deposited in an interest bearing account with the net earnings to be paid to the client.

(2) The Court agreed that the Bar's proposed amendments to the fee arbitration Rule should be circulated to the members of the Alaska Bar Association for their comments with an appropriate letter highlighting the particular provisions which are likely to be viewed as controversial.

170.021

Alaska Pro Bono Program
550 West 8th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 272-9431 Zenith 3199

July 26, 1985

Nancy Bennett
House Hess Committee
Pouch V
Juneau, Alaska 99811

Re: IOLTA

Dear Ms. Bennett:

As we discussed today on the phone, I am sending you a copy of the IOLTA brief currently before the Supreme Court, as well as the latest "IOLTA UPDATE" published periodically by the National IOLTA Clearinghouse of the Florida Justice Institute, Inc. in Miami, Florida.

I hope that you will find these helpful in assessing the current status of IOLTA, not only in Alaska but throughout the country.

If I can be of further assistance please do not hesitate to call me.

Sincerely,

Seth Eames

SE/cb

cc: Robert K. Hickerson

ALASKA BAR ASSOCIATION
P.O. BOX 100279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

RANDALL P. BURNS, EXECUTIVE DIRECTOR

STEPHEN J. VAN GOOR, DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL



April 5, 1985

Supreme Court
State of Alaska
604 Barnette Street, Room 418
Fairbanks, AK 99701

ATTN: The Honorable Jay Rabinowitz
Chief Justice

RE: Petition to Amend Canon 9 of the Code of Professional Responsibility to Provide for Voluntary Attorney Participation In a Lawyer Account Program to Support Law-Related Public Projects

Dear Chief Justice Rabinowitz:

The proposal set forth in the attached memorandum petition is a tangible result of the continuing effort by the Alaska Bar Association to propose improvement in the legal system for the benefit of the public. This proposal specifically addresses the need for additional funding sources for the delivery of legal services to the economically disadvantaged and for other worthwhile law-related projects.

This petition is submitted at the direction of the Alaska Bar Association to request the Supreme Court of Alaska to consider amending Canon 9 of the Code of Professional Responsibility to provide voluntary lawyer participation in the lawyer trust account program in the State of Alaska. The purpose of the program would be to provide funding, through the Alaska Bar Foundation, of project design to:

(a) Assist in providing legal services to the economically disadvantaged;

(b) Improve the administration of justice; and

(c) Engage in such other programs for the benefit of the public as are specifically approved by the Supreme Court for the State of Alaska.

The proposal contained in the petition presents a legally and ethically sound opportunity for the legal profession to make a contribution toward a solution to the many law-related public needs, specifically legal services to the disadvantaged, which have ever-increasing demands for funding.

Accordingly, the Alaska Bar Association petitions this court for adoption of the amendments to Canon 9 of the Code of Professional Responsibility in order to authorize attorney participation in the lawyer trust acount program.

Respectfully submitted,

ALASKA BAR ASSOCIATION

Harold M. Brown
President

Attachment

cc: Justice Allen T. Compton
Justice Warren W. Matthews
Justice Edmond W. Burke
Justice Daniel A. Moore, Jr.

IN THE SUPREME COURT OF THE STATE OF ALASKA

| | |
|---|---|
| In the Matter of: THE ADOPTION OF AMENDMENTS TO DISCIPLINARY RULE 9-102, THE ADOPTION OF ETHICAL CONSIDERATION 9-7, and THE ADOPTION OF SUPREME COURT RULE TO IMPLEMENT THE INTEREST ON TRUST ACCOUNTS PROGRAM | ) |

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MEMORANDUM IN SUPPORT OF THE PETITION
OF THE ALASKA BAR ASSOCIATION

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Harold M. Brown, President
Alaska Bar Association

Mary K. Hughes, President
Alaska Bar Foundation

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CASES CITED

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## STATUTES AND RULES CITED

# I. INTRODUCTION

The Alaska Bar Association, pursuant to mandate of its Board of Governors, seeks the creation of an Interest on Lawyer Trust Accounts (IOLTA) Program. Under the Program, client funds which are nominal in amount or held for a short period of time would be placed in a common, pooled, interest-bearing demand account. The interest earned from this common account would be paid directly to Alaska Bar Foundation which would distribute proceeds to the non-profit legal services programs currently operating in Alaska in order to further the delivery of legal services to the poor of Alaska.

The operation of the IOLTA Program is quite simple and would not in any way change each lawyer's ethical obligation to safeguard and segregate the funds of a client. The program would allow moneys which are individually too small to produce income for the client to be allocated and used in such a way that the public purpose of providing legal servies to indigents would be served.

Presently, lawyers and law firms are required to maintain client funds in separate identifiable accounts. This has always been the mandate of Disciplinary Rule 9-102 of the Alaska Code of Professional Responsibility. DR 9-102 allows lawyers to invest in individual accounts the sizable sums of individual clients which are capable of generating enough interest to cover costs of

the account and to be of direct benefit to the client or other beneficiary. However, the vast majority of trust funds are so small in amount or are held for such a short period of time that the cost of administering the individual accounts or of having the interest computed and allocated to individual clients does not exceed the potential earnings. These kinds of funds are therefore usually pooled in non-interest-bearing checking accounts for easy withdrawal and bookkeeping procedures.

These funds, however, are not actually non-interest-bearing because the money does earn interest which at the present time inures only to the benefit of the financial institutions in which they are deposited. Under the IOLTA Program, lawyers would be able to convert these accounts, through a very simple procedure, to an interest-bearing demand account called a Negotiable Order of Withdrawal (NOW) account. The income earned from this common account would inure to the benefit of low-income people who need legal services they cannot now afford. The program envisions that all interest from the accounts will be distributed on an equitable basis to the legal services programs now operating in Alaska.

The IOLTA Program does not in any way change the capability or the responsibility of lawyers to separate those clients' funds which are large enough or which will be held for a long enough period of time to produce sufficient interest to credit to the individual client. Thus, the lawyer's traditional fiduciary

obligation under agency law to safeguard funds for the benefit of the client would remain unchanged. Only IOLTA funds (funds the interest on which is by definition not capable of individual investment or allocation) would be affected by the program.

The Petition to establish an IOLTA program reflects the Alaska Bar Association's continuing commitment to the development and support of activities to improve the legal system. This pursuit is fully consistent with a lawyer's ethical obligation under Canons 2 and 8 of the Alaska Code of Professional Responsibility to develop methods of making legal services more fully available by providing financial assistance to legal services programs which are presently inadequately funded to cope with the very great need for legal services of indigent Alaska citizens.

The IOLTA Program now before the Alaska Supreme Court is not a new concept. The legal and practical experience of the several states in which similar IOLTA programs have been operating can be of value to this Court in considering the program. Certain legal opinions by the Internal Revenue Service and the Federal Reserve Board which have been promulgated and established in other states can by analogy be directly applied to Alaska's proposed program. Set forth below are details about these legal opinions and the other practical and legal considerations which have led to the Petition now before the Court.

## II. THE INTEREST ON LAWYER TRUST ACCOUNTS PROGRAM

### A. History of IOLTA

The concept of using the interest on pooled accounts has been in existence for over twenty years in other countries. British Commonwealth nations first developed the concept because their banking institutions had long allowed interest-bearing demand accounts. Ethical rules in those countries did not prohibit lawyers from receiving the interest on those accounts and it was relatively simple as well as logical to propose that the interest income be transferred from a lawyer who had no claim of right to the funds to the benefit of a particular public purpose.

In the 1970's, the United States banking laws were changed to allow interest-bearing checking accounts. It thus became possible to adopt the approach to trust fund interest which had been developed in the Commonwealth countries to our nation. The Florida Bar undertook the pioneering effort in 1976. After five years of study, negotiations with the Internal Revenue Service, and adaptation of the program to conform with federal and state laws, the Florida Supreme Court issued an opinion establishing the first IOLTA program in the United States. Their opinion, In re Interest on Trust Accounts, is reported at 402 So.2d 389 (Fla. 1981). See also England & Carlisle, "History of Interest on Trust Accounts Program," 56 Fla. B.J. 101 (Feb. 1982).

In Florida, participation by lawyers or law firms is voluntary. However, once a lawyer or a firm decides to participate,

all IOLTA funds held by the lawyers must be invested in pooled interest-bearing accounts, the income from which is payable to the Florida Bar Foundation.

This initiative of the Florida Bar and the Florida Supreme Court received a great deal of national attention. When the federal budget for Legal Services was reduced by 25% in 1982, many state bar associations began to examine the IOLTA concept as a means of responding to the resulting demand that the legal profession directly assume greater responsibility for providing access to the justice system for the poor.

As a result, six other states adopted IOLTA programs in short order. The States of Idaho (slip opinion, May 27, 1982); Colorado (slip opinion, November 1, 1982); Maryland (Md. Ann. Cod. art. 10, §44); and New Hampshire (In re New Hampshire Bar Ass'n, 453 A.2d 1258 (1982)), adopted voluntary programs. The States of California (Cal. Bus. & Prof. Code, §§6210-6228) and Minnesota (In re Minnesota Bar Ass'n, No. A-8 (December 27, 1982)) adopted mandatory IOLTA programs. In the recent past, the Supreme Courts of the States of Illinois, Virginia and Oregon have adopted voluntary programs.

All the IOLTA programs require that interest earned on IOLTA funds be diverted for public purposes, with the chief purpose being the provision of legal services to the poor in civil matters.

B. Simplicity of Operation - The Lawyers Perspective

The proposal before the Alaska Supreme Court is designed for simplicity. There will be no new record keeping or other administrative burdens on the lawyer or law firm. IOLTA would require only that a law firm or lawyer's non-interest-bearing checking account be converted to a NOW account. The only thing a lawyer or law firm must do is file new signature cards for existing trust accounts and send a letter to the depository institution authorizing the direct payment of the interest earned on the account to the Alaska Bar Foundation. Ledger cards, checks and other accounting records for existing trust accounts would not be changed. All the interest accounting, reporting and transmittal of funds would be done by the financial institution which would receive a reasonable service charge for its services.

C. Control By the Client - The Assignment of Interest Doctrine

In the IOLTA program which was originally adopted by the Flordia Supreme Court in 1978, and which was endorsed by the National Council of Chief Justices, each client would have been permitted to decide whether or not his/her funds would be placed in a pooled interest-bearing account to support public purposes. In re Interest on Trust Accounts, 356 So.2d 799 (Fla., 1978). That proposal immediately ran into difficulties with the Internal Revenue Service. The IRS, relying on the assignment of interest

doctrine first articulated in Lucas v. Earl, 281 U.S. 111 (1930), ruled that any exercise of discretion by the client would require that the interest earned by treated as income to the client. That ruling threatened to effectively terminate the IOLTA program because its basic premise is that the program only involves funds which are too small to earn interest which can as a practical matter be allocated to individual clients. Thus, by definition, IOLTA makes it impossible to identify income which can be reported for tax purposes.

In order to deal with this IRS ruling, the Florida IOLTA program, and all those subsequently adopted, eliminates any element of client-control over the placement of interest earned on participating trust accounts. In re Interest on Trust Accounts, 402 So.2d 389 Fla. 1981); see, Middlebrooks, "The Interest on Trust Accounts Program: Mechanics of Its Operation," 56 Fla. B.J. 115 (Feb. 1982). This requirement does not deprive clients of income they otherwise would be entitled to receive since IOLTA by definition concerns only monies which cannot earn interest for the client because the amounts earned are too small to permit individual allocation. The IRS has approved this approach.

Of course, clients would in the ordinary course of dealing with their lawyer, continue to be advised of how trust funds will be handled with emphasis, where practical, upon methods of investing their net interest for their benefit. As stated above, IOLTA does not in any way interfere with this analysis on an individual basis.

D. Deposit in Pooled Accounts- The Lawyers Good Faith Judgment

The proposal before this Court maintains the discretion for determining whether or not client funds are nominal in amount or to be held for a short period of time in the good faith judgment of the lawyer. This is a continuation of existing practices which permit the lawyer to determine whether to place client funds in non-interest-bearing trust accounts or to invest them at interest for the client. This proposed standard was articulated by the Minnesota Supreme Court in its opinion approving a mandatory program:

> We therefore choose to follow the approach of the Florida Supreme Court which concluded that the determination of whether or not a client's funds are 'nominal in amount' or 'to be held for a short period of time' should rest exclusively in the sound judgment of each attorney or law firm, and that no charge of ethical impropriety or other breach of professional conduct should attend an attorney's good faith exercise of judgment in that regard. See, Matter of Interest on Trust Accounts, 402 So.2d at 394 (Fla. 1981). We likewise emphasize...that the test must be the good faith judgment made by an attorney at the time the funds are received and deposited, and not as a result of hindsight. In re Minnesota Bar Ass'n, No. A-8 (slip opinion at 6)."

In so concluding, the Minnesota court rejected, as does our proposal, the provision of the Maryland IOLTA legislation which establishes $50.00 as the bench mark, separating trust funds which must be treated as IOLTA funds, while leaving the treatment

of funds that can be expected to generate more than $50.00 in interest to be sound judgment of the attorney. The Minnesota Supreme Court instead articulated three general criteria to be applied by the lawyer in exercising discretion in the treatment of interest on trust accounts: (a) The potential earnings; (b) the cost of establishing and administering the account, including the cost of the attorney's services; and (c) the capability of financial institutions to calculate and allocate interest to individual clients. We believe a similar approach preferable to the use of any specific, necessarily arbitrary sum, and the Code provision we submit for adoption so specifies those standards.

E. IOLTA and the Lawyers Ethical Obligation - The ABA Opinion

As noted earlier, the proposed amendment to DR 9-102 does not in any way change the ethical obligation of a lawyer to safeguard client funds and property. The only change is that IOLTA funds which are not capable of being invested at interest for clients would be invested at interest for public purposes.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility recently addressed several issues relating to IOLTA programs in Formal Opinion 348 (July 23, 1982). That opinion concluded that: (a) Lawyers may place client funds in interest-bearing accounts; (b) lawyers may not retain any part of the interest; (c) where interest can be earned for the client

the lawyer should consult the client and follow the client's instructions as to investing; and (d) lawyers may participate in programs in which client IOLTA funds (the interest on which cannot be allocated to individual clients) are invested at interest to support law-related public purposes.

While DR 9-102 does not create a specific obligation to invest client funds which are capable of producing interest in amounts large enough to be allocated to the client, basic principles of agency law require that the lawyer as fiduciary for the client so invest client funds since failure to do so would place the lawyer at risk of being found guilty of gross negligence. See, 2 A. Scott, The Law of Trusts, 180.3, 181 at 1457, 1463 (3d Ed. 1967 & Supp. 1981).

The Code provision proposed by the Alaska Bar Association meets the tests of the ABA opinion in that it does not change the lawyer's ethical and legal obligations to invest client funds at interest for the client where practicable.

F. The IOLTA Program Does Not Deprive Clients of Income

The basic premise underlying the IOLTA program is that lawyer's pooled trust accounts are made up of multiple deposits which are so small in amount or held for so short a period of time that it is not practicable to allocate earnings thereon to individual clients. Indeed, the trust accounts become capable of earning significant interest solely because of the pooling of

numerous deposits which would otherwise individually produce interest in insignificant amounts.

Once this premise is understood, the conclusion is inescapable that the client has no cognizable interest in the earnings which may be generated on the total funds in the pooled trust deposits. And, since there is no client interest in the earnings, it follows that the client is not being deprived of any income. Moreover, under traditional trust accounting principles, the trustee cannot be required to bear the expenses of the administration of a trust. The trustee, therefore, has the right to reimbursement for the costs of administering the trust. Consequently, the client owner of such small funds has what amounts to a negative expectation of income. Thus, there is no private property right that is lost under the IOLTA proposal.

The decision of the United States Supreme Court in Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155; 1010 S.Ct. 446; 66 L.Ed.2d 358 (1980) is not inconsistent. That decision was limited to the narrow circumstances presented and the rationale is not applicable to the IOLTA concept.

Beckwith involved a single deposit into an interpleader fund of $1,812,145.77 for approximately one year. Under no set of circumstances could such a deposit be considered to be either nominal or short term. Indeed, the fund earned interest during the deposit period of over $100,000. Under the provisions of both existing DR 9-102 and this proposed revision, a client fund

of this magnitude would have to be deposited at interest for the client.

The Beckwith case involved other important distinctions. The funds were required to be placed in an interpleader fund in order for a party to avail itself of statutory protections. This is not the case with IOLTA programs. No one is compelled to utilize a lawyer's trust account. Trust accounts are established for the convenience of attorneys and clients and access to the court is not in any way dependent upon the use of a trust account.

More importantly, the Beckwith case involved a double charging of fees, a fact that troubled the Supreme Court. See 101 S.Ct. at 452. Finally, the Beckwith case involved the taking of property for general governmental expenditures. The IOLTA program would use the income generated to directly support the public welfare, an important distinction.

IOLTA programs do not concern identifiable property interests and do not involve a taking: elements which must both be present to constitute a violation of the due process clause. While the sum deposited in an attorney trust account is private property, the interest earned thereon does not constitute a property interest because the sums involved cannot be allocated to an individual owner. As the Florida Supreme Court noted, it is impractical if not impossible to allocate interest to individual clients when the interest is earned on commingled accounts comprised of nominal or short term deposits. Consequently:

> The most relevant distinction, plainly, is the fact that no client is compelled to part with 'property' by reasons of a state directive, since the program creates income where there would have been none before, and the income thus created would never benefit the client under any set of circumstances. In re Interest on Trust Accounts, 402 So.2d 389 (Fla. 1981). See also, In re Minnesota Bar Ass'n, (slip opinion at 7, 8).

Moreover, no taking occurs.

> A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good. Penn Central Trans. Co. v. New York City, 438 U.S. 104, 124 (1970).

Finally, as has often been noted, even where there is a taking, "[I]n striking the appropriate due process balance the final factor to be assessed is the public interest." Matthews v. Eldridge, 424 U.S. 319 (1976). In Beckwith the Supreme Court emphasized that there was a total absence of any public purpose or police power justification for the governmental action. Beckwith, supra, at 452.

In striking contrast, the IOLTA program rests upon the well-established power of this Court to regulate the practice of law and its inherent powers to assure the effective administration of justice.

Additionally, the program is directly related to important societal objectives -- access to the justice system as recognized by the Code of Professional Responsibility and the Constitution

itself: United States Constitution, Amendment VI; Constitution of the State of Alaska, Article I, Section 11, Alaska Code of Professional Responsibility, Canon 8. Ethical Consideration 8-3.

In summary, there is no constitutional impediment to the implementation of an IOLTA program. Indeed, IOLTA represents a common sense ordering of priorities consistent with constitutional principles of fairness to the individual and benefit to the public. Under the program, interest will go to the client, if possible. Only in those instances when funds are too small or held for too short a period of time to generate interest to the client, will income be diverted to a public purpose.

G. Participation in IOLTA Should Be Voluntary

The Alaska Bar Association proposes that participation in IOLTA by lawyers or law firms be voluntary. The Alaska Bar Foundation has plans to conduct a broad-based recruitment program to inform all the attorneys in the State of Alaska of the advantages of this program and encourage their support. The Bar Association has chosen to propose a voluntary program because the Alaska Bar has a strong tradition of volunteerism which has been most recently demonstrated by strong participation in the voluntary Alaska Pro-Bono Project. We believe that this tradition will remain in the participation in IOLTA.

The Alaska Bar Association has also opted to propose a voluntary program because, even though the savings in start-up costs

in a mandatory program is undeniable, the Association believes that this consideration is outweighed by the need to obtain broad support for the program. It is likely that a deeper commitment and understanding of the program can be prompted through a voluntary program actively solicited. Mandatory participation might produce unnecessary resentment and reluctance to promote the program which could prove fatal to its ultimate success. Additionally, a voluntary program is likely to eliminate the force of constitutional objections to the program itself. Therefore, the Bar Association recommends that the program be voluntary in nature.

H. IOLTA Funds Must Be Used for Charitable Purposes

Income earned on pooled trust accounts as the IOLTA program is, under general principles of tax law, attributable to the recipient organization. In order to meet the tests of the ABA Ethics Opinion and to assure that the income is not taxable, the purposes for which IOLTA funds are used must meet the criteria for tax exemption under the Internal Revenue Code.

In addition, under Federal Reserve Board rulings (12 C.F.R. §217.157), only a non-profit corporation organized under 26 U.S.C. §§501(c)(3)-(13) or (19) is eligible to utilize a NOW account. Corporations organized for profit are not. Subsequent interpretations by the Federal Reserve Board have extended this ruling to lawyers' professiona' service corporations that are

participating in IOLTA programs where the use to which the funds are put meets the tax-exemption requirements of the Internal Revenue Code. The purpose proposed by the Alaska Bar Association meets the charitable purpose test under IRS rulings. The Alaska Bar Foundation currently holds a 501(c)(3) exemption.

## III. ROLE OF ALASKA BAR FOUNDATION

The role of the Alaska Bar Foundation will be to handle the income produced by IOLTA funds set up by lawyers and law firms across the state. The Foundation will also prepare all the necessary forms and explanatory pamphlets to the lawyers and law firms so that the process of changing current non-interest-bearing trust accounts to IOLTA-related NOW accounts will be a simple one for participating lawyers and law firms. The foundation will also set up an efficient and equitable mechanism for distributing any proceeds from the IOLTA program to the legal services programs.

## IV. CONCLUSION

The proposal to create an IOLTA program to enhance the availability of legal services to the poor is both constitutionally and ethically sound. Indeed, it is fully consistent with the legal profession's obligation to assure that adequate representation is available for all.

The issue is simple: Will lawyers' trust accounts continue to be maintained in non-interest-bearing checking accounts so that the depositories, by default, are the only entities to derive financial benefits, or will trust funds of nominal amounts or held for short periods of time be placed in interest-bearing accounts, the income from which is made available to further the public purpose of increasing access to the justice system for the poor?

Respectfully submitted,

ALASKA BAR ASSOCIATION

By: Harold M. Brown
Harold M. Brown, President

ALASKA BAR FOUNDATION

By: Mary K. Hughes
Mary K. Hughes, President

DR 9-102. Preserving Identity of Funds and Property of a Client

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable insured depository accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay service charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

For purposes of this Rule, "insured depository accounts" shall mean government insured accounts at a regulated financial institution on which withdrawals or transfers can be made on demand, subject only to any notice period which the institution is required to reserve by law or regulation.

(B) A lawyer shall

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(C) A lawyer or law firm may elect to establish and maintain an interest bearing insured depository account into which may be deposited funds of clients which are nominal in amount or are expected to be held for a short period of time, but only in compliance with the following provisions:

(1) No earnings from such account shall be made available to the lawyer or law firm and the lawyer or law firm shall have no right or claim to such earnings.

(2) Only funds of clients which are nominal in amount or are expected to be held for a short period of time may be deposited in such account.

(3) Funds deposited in such account must be available for withdrawal or transfer on demand, subject only to any notice period which the institution is required to reserve by law or regulation.

(4) The depository institution shall be directed by the lawyer or law firm establishing such account:

(a) To remit earnings from such account, net of any service charges or fees, as computed in accordance with the institution's standard accounting practice to the Alaska Bar Foundation, Inc., or such other IRS approved IOLTA fund approved by the Alaska Bar Association Board of Governors at least quarter-annually; and

(b) To transmit with each remittance of earnings a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to such lawyer or law firm.

(5) The lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstancaes required further action with respect to the funds of any client.

EC 907. A lawyer should exercise good faith judgment in determining initially whether funds of a client are of such a nominal amount or are expected to be held by the lawyer for such a short period of time that the funds should not be placed in an interest bearing insured depository account for the benefit of the client. In this determination, the lawyer should consider all relevant factors, including without limitation, the cost of establishing and maintaining the account, service charges, accounting fees and tax reporting procedures, the nature of the transaction involved and the likelihood of delay. A determination not to place funds in an account of the benefit of the client should be reviewed at reasonable intervals if the funds remain on hand to determine if changed circumstances require further action with respect to such funds.



# I·O·L·T·A UPDATE

National IOLTA (Interest on Lawyers' Trust Accounts) Clearinghouse

Volume 2, Number 4 Spring 1985


## $13 MILLION TO BE DISBURSED BY JULY

During the next quarter IOLTA programs in nine states will be disbursing over $13 million to organizations that provide legal services to indigents. The D.C. Court of Appeal's February 22 Order creating a voluntary opt-out program brings the number of jurisdictions with approved programs to thirty-six (36). Twenty (20) of these are operational and collecting interest income — the latest being the voluntary IOLA Fund of the State of New York, Rhode Island's opt-out program, and the state of Washington's mandatory program. Several states will start collecting interest income within the next few months.

### Implementation Overview

Many of the older IOLTA programs are operating on a July 1 - June 30 fiscal year and have made policy decisions to disburse funds annually on July 1. The State Bar of California's Legal Services Trust Fund Commission decided in mid-April that they will be able to grant $10.8 million to eligible legal services organizations on that date; they have received 120 applications for funds. Minnesota's Lawyer Trust Account Board (LTAB) will make decisions on its third round of grants in May, also for distribution on July 1. They anticipate granting $1.2 million, the vast majority of which will go to providing legal service to the poor. LTAB received 43 grant applications for this cycle, as compared with 29 last year.

The Maryland Legal Services Corporation will grant $600,000 in IOLTA funds and $500,000 from an annual state appropriation to four legal services providers at the end of June. Although the Delaware IOLTA program has not yet decided exactly how much money to disburse, they are definitely planning to make a second round of grants for the fiscal year beginning July 1. Colorado's Lawyer Trust Account Foundation (COLTAF), the only IOLTA program to disburse grants semiannually, will allocate $80,000 to the state's five federally-funded programs at the end of June.

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### California Supreme Court Denies Petition - Florida on Fast Track

The California Supreme Court, on May 2, 1985, denied the plaintiffs' Petition for Hearing in **Carroll v. State Bar of California,** 209 Cal. Rptr. 740 (Cal. App. 4 Dist. 1984). Whether plaintiffs will seek cert to the U.S. Supreme Court is unknown at this time.

Florida's federal litigation has been put on a fast track. In mid-February, Chief Judge Gobold of the Eleventh Circuit Court of Appeals assigned **Glaeser, et. al. v. The Florida Bar et. al.** (84-1345-Civ-T-13) to Senior Judge Seybourn H. Lynne, U.S. District Court for the Northern District of Alabama.

On March 1, 1985, Judge Lynne decided that the class certification issues could wait until he had first determined the constitutionality of IOLTA. He directed the parties to stipulate to facts necessary for a decision on the merits, suspended all discovery, and stated that no motions other than for partial summary judgment would be permitted. The Judge also

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## OVERVIEW

Two programs will be making their first disbursements within the next few months. Arizona's mandatory program, which has collected $315,000 in its first five months of operation, intends to primarily fund local bar association pro bono efforts; the Idaho Law Foundation will distribute $41,588 to help support administration of justice projects, law-related education programs and the statewide legal aid program.

Other IOLTA programs plan to wait until the fall before disbursing funds. The Virginia Law Foundation will probably wait until September to do its second grants distribution, although they anticipate making funding decisions at their June annual meeting. Utah's opt-out program, the North Carolina State Bar's voluntary program, and the state of Washington's mandatory program also anticipate making fall disbursements. The Florida Bar Foundation will send out solicitations in May for their fall 85'-86' grants cycle, but is making no assurances of actual grants disbursement because of the pending litigation.

The New Hampshire and Illinois IOLTA programs, which distribute funds in December for the next calendar year, have rejuvenated their recruitment efforts to try and bolster the number of attorneys participating in their voluntary programs. IOLTA programs in Kansas, Oklahoma, South Dakota, and Vermont hope to be able to make grants by the end of the year, but right now they are concentrating on signing up law firms and financial institutions.

The voluntary IOLTA programs that started collecting interest income this winter are encouraged by the positive responses from attorneys in their states. New York's IOLA Fund kicked off their attorney recruitment campaign at the end of January and already has more than 3,000 of the state's estimated 65,000 attorneys in private practice participating in their IOLA program. The Rhode Island Bar Foundation's opt-out program sent out their IOLTA information and forms in late January, with an April 1 deadline for opting-out of the program. Approximately 600 of the state's 2,000+ attorneys have

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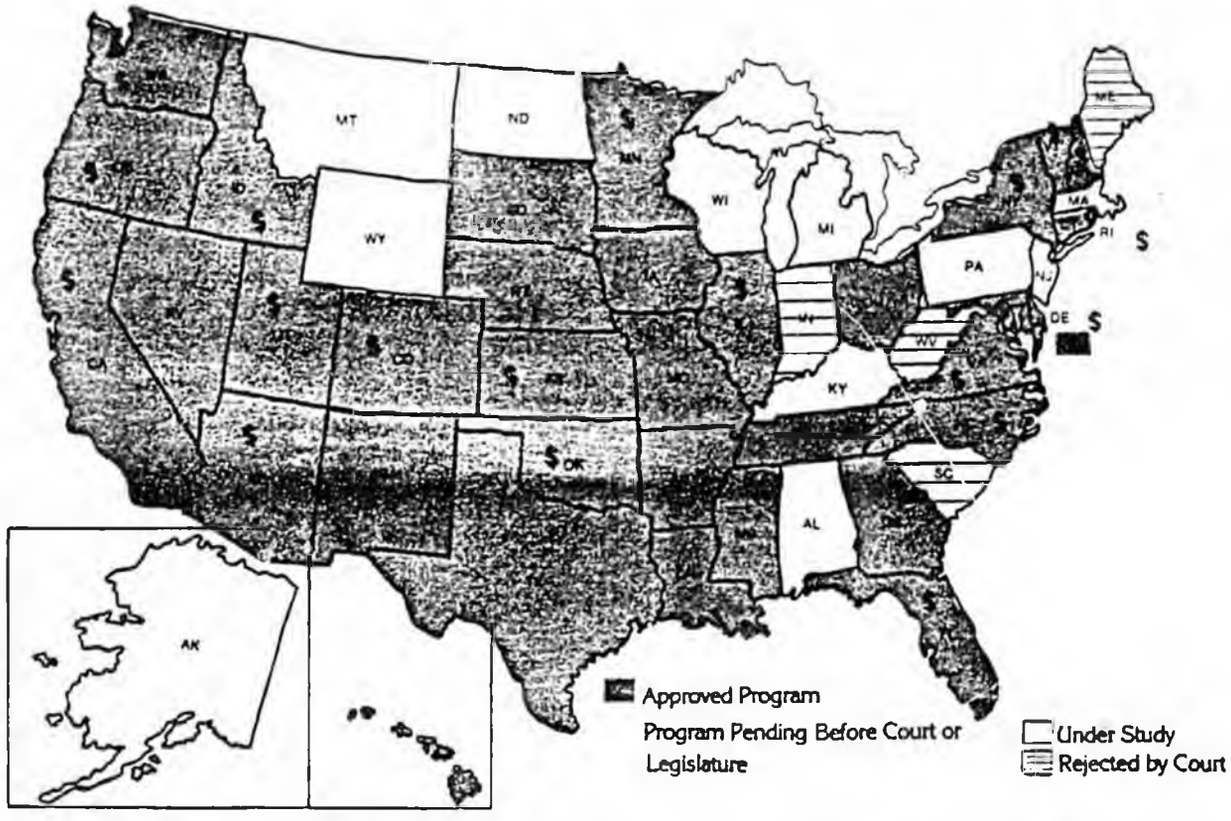


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notified the Supreme Court that they are ineligible or do not wish to participate in the program. It appears that most of those who have opted-out are either not in private practice or have trust accounts with very low average monthly balances.

States that have approved IOLTA programs but are not yet collecting interest income are undertaking the necessary preliminary steps for implementation. The New Mexico, Missouri, Connecticut, and Hawaii programs are in the process of hiring executive directors, and anticipate becoming operational in the fall. Also gearing up for fall implementation are programs in Arkansas, the District of Columbia, Georgia, Mississippi, Nebraska, and Texas. IOLTA leaders in all these states have been explaining IOLTA at local bar association meetings and have been meeting with financial institutions to ensure their cooperation.

Ohio's mandatory program, which becomes effective July 1, reports being on schedule, and anticipates sending out final brochures and recruitment forms in early June.

## Developmental Overview

Petitions or legislation to create IOLTA programs are pending in seven states. The South Carolina Supreme Court, which rejected the State Bar's initial voluntary IOLTA proposal two years ago, held a public hearing May 6 on a revised opt-out petition, resubmitted by the South Carolina Bar in March. State Supreme Court hearings are scheduled later in May on the Kentucky Bar Association's voluntary IOLTA program petition and on the State Bar of Wisconsin's mandatory proposal. Petitions which would create voluntary IOLTA programs are pending before courts in Massachusetts and Alaska; a mandatory petition is pending before Michigan's court.

Despite the best efforts of many Pennsylvania attorneys, their state still does not have an approved IOLTA program. A petition for a voluntary IOLTA program has been pending before the Pennsylvania Supreme Court since early 1984; a Pennsylvania Senate bill, which would have also created a voluntary program, was tabled last November and sent back to the Judiciary Committee. Senator Jeanette F. Reibman, the primary sponsor of the 1984 bill,

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## What Others Are Saying About IOLTA

(Editor's Note: Newspapers in most states have written favorable editorial and/or articles about IOLTA programs. The editorial below appeared in the January 30, 1985 edition of Baltimore's **The Evening Sun.**)

## IOLTA's Good Sense

Legal settlements keep large amounts of cash perpetually flowing through the pipelines of banking, but one of the most innovative uses for these funds is now under attack.

There is a grumpy element in the nation which holds an obsessive loathing for effective legal aid for poor people, and that group is now assailing the practice of paying for legal services with the interest in special escrow accounts that lawyers set up to handle a variety of transactions in real estate and other fields. Legal aid opponents would foreclose use of those funds, which belong to no one while a legal transaction is still in flux.

Tapping these funds through IOLTA - an acronym for "interest on lawyers' trust accounts" - is a creative means devised by bar associations to replace federal cutbacks in legal services programs. In many respects it is a practical private-sector response which the Reagan administration ought to welcome.

In Maryland, the fourth state to adopt IOLTA, $700,000 has been raised since the program began in 1982. While that does not equal the $1.2 million lost from cutbacks, the fund is growing: last year, it dispensed $307,000; this year $500,000. IOLTA funds underwrite 15 percent of legal services in Maryland.

But the need is far greater. Some critics blithely suggest that lawyers ought to donate their time and expertise to worthy causes more freely, but that misses the point. Like many doctors, many lawyers don't always have an opportunity to do as much pro bono work as they would like. Inevitably, the poor and handicapped suffer.

Thanks to early and effective leadership, Maryland's program boasts the highest sign-up percentage of voluntary state programs in the nation. But substantial funds - and many sorely needed legal services - are unavailable due to the failure of some 2,900 lawyers to participate. Some think the bulk of current funds is going to the city; others fear they may offend the banks, which hitherto profited from the use of these idle funds.

But neither reason is valid. Banks agreed to cooperate in this program and the funds are spread throughout the state. Taking part in IOLTA is a perfect mechanism for lawyers who cannot make a commitment of professional services in any other way. $

(continued from page 3)

### Overview

and 15 co-sponsors reintroduced similar legislation earlier this year. The Senate passed the bill (39-9) in mid-April, and it has been sent to the Pennsylvania House of Representatives for consideration. The proposed legislation would create a new 501(c) (3) organization entitled the "Lawyer Trust Account Board" to establish and administer the IOLTA program.

The remaining states with the exception of Wyoming, which has notified the Clearinghouse that the State Bar's Board of Governors has decided not to go forward with an IOLTA program, are developing IOLTA proposals, and most hope to file or resubmit petitions to their courts for voluntary programs before the end of the year.

The State Bar of Montana's Board of Governors approved an opt-out IOLTA proposal in March; their House of Delegates will be asked to approve the plan at their annual meeting in June. The Alabama State Bar's IOLTA Committee is continuing to develop a voluntary IOLTA program, and the President-elect of The Florida Bar has been invited to explain IOLTA to Alabama attorneys at their July annual meeting. In North Dakota, the Rules Committee of the Supreme Court is reviewing information about voluntary, opt-out and mandatory programs. A special Supreme Court Committee earlier this year submitted a preliminary report to the Court on the feasibility of an IOLTA program for New Jersey. An Advisory Committee on Court-Bar Association Relations of the Maine Supreme Judicial Court is presently reviewing a revised state bar association proposal for a voluntary IOLTA program. Although state courts in West Virginia and Indiana initially rejected bar association proposals for voluntary IOLTA programs, bar leaders are hopeful that eventually they will be able to garner approval for their IOLTA programs. $

## Subaccounting and IOLTA

The availability of subaccounting by banks or law firms for aggregated attorney trust accounts is a subject about which the National IOLTA Clearinghouse is often queried. Participation in IOLTA does not preclude subaccounting. Arizona's Court Order specifically authorizes banks and law firms to engage in subaccounting; others do so by implication.

Subaccounting for nominal or short term deposits, however, remains administratively impracticable and uneconomical. Additionally, NOW accounts are simply not available under federal banking law for many clients. To our knowledge, no commercial bank or savings and loan association — in states with or without IOLTA programs — presently offers subaccounting for use in conjunction with nominal or short term attorney trust deposits.

The Maine State Bar Association last summer asked Professor Robert F. Seibel, of the University of Maine Law School, to investigate the availability of financial institution subaccounting nationwide. He learned that only two banks offer such services, one in Brockton, Massachusetts and the other in Racine, Wisconsin. The President of the Racine bank clearly indicated to the Chairman of the State Bar of Wisconsin's IOLTA Committee that the bank's program was intended for larger, long-term deposits, which should (and can) be placed in a separate interest-bearing account for the client. A Vice President of the Brockton Savings Bank stated that it was not cost-effective for the bank to have a large number of small deposits and that, accordingly, the bank was engaging in selective marketing of its subaccounting services.

Professor Seibel also noted, in an affidavit prepared for the Maine Supreme Judicial Court's eventual reconsideration of an IOLTA program, that several mutual fund management companies have subaccounting available, but that the money is placed in uninsured accounts and is subject to a variety of restrictions on withdrawals, including minimum withdrawal requirements of, in one case, $250, and in another case, $500.

The reason bank subaccounting is generally unavailable is not primarily technological, although existing software programs would have to be rewritten, undoubtedly at substantial cost. Instead, it appears the primary reason is that financial institutions would derive no particular economic or competitive advantage from making such services available. For example, in Arizona, which has a mandatory IOLTA program, the state's second largest bank, First Interstate Bank of Arizona, N.A., advised all attorneys that it would make IOLTA subaccounting available only if a trust account's minimum balance totaled at least $5 million.

Nothing prevents a law firm from engaging in subaccounting when it is economically feasible, although Professor Seibel's research found that no off-the-shelf software program presently available would permit law firms to engage in subaccounting. No program has been called to the attention of the Clearinghouse from any other source. Even if there were such a program available or a law firm engaged one to be written, substantial costs remain which make subaccounting uneconomical.

There are some serious technical problems with law firm subaccounting that usually go unnoticed when the topic is raised. The basic problem is that a financial institution, depending on its policies and procedures, will not always begin to credit interest on a deposit on the same date the depositor will record the deposit on its books. Even worse, because the attorney cannot know as a matter of course when a withdrawal will clear, the date on which interest should no longer be credited to the deposit will be difficult to determine. Precise subaccounting for interest earned will only be possible if the attorney's computer and the bank's computer are linked, or if the law firm engages in substantial — and costly — reconciliations.

Finally, in many cases, even with subaccounting, the actual interest earned will be far less than the transaction costs involved. For example, in a typical transaction, an attorney receives $50.00 as a cost deposit. It is expended at the end of thirty days, having earned 66¢. No matter how sophisticated the attorney's computer, it will cost far more than 66¢ to process the client's refund.

The result of subaccounting, at best, would be to reduce the already low $50 benchmark used by Maryland's IOLTA program to guide lawyers in determining whether accounts should be put in an IOLTA account or invested separately for the benefit of the client. $

## Does the Bank or Thrift Make a Difference?

Attorneys with trust accounts can increase IOLTA income by selectively choosing their financial institutions. The more IOLTA participants utilize thrifts for their trust accounts, the more income IOLTA programs will realize. These are the basic conclusions of an unscientific survery recently conducted by the Clearinghouse.

We surveyed the terms and conditions under which commercial banks and savings and loan associations offer NOW and SUPER NOW accounts by visiting 11 banks and 7 thrifts with offices in Miami. Our focus was on opening and minimum balance requirements, fees and charges, rates of return for Super NOWs, and the consequences of a low account balance. There were significant differences from institution to institution and between banks and thrifts.

The maximum interest rate payable on a NOW account is 5¼%. No institution paid less. All thrifts compounded interest daily. Several banks, however, only compounded interest monthly. Moreover, three of the banks paid no interest if the average monthly balance fell below $1,500. Most institutions, including all thrifts, paid interest from day of deposit to day of withdrawal. Some banks, however, only paid interest on collected funds.

All thrifts, but not all banks, offered Super NOW acccounts. The return ranged from a low of 5.38% to a high of 7.93%. In general, thrifts were higher, averaging 6.97%, while banks averaged 6.54%. Yet, the lowest rate offered was by a thrift.

Only one institution, a thrift, had dropped its opening balance requirement for Super NOW's to the regulatory minimum of $1,000. With the exception of two banks, one of which was at $6,000, and the other at $5,000, all other institutions offering Super NOWs required a $2,500 minimum opening balance.

For NOW accounts, most banks imposed no service charges if the minimum daily balance exceeded $1,500. Three waived fees at $1,000, although two only did so for collected funds. One bank imposed fees unless the average monthly balance exceeded $2,500. Thrifts tended to impose much lower waiver limits — in one case as low as a $100 minimum daily balance — although the largest thrift in the area imposed a $1,000 minimum daily balance requirement.

For Super NOWs, no thrift imposed a service charge if the minimum daily balance equaled or exceeded the opening balance requirement. Banks were another story. In addition to the two banks with high opening balances, which only waived fees if the minimum monthly balance equaled or exceeded their opening balance requirement, a third bank imposed fees unless the minimum daily balance exceeded $5,000 and a fourth bank only waived fees if the average monthly balance exceeded $5,000. Three banks charged fees no matter the size of the account. The fees imposed were substantial. One charged $8.50 per month plus 50¢ per check. Another charged $3.00 per month plus 35¢ per check. A third, in addition to charging a monthly fee of $5.00, charged $1.00 per check in excess of six each month. The bank with the $6,000 opening and minimum balance requirement charged $1.00 per check for all checks written in excess of 20 per month.

Most institutions paid Super NOW interest rates on the entire account balance. Several banks, however, paid only 5¼% on the first $2,500. Most of the thrifts, but few of the banks, compounded interest on a daily basis.

The consequences to the deposit holder, and thus to an IOLTA program, when the minimum daily balance fell below the institution's requirement for a Super NOW account varied drastically. All thrifts, save one, simply reverted the Super NOW to a NOW account for that period of time during which the minimum

### Clearinghouse to Operate into 1986

The Clearinghouse will continue assisting states with IOLTA development and implementation through early 1986. In response to our request for reconsideration of additional funding, the Legal Services Corporation's Board of Directors in February approved an additional one-time grant through December 1985. The Ford and Rockefeller Foundations, as part of their continuing effort to support IOLTA program growth nationwide, had previously agreed to fund what constitutes the needed balance.

balance was not maintained. The interest paid was reduced to 5¼%. At the same time, NOW account minimum balance and service charge rules were applied. On the other hand, only two of the banks provided for automatic reversion. The rest all treated NOW and Super NOW accounts as separate and distinct entities. Therefore, when the minimum daily balance fell below the mandated amount, they imposed a monthly service charge -- which ran as high as $12.00, plus a per item charge which ran as high as $1.00. In addition, three of the banks paid no interest if the account fell below the minimum at any time during the month. Finally, one bank only paid interest on 88% of the collected funds in the account, its employees claiming that as a matter of law the bank was not permitted to pay interest on that percentage of the account which represented reserves as set by the Federal Reserve Board.

Before drawing any conclusions, a word of caution is in order. It is possible, although we think unlikely, that the differences we found between institutions of the same type as well as between banks and thrifts is not reflective of the national situation. Published statistics do show that South Florida financial institutions, on average, pay lower rates of return than financial institutions in many other urban areas and pay rates of return lower than the national average. There may be other significant differences between financial institutions in South Florida and elsewhere. However, each IOLTA program can easily take its own survey.

One aside. A by-product of our survey shows that obtaining concrete information from financial institutions may be difficult; at least this was certainly true of the published brochures from the banks and thrifts in South Florida. Additionally, many of the financial institution employees that deal with the public were fountains of misinformation. For example, we were told several times that non-profit corporations could not open NOW accounts.

IOLTA programs will increase their income to the extent that participating lawyers can be convinced to open or transfer their client trust accounts to thrifts. That is particularly true for smaller accounts, since less money is required to open or maintain a Super NOW account. Fees are waived at lower levels. Automatic reversions mean that costly monthly fees are avoided. This is a particularly important factor for smaller or fluctuating accounts.

While there was little variation between thrifts, there was great variation among banks. Lawyers can be encouraged to shop selectively. Some banks offered NOW and Super NOW acounts on terms almost as favorable as thrifts. Most did not.

It may be unrealistic to suggest that participating lawyers switch financial institutions. It may not be unrealistic to suggest that compilation and publication of the differences between institutions will fire the competitive juices for the benefit of all. $

## British Columbia Seeks More IOLTA Income

The Law Society of British Columbia, as the outgrowth of a plan to better ensure the security of client trust funds, is actively considering a proposal which it expects will substantially increase IOLTA income.

The starting point of the BC plan is the recognition that the relationship between attorney and bank, as in the United States, is one of debtor and creditor. Internally, however, a bank's handling of attorney trust accounts is governed by banking law and regulations, not by the Code of Professional Responsibility. The BC plan proposes using a mirror account (a consolidated trust account), into which all attorney trust account funds maintained in a particular financial institution are transferred at the close of business each day. These funds would be under the Law Society's control and subject to investment on the Law Society's terms, not the financial institution's terms. Half the funds would be invested directly into government guaranteed obligations, such as Treasury Bills. The other half would be kept liquid, remaining in an interest-bearing checking account. The Law Society estimates that had this scheme been available in 1983 when IOLTA income for BC totalled $3.751 million (Canadian) the income generated would have exceeded $11 million.

Although there are differences between the Canadian and American banking and legal systems, we do not think these would pose an unsurmountable barrier to implementation of a similar plan in the United States. A copy of the BC pooled income plan, entitled "Ensuring the Security of Trust Funds" is available upon request from the Clearinghouse. $

# IOLTA INFO

## Tax

**Federal legislation reintroduced.** In early 1983, Congressman Robert Garcia (D-NY) introduced a bill, applicable only to §501(c)(3) IOLTA organizations, which would place a tax (in an unspecified percentage) on all IOLTA funds not granted for the purpose of providing legal services to indigents. The bill was referred to the House Ways and Means Committee and, although hearings were requested, none were ever held. On February 26, 1985, the legislation (H.R. 1273) was reintroduced by Congressman Garcia and 17 co-sponsors. The new bill specifies a 100% tax, but is otherwise identical to the former proposed legislation. It has again been referred to the Ways and Means Committee. No action has been taken, nor is any anticipated in the near future, according to Congressman Garcia's office.

## Constitutional

**Law review article on constitutional issues.** Clearinghouse attorney Peter Siegel's law review article on the constitutionality of IOLTA, which concludes that IOLTA programs for nominal or short-term attorney trust fund deposits do not violate the Fifth Amendment's taking clause is being published in the **University of Florida Law Review** (Vol. 36, No. 4). It will be available in June and the Clearinghouse will send copies to all IOLTA programs.

## Fundraising

**The Ford Foundation has modest grants available to help with IOLTA state implementation efforts.** The Ford Foundation has set aside $70,000 through September 30, 1985 to provide small IOLTA implementation grants to states "as part of its concern with supporting the development of local sources of funding for legal services that can supplement existing federal funds and be free from restrictions." Because of its limited resources, the Foundation's program is supporting IOLTA program implementation in states which meet the following criteria: (1) those states which have large numbers of lawyers and large numbers of financial transactions which can therefore generate substantial revenues for legal services; or (2) those states which have few lawyers, large numbers of low income persons, and little in the way of resources for legal services. Interested IOLTA programs should write a preliminary two-page proposal letter to: Amy Vance, Esquire, Program Officer, Human Rights and Governance Program Division, The Ford Foundation, 320 East 43rd Street, New York, NY 10017.

**Other private sector resources being tapped to assist with IOLTA start-up costs.** IOLTA programs in several states, including D.C., Hawaii, Illinois, Maryland, New York, and Rhode Island have requested and received one-time private foundation grants ranging from $5,000 to $25,000 to help with program implementation ... The New Mexico Bar Foundation's IOLTA program is being housed free of charge in the law offices of the State Bar of New Mexico's immediate Past President, Robert Tinin, Jr. The State Bar is printing notices in their monthly bar publication requesting donations of office furniture, equipment and supplies, and reports that several contributions have already been received ... The NY IOLA Fund convinced Lawyers Co-operative Publishing Company in Rochester to donate typesetting and printing of the first 100,000 Q and A brochures and sign-up forms; a cutline at the bottom of the educational materials reads: "Brochure produced compliments of Lawyers Co-operative Publishing Company." If your IOLTA program needs money or in-kind resources to help get started, you may also want to consider approaching local foundations, printers and businesses who are likely to be supportive of your efforts to generate substantial funding for programs benefiting the public interest.

## Banking

**Program request for financial services proposals.** The Legal Foundation of Washington has developed a request for financial services proposal (RFP) which may be helpful to other states. The RFP outlines the background of the IOLTA program and Foundation, its need for financial services and the criteria for evaluating proposals. The Foundation's needs are for assisting in the collection of IOLTA income from attorneys' banks or credit unions, reporting and

(continued on page 9)

analyzing collections, and investing the Foundation's funds. Copies of the RFP are available from the Clearinghouse.

**Oklahoma Bar Foundation places monthly ads in state bankers' association magazine.** Oklahoma's IOLTA program has, for the past several months, bought full-page ads for placement opposite the "Legal Briefs" page in the **Oklahoma Banker.** The first month a letter to banking association members explaining the IOLTA program was published; ads in consecutive issues included a list of excerpted quotes from IRS and federal administrative agency approvals of the program, a thank you notice to cooperating financial institutions in the state, and a list of all banks and S&Ls that had agreed to participate in the program. The cost for each ad is under $400 (typesetting, layout, space rate, and special placement). If you are interested in exploring the possibility of similar advertising in your state's banking association magazine, copies of the Oklahoma ads are available from the Clearinghouse.

**IOLA Fund of the State of New York publishes "Guidelines for Financial Institutions."** NY's IOLA program, which earlier had prepared an excellent general informational package for the state's banks and S&Ls, in April issued guidelines for the internal handling of accounts by financial institutions. They were prepared in consultation with representatives from the New York State Bankers' Association and the New York League of Savings Institutions and are available from the Clearinghouse.

**Rhode Island financial institutions waive IOLTA service charges.** Commercial banks and savings & loans throughout the state agreed, after several meetings with Rhode Island IOLTA program officials, to forgo any service charges on commingled trust accounts of attorneys participating in the Rhode Island Bar Foundation's opt-out program.

**Ohio IOLTA program schedules regional banking meetings.** Ohio program officials, along with the State's Treasurer and Comptroller, are in the process of holding four regional meetings to explain IOLTA to financial institution representatives; good attendance and productive results have been reported on the meetings held to date.

## Implementation

**Voluntary IOLTA programs accelerate recruitment efforts.** The New Hampshire Bar Foundation, which formed a new 20-member Blue Ribbon Recruitment Committee last fall as part of an intensive new effort to increase enrollment from 23% to 50%, has begun the second prong of their campaign by naming IOLTA Chairpersons in each county who will personally contact each firm that has not already signed up. Bar Foundation staff members have carefully checked the state's attorney registration list and revised their tracking system to remove any lawyers licensed to practice in the state who are retired, out-of-state, with government offices or corporations, or law professors ... New York's IOLA Fund is developing local recruitment packets, similar to those prepared in early 1983 by the Florida Bar Foundation, for use by regional committees throughout the state (copies available from the Clearinghouse) ... The Kansas Bar Foundation is applying the Maryland Legal Services Corporation's two-letter-follow-up-phone-call recruitment model to their current drive. The President of the Kansas Bar Association first sent a letter to the state's 6,000 attorneys encouraging them to join the new IOLTA program, and this was followed up by letters from key bar leaders to their local legal brethern in 12 regions throughout the state. Senior partners of firms in each region have been targeted to receive follow-up telephone calls. While the Kansas campaign is not yet completed, bar foundation officials are encouraged with the results to date ... The North Carolina State Bar's 1985 annual membership fee notice mailing included a letter about their IOLTA program and sign-up forms. North Carolina also has a voluntary bar association, and the chairman of its Young Lawyers Division sent a letter at about the same time encouraging attorneys to join the program. The result of the two mailings was the biggest enrollment for any month since the program became operational in April 1984. The IOLTA program's director believes that lawyers had become aware of the program through bar and media articles and that the mailings provided the needed impetus to convince them to join the program ... The Colorado Lawyer Trust Account Foundation, with some advice from a marketing firm, has

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# IOLTA INFO

revised and updated their educational IOLTA materials. Over the next several months, COLTAF intends to do targeted local mailings, to be followed up with keynote speeches on IOLTA during regularly scheduled bar association meetings ... The new Chief Justice of the Oklahoma Supreme Court has sent out a letter to all attorneys in the state who have not enrolled in the state's IOLTA program; the Oklahoma Bar Foundation is considering the possibility of hiring a professional marketing firm to further assist them with their recruitment in the fall ... The Oregon Law Foundation, which increased enrollment from 25% to 33% as a result of a rejuvenated recruitment drive during the winter months, is now trying to decide whether a special campaign directed at solo practioners in the state would be cost-effective ... South Dakota's IOLTA program is undertaking a one-on-one attorney enrollment campaign during the spring months ... The Vermont Bar Foundation has set up a new statewide implementation committee to assist with their recruitment efforts.

**Program administration.** Internal management and financial systems, with a particular emphasis on computerization, will be a primary agenda topic during the July 6th IOLTA Program Directors' Meeting ... IOLTA programs not using outside data processing services to handle their record keeping and financial institution reports have either bought, or are considering buying IBM hardware. The Minnesota Lawyer Trust Account Board and the Lawyers Trust Fund of Illinois have bought IBM Personal Computers; IOLTA programs in Maryland, Oklahoma and the state of Washington have purchased IBM PC AT models, and the Ohio and New York programs have IBM PC XT hardware on order. All are currently investigating the available software packages to determine which can most easily be adapted to their needs. Two IOLTA programs housed in their state bar associations — the Kansas Bar Foundation and the Utah Bar Foundation — are utilizing bar association IBM 36 hardware, and have had compatible software programs designed to track necessary IOLTA information.

**Conflict of interest policies established.** IOLTA program boards of directors in Florida, Illinois and New York have established formal conflict of interest policies regarding grantmaking decisions. Copies are available from the Clearinghouse.

**Videotapes explaining IOLTA available for use in other states.** The State Bar of Texas has updated an 18-minute Q&A videotape made in 1983 with Arthur England and Randy Berg, and the State Bar of Wisconsin recently produced a similar 13-minute videotape with the Chairman of the IOLTA Committee answering questions about their proposed program. It has been sent out to local bar associations for their use in educating attorneys about IOLTA. VHS copies of both tapes can be borrowed from the Clearinghouse for limited amounts of time.

### Mark Your Calendar

IOLTA meetings, followed by a cash bar and dinner, have been scheduled during the American Bar Association's Annual Meeting in Washington, D.C. on Saturday, July 6, 1985. IOLTA Program Executive Directors will meet from 9 a.m. to Noon in the Shoreham Hotel's Blue Room (Level II). The joint meeting of the Clearinghouse's Advisory Committee and ABA Task Force on IOLTA will take place in the same room from 2:00 to 5:00 p.m.

A cash bar reception, co-sponsored by the Clearinghouse, the ABA Task Force and the National Conference of Bar Foundations will be held from 6:30 to 7:30 p.m. at the Sheraton Washington Hotel, in the Nathan Hale Room (Wardman Tower). Dinner ($25.00 per person) will follow in the adjoining Ethan Allen Room. All persons interested in IOLTA programs are cordially invited to attend either or both of the meetings, as well as the reception and dinner. Please let the Clearinghouse know by May 31 if you would like to attend the dinner.

## STATUS OF OPERATIONAL IOLTA PROGRAMS[1]
## (as of April 1, 1985)

| Jurisdiction/ Implementation Date | Type Program/ Eligible Attorney Participation | Interest Income Received[2] | Amount Distributed for Legal Services to Poor[2] |
|---|---|---|---|
| FLORIDA<br>September 1, 1981 | Voluntary<br>4,035 (23%) | $6,605,181 | $3,752,800 |
| NEW HAMPSHIRE<br>January 1, 1983 | Voluntary<br>591 (30%) | $277,157 | $281,437<br>(quarterly payments) |
| CALIFORNIA<br>March 1, 1983 | Mandatory<br>49,000+ | $15,115,497 | $7,200,000 |
| MARYLAND<br>March 25, 1983 | Voluntary<br>2,330 (44.8%) | $985,851 | $306,500 |
| COLORADO<br>April 1, 1983 | Voluntary<br>1,600 (19%) | $269,435 | $188,545 |
| DELAWARE<br>May 26, 1983 | Voluntary (Opt-Out)<br>500+ (67%) | $532,842 | $179,000 |
| MINNESOTA<br>July 1, 1983 | Mandatory<br>12,000+ | $2,115,000 | $918,500 |
| OREGON<br>November 1, 1983 | Voluntary<br>1,655 (33%) | $255,845 | $100,000 |
| VIRGINIA<br>November 1, 1983 | Voluntary<br>1,560 (15%) | $495,000 | $132,000 |
| ILLINOIS<br>December 7, 1983 | Voluntary<br>4,200 (21%) | $361,080 | $100,000 |
| IDAHO<br>January 1, 1984 | Voluntary<br>430 (27%) | $54,000 | |
| OKLAHOMA<br>March 15, 1984 | Voluntary<br>542 (7%0 | $69,000 | |
| NORTH CAROLINA<br>June 23, 1983 | Voluntary<br>1,067 (11%) | $176,859 | |
| UTAH<br>July 1, 1984 | Voluntary (Opt-Out)<br>500 (7%) | $100,000 | |
| VERMONT<br>September 1, 1984 | Voluntary<br>(30 firms) | $5,732 | |
| ARIZONA<br>September 30, 1984 | Mandatory<br>4,000+ | $315,000 | |
| KANSAS<br>November 1, 1984 | Voluntary<br>230 (11%) | $4,000 | |
| NEW YORK<br>January 25, 1985 | Voluntary<br>No figures available | | |
| RHODE ISLAND<br>March 1, 1985 | Voluntary (Opt-Out)<br>No figures available | | |
| WASHINGTON<br>March 1, 1985 | Mandatory<br>No figures available | | |
| **TOTALS:** | | **$27,737,479[2]** | **$13,158,782[2]** |

[1]The following jurisdictions have approved IOLTA programs, but were not operational as of April 1, 1985: Arkansas, Connecticut, District of Columbia, Georgia, Hawaii, Iowa, Louisiana, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Ohio, South Dakota, Tennessee, and Texas.

[2]Cumulative since date program became operational.

## Litigation Update

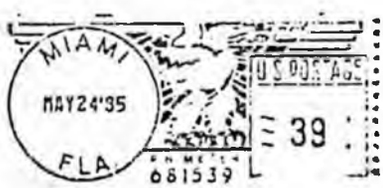
(continued from page 1)

established a schedule for the submission by the parties of proposed fact stipulations and Memorandums of Law during the months of March and April. In addition, Judge Lynne stated that after he has reached tentative conclusions he will permit oral argument and estimated that this would take place about mid-May. Judge Lynne's remarks offer encouragement that he will dispose of the constitutional issue by summer. The Clearinghouse, on behalf of itself and a representative group of Florida IOTA grantees, is appearing as **Amici Curiae** on the constitutional issue.

Five Iowa attorneys filed a Petition for a Writ of Certiorari with the United States Supreme Court on March 14, 1985. **Edward Ronwin, et al. v. Supreme Court of Iowa** (No. 84-1461). The questions presented for review were (1) "is the mandatory Interest on Lawyers Trust Accounts program imposed by Respondent Court in the State of Iowa a violation of the Fifth and Fourteenth Amendments, U.S. Constitution, since the interest earned on client and attorney's funds in said accounts are taken by said Court without permission or even knowledge of the client and without permission of the attorney?" and (2) "does the declaration of a mandatory Interest on Lawyers Trust Accounts program by Respondent Court violate the constitutional principle of separation of powers of the three branches of government?"

The Iowa Supreme Court's Brief opposing a grant of Certiorari was filed on April 12, 1985 by the Attorney General of Iowa. The Court argued that (1) rulemaking by a state supreme court establishing an Interest on Lawyers Trust Account program is not a judgment appealable to the Supreme Court under 28 U.S.C. §1257 and (2) no substantial constitutional question exists as to the constitutionality of the Interest on Lawyers Trust Account Program. The Attorney General's office expects a decision as to whether the Writ will be granted by mid-May. $

NATIONAL IOLTA CLEARINGHOUSE
Florida Justice Institute, Inc.
1401 AmeriFirst Building
One Southeast Third Avenue
Miami, Florida 33131




Robert Hickerson
Alaska Legal Services Corp.
615 H Street, Ste. 100
Anchorage, AK 99501

LEG 15 13282051 05/28/85
NOTIFY SENDER OF NEW ADDRESS
:AK LEGAL SERVICES
550 W 8TH AV #300
ANCHORAGE AK 99501-3553

**FIRST CLASS**

# Approved IOLTA Programs
## January 15, 1986

| Jurisdiction | Type Program/ Approval Method | Interest Recipient/ Fund Disperser | Uses of IOLTA Income | Implementation Status | Interest Income | Amount Distributed for Legal Services to Poor |
|---|---|---|---|---|---|---|
| 1. **FLORIDA**<br>The Florida Bar (Unified – 36,320 members; 28,343 in State) | • Voluntary Program<br>• Florida Supreme Court Opinion 402 So. 2d 389 (July 16, 1981)<br>• 4,040 attorneys participating 21% of bar with trust accounts | Florida Bar Foundation (pre existing) | • legal aid to the poor<br>• student loans<br>• administration of justice projects<br>• such other programs as are specifically approved from time to time by the Supreme Court for exclusively public purposes | • Became operational September 1, 1981<br>• Funds first distributed 1982<br>• Annual grants to 36 legal services providers made in September 1985<br>• Constitutional challenge in federal court denied December 16, 1985 | • $8,966,528 to date<br>• $3,094,000 last fiscal year<br>• $250,000 monthly | • $6,157,800 to date<br>• $2,405,000 last grant year |
| 2. **CALIFORNIA**<br>State Bar of California (Unified 95,570 members) | • Mandatory Program<br>• Legislation enacted September 25, 1981, effective January 1, 1982 California Business and Professions code, §§6210-6228 (1981)<br>• 50,000 + lawyers participating | State Bar of California (public corporation created by Constitution; serves as arm of judiciary); distribution of fund supervised by Legal Services Trust Fund Commission (17 attorneys and 8 public members) | • to fund qualified legal services programs and support centers on the basis of the number of poor people in the state as a whole<br>• to provide work opportunities with pay for law students at qualified legal services programs and where feasible, scholarships for disadvantaged law students<br>• State Bar may pay actual administrative costs of the program and set up a reasonable reserve | • Became operational March 1, 1983<br>• 104 legal services programs and support centers received grants<br>• Partially computerized<br>• Working on grantee evaluation process<br>• Revised grant application<br>• Working to reduce bank service charges<br>• Program held constitutional by 4th District Court of Appeal, Opinion dated December 19, 1984 certiorari denied (U.S. Supreme Court | • $21,000,000 to date<br>• $12,000,000 last year<br>• $1,000,000 monthly | • $17.2 million to date<br>• $10.5 million last grant year |
| 3. **IDAHO**<br>Idaho State Bar (Unified – 2,400 members) 1,900 active | • Voluntary Program<br>• Supreme Court Order, May 27, 1982<br>• 426 attorneys participating 25% of bar with trust accounts | Idaho Law Foundation (pre existing) | • pro bono panels and other programs to provide legal assistance to the indigent<br>• administration of justice programs<br>• law related education programs<br>• law student loans and scholarships<br>• other programs for the public interest which may be approved from time to time by the Idaho Supreme Court | • Program operational January 1, 1984<br>• Recruitment moving from mass marketing to one on one efforts<br>• Funds first distributed July 1985, will continue on semi annual basis | • $150,000 to date<br>• $12,000 monthly | • $40,000 to date |
| 4. **MARYLAND**<br>Maryland State Bar Association (Voluntary; 11,300 members; 15,600 registered attorneys) | • Voluntary Program<br>• Legislation enacted by Maryland General Assembly, July 1, 1982 Md. Ann. Code, Art. 10, §44 (a) (2) (1982)<br>• 2,330 attorneys participating; 45% of bar with trust accounts | Maryland Legal Services Corporation (new §501 (c) (3) quasi public corporation) | • 100% to organizations providing civil legal services to the poor and handicapped | • 3 full time staff<br>• Anticipate distributing $1.05 million in June 1986 to 5 legal services grantees<br>• 4 legal services grantees last year<br>• Became operational March 25, 1981<br>• Computerized<br>• Annual recruitment campaign now going on<br>• Considering converting to a mandatory program | • $1,586,545 to date<br>• 741,181 last fiscal year<br>• $65,000 monthly | • $833,358 to date<br>• $307,500 last grant year |
| 5. **COLORADO**<br>Colorado Bar Association (Voluntary; 8,700 members; 13,000 registered attorneys) | • Voluntary Program<br>• Colorado Supreme Court Order, November 1, 1982<br>• 2,040 attorneys participating; 24% of bar with trust accounts | Colorado Lawyer Trust Account Foundation COLTAF (new §501 (c)(3) corporation) | • assist in providing legal services to the disadvantaged<br>• improve delivery of legal services<br>• promote knowledge and awareness of the law in the community<br>• improve the administration of justice | • Became operational April 1, 1983<br>• Two grant cycles per year; preparing to disburse $125,000<br>• Two newsletters, one for law firms, one for banks<br>• New recruitment efforts on 50 "target firms"<br>• Colorado Springs has 70% participation | • $487,000 to date<br>• $275,485 last fiscal year<br>• $22,000 monthly | • $205,750 to date<br>• $200,000 last grant year |
| 6. **NEW HAMPSHIRE**<br>New Hampshire Bar Association (Unified – 2,400 members) | • Voluntary Program<br>• New Hampshire Supreme Court Opinion, 453 A.2d 1258, November 24, 1982<br>• 748 attorneys participating 45% of bar with trust accounts | New Hampshire Bar Foundation (preexisting) | • legal services to the disadvantaged<br>• public education relating to the courts and legal matters<br>• such other programs as may be approved by the Supreme Court | • Became operational January 1, 1983<br>• $331,022 to be awarded to legal services in January 1986<br>• Intensive recruitment campaign underway using volunteer members | • $521,000 to date<br>• $278,000 last fiscal year<br>• $30,000 monthly | • $[illegible],737 to date<br>• $158,437 last fiscal year |
| 7. **MINNESOTA**<br>Minnesota State Bar Association (Voluntary – 10,000 members; 13,000 registered attorneys) | • Mandatory Program<br>• Minnesota Supreme Court Opinion, 332 N.W. 2d 151 December 13, 1982<br>• 12,100 attorneys participating | Lawyer Trust Account Board LTAB (a new agency of the Minnesota Supreme Court) | • legal aid to the poor<br>• law related education<br>• administration of justice projects | • Became operational July 1, 1983<br>• Mandatory program being monitored through IOLTA information requested on annual attorney license registration forms<br>• Funds distributed annually<br>• Partially computerized<br>• 11 legal services grantees | • $3,170,487 to date<br>• $1,425,830 last fiscal year<br>• $121,000 monthly | • $2,140,000 to date<br>• $600,000 last grant year |

# Approved IOLTA Programs
# January 15, 1986

| Jurisdiction | Type Program/ Approval Method | Interest Recipient/ Fund Disperser | Uses of IOLTA Income | Implementation Status | Interest Income Received | Amount Distributed for Legal Services to Poor |
|---|---|---|---|---|---|---|
| **15. NEW YORK**<br>New York State Bar Association (Voluntary 35,835 members; estimated 60,000 in private practice) | • Voluntary Program<br>• N.Y. Judiciary Law § 497 and N.Y. State Finance Law § 97-v (1983) | • State Comptroller to receive and hold funds as a fiduciary for newly established New York IOLA Fund<br>• Fifteen member Board of Trustees to administer the IOLA Fund | • legal services for the poor (no less than 75%)<br>• purposes related to the improvement of the administration of justice | • Program became operational January 1985<br>• 6,000 attorneys participating (10% of bar with trust accounts)<br>• Immediate goal is to recruit 14,15[illegible] attorneys (20% of bar with trust accounts) | • $110,000 to date | |
| **16. HAWAII**<br>Hawaii State Bar Association (Unified 2,700 members, 2,100 in private practice) | • Voluntary Program<br>• Hawaii Supreme Court Order, September 22, 1983 | Hawaii Bar Foundation (pre-existing) | • supply legal aid to the poor<br>• provide aid to law reform projects<br>• provide for competent delivery of legal services to those who are eligible therefor<br>• provide continuing legal education<br>• provide legal education to laymen<br>• student loans<br>• support other programs for the benefit of the public and specifically approved by the Hawaii Supreme Court | • Program operational September 1, 1985<br>• 588 attorneys participating (28% of those eligible)<br>• All of Hawaii's 14 banks are cooperating<br>• Personal contact works best for recruitment | • $13,500 to date<br>• $3,300 monthly | |
| **17. UTAH**<br>Utah State Bar (Unified 4,401 members, 3,800 active) | • Voluntary Opt-out Program<br>• Utah Supreme Court Opinion, 672 P. 2d 406, (October 5, 1983)<br>• 130 firms participating (15% of those eligible) | Utah Bar Foundation (pre-existing) | • legal aid to the disadvantaged<br>• law reform<br>• administration of justice | • Program became operational July 1, 1984<br>• Funds distributed June 1985<br>• Program has put the Utah Bar Foundation "on the map"<br>• New recruiting efforts needed<br>• 3 legal services grantees | • $130,000 to date<br>• $50,000 last fiscal year<br>• $10,000 monthly | • $40,000 to date |
| **18. VERMONT**<br>Vermont Bar Association (Voluntary 1,308 members) | • Voluntary Program<br>• Vermont Supreme Court Order, October 28, 1983 | Vermont Bar Foundation (new 501(c)(3) corporation) | • for the support of legal services to the disadvantaged<br>• for public education relating to the courts and legal matters | • Program became operational September 1, 1984<br>• Funds first distributed October 1, 1985<br>• Using one-to-one recruitment campaign<br>• Grant cycles vary | • $28,369 to date<br>• $21,802 last year<br>• $2,000 monthly | • $20,000 to date |
| **19. GEORGIA**<br>State Bar of Georgia (Unified – 17,000 members, 14,000 active) | • Voluntary Program<br>• Georgia Supreme Court Order, November 4, 1983 | Georgia Bar Foundation (pre-existing) | • legal aid to the poor<br>• student loans<br>• administration of justice projects<br>• such other programs for the benefit of the public as are specifically approved from time to time by the Supreme Court | • Program became operational December 1985<br>• Initial recruitment drive underway<br>• Banks cooperative, following example of Florida banks | • $11,000 to date | |
| **20. SOUTH DAKOTA**<br>State Bar of South Dakota (Unified – 1,321 members, 1,203 active) | • Voluntary Program<br>• South Dakota Supreme Court Order, January 5, 1984; effective July 1, 1984 | South Dakota Bar Foundation (pre-existing) | • delivery of civil and criminal legal services and the administration of justice<br>• help prevent crime<br>• encourage law-related education in the schools (K-12) and for adults<br>• issue publications and give the public information about the United States legal system | • Program operational April 1, 1985<br>• $30,000 for grants in 1986<br>• Great cooperation from banks<br>• "Honor Roll" of participants published regularly | • $32,000 to date | |
| **21. ARIZONA**<br>State Bar of Arizona (Unified – 7,287 members) | • Mandatory Program<br>• Arizona Supreme Court Order, January 11, 1984, effective 30 days after receipt of IRS ruling | Arizona Bar Foundation (pre-existing) | • legal aid to the poor<br>• administration of justice projects<br>• student loans<br>• such other programs as are specifically approved from time to time by the Supreme Court for exclusively public purposes | • 90% of eligible attorneys participating<br>• Funds first distributed April 1985<br>• $700,000 to be distributed in 1986<br>• 27 legal services programs received funding last year<br>• Became operational October 30, 1984 | • $987,667 to date<br>• $83,000 monthly | • $150,000 to date |

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|---|---|---|---|---|---|---|
| **22. KANSAS**<br>Kansas Bar Association (Voluntary — 4,200 members, 6,000 registered attorneys in state) | • Voluntary Program<br>• Kansas Supreme Court Order, April 5, 1984 | Kansas Bar Foundation (preexisting) | • legal services to the poor<br>• administration of justice programs<br>• student loans or scholarships<br>• other programs deemed important by the Kansas Supreme Court | • Program became operational November 1, 1984<br>• 15% of attorneys in state with trust accounts participating<br>• Recruitment procedures being re-evaluated | • $25,000 to date | |
| **23. TEXAS**<br>State Bar of Texas (Unified 44,000 members) | • Voluntary Program<br>• Texas Supreme Court Order, May 9, 1984 | Texas Equal Access to Justice Foundation (new §501(c)(3) Corporation) | • Provide legal services to the poor in civil matters | • Operational since October 1985<br>• In first three months, 8% of the eligible bar has been recruited<br>• Computerization completed | • $30,000 to date | |
| **24. NEBRASKA**<br>Nebraska State Bar Association (Unified — 6,700 members 4,759 active) | • Voluntary Program<br>• Nebraska Supreme Court Order, May 15, 1984 | Nebraska Lawyers Trust Account Foundation (new §501 (c)(3) corporation) | • legal services to the poor | • Became operational April 1, 1985<br>• 877 attorneys participating<br>• Have shifted from direct mail to one on one recruitment | • $20,461 to date<br>• $4,500 monthly | |
| **25. MISSISSIPPI**<br>Mississippi State Bar (Unified — 5,200 members, 4,600 in state) | • Voluntary Program<br>• Mississippi Supreme Court Order, May 30, 1984 | Mississippi Bar Foundation (preexisting) | • legal aid to the poor<br>• law related education programs<br>• student loans and scholarships<br>• improve the administration of justice<br>• programs specifically approved from time to time by the Court for exclusively public purposes | • Became operational in December, 1985<br>• 560 attorneys participating<br>• Brochure very popular<br>• New selective recruitment campaign underway | • $6,000 to date | |
| **26. CONNECTICUT**<br>Connecticut Bar Association (Voluntary - 8,500 members, 11,000 registered) | • Voluntary Program<br>• Legislation enacted by Connecticut General Assembly and signed by Governor on June 15, 1984; Public Act No. 84-537 | Connecticut Bar Foundation (pre existing) | • Legal services to the poor | • Program not operational<br>• Direct mail materials now being prepared<br>• State requires client notice<br>• Recently hired IOLTA Executive Director | | |
| **27. WASHINGTON**<br>Washington State Bar Association (Unified 11,599 members) | • Mandatory Program<br>• Washington Supreme Court Opinion, 102 Wash. 2d 1101 (June 19, 1984) effective March 1, 1985 | The Legal Foundation of Washington (new §501(c)(3) corporation) | • legal aid to the poor<br>• student loans<br>• improve the administration of justice<br>• other programs specifically approved by the court for the public's benefit | • Became operational March 1, 1985<br>• Good response from banks<br>• Funds distributed December 1985<br>• Bar responsible for enforcing attorney compliance<br>• Full time staff | • $1,339,303 to date<br>• $203,000 monthly | • $1,231,900 to date |
| **28. NEW MEXICO**<br>State Bar of New Mexico (Unified — 1,900 members) | • Voluntary Program<br>• New Mexico Supreme Court Order, July 18, 1984 | New Mexico Bar Foundation (new 501(c)(3) corporation) | • legal assistance to the poor<br>• legal education<br>• administration of justice<br>• other charitable purposes as the Supreme Court may determine from time to time | • Program became operational September 1, 1985<br>• 23% of the eligible bar is participating<br>• Person to person recruitment campaign now underway | • $9,200 to date | |

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|---|---|---|---|---|
| **36. DISTRICT OF COLUMBIA**<br>District of Columbia Bar (Unified – 43,640 members) | • Voluntary Opt Out Program<br>• D.C. Court of Appeals Order, February 22, 1985 | The District of Columbia Bar Foundation (pre existing) | • legal aid to the poor (at least 85%)<br>• administration of justice (up to 15%) | • Operational as of January 1986<br>• First direct mail campaign completed<br>• Attorneys had until November 1985 to opt out |
| **37. MASSACHUSETTS**<br>Massachusetts Bar Association (Voluntary – 16,000 members, 30,000 licensed to practice) | • Voluntary Program<br>• Massachusetts Supreme Judicial Court Order 478 N.E. 2d 715C, May 26, 1985 | Multiple recipients<br>• Massachusetts Legal Assistance Corp. (pre existing)<br>• Boston Bar Foundation (pre existing)<br>• Massachusetts Bar Foundation (pre existing) | • civil legal services to the poor<br>• improvements to the administration of justice | • Not operational<br>• Massachusetts IOLTA Implementation Committee now recruiting, first mass mailing this March<br>• Banks are cooperating |
| **38. SOUTH CAROLINA**<br>South Carolina Bar (Unified – 6,000 members, 5,000 resident members) | • Voluntary Program<br>• South Carolina State Supreme Court Order, October 10, 1985 | South Carolina Bar Foundation (pre existing) | • legal services to the poor<br>• law related education | • Not operational<br>• Recruitment began November 1985 (50 firms thus far)<br>• In process of getting banks operational |
| **39. MONTANA**<br>State Bar of Montana (Unified – 1,900 members) | • Voluntary Opt Out Program<br>• Montana Supreme Court Order, October 31, 1985 | Montana Law Foundation (pre existing) | • providing legal assistance to the poor<br>• legal education<br>• other purposes serving justice | • Expected to become operational Spring 1986<br>• IOLTA Implementation Board has been set up to work with attorneys and bankers |
| **40. KENTUCKY**<br>Kentucky Bar Association (Unified – 9,000 members) | • Voluntary<br>• Kentucky Supreme Court Order, January 13, 1986 | Kentucky Bar Foundation, Inc. (pre existing) | • assist legal services to the poor<br>• finance public service legal programs<br>• scholarships for law students | • Expect to become operational July 1, 1986<br>• Media blitz now going on<br>• Setting up the initial Board of Trustees of the Kentucky IOLTA Fund |

# president's message

## IOLTA — AN IDEA WHOSE TIME HAS COME

The Louisiana State Bar Association's Code of Professional Responsibility charges us with the responsibility of insuring access to justice to those unable to afford it, promoting improvements in the efficient and fair administration of justice, and assisting in the understanding of our legal system by the public at large.

Historically members of the legal profession have willingly shouldered these and other important public responsibilities. But notwithstanding conscientious work on the part of many, the best efforts of professional and charitable organizations have proven inadequate. The need for legal services, education on legal issues and support for improvements in the administration of justice is greater now than ever. Failure to meet these needs will erode respect for the rule of law as well as the legal profession and detrimentally affect our whole society. In response to this need the IOLTA concept was born. IOLTA is an acronym for interest on lawyers' trust accounts. It is a method of generating revenue on otherwise unproductive funds and using that money to fund law related activities.

Traditionally, American lawyers have deposited their clients' trust funds in standard demand deposit checking accounts. Unless the sum was so large or was to be held for such a period of time as to argue for its deposit in a separate interest bearing savings account, all the lawyer's trust funds were commingled into one noninterest-bearing account. Organized bars in other countries such as Canada and Australia began in the 1960s to develop IOLTA programs to generate interest on such trust accounts to be used for the public good. Funds generated on IOLTA accounts in Canada, for example, are used to support legal aid, law libraries, scholarships for law students, client security funds and projects for the improvement of the administration of justice. Today, income on IOLTA accounts in Canada alone has exceeded 34 million dollars a year.

Florida became the pioneering American jurisdiction for IOLTA in 1981, when its supreme court, upon petition by the Florida Bar, ordered the implementation of the first "Americanized" IOLTA program. At present, IOLTA programs have been adopted in 38 states. In 1984 the Florida IOLTA program produced in excess of three million dollars which was used for law related services.

An attractive aspect of the IOLTA concept is its simplicity. The implemention of an IOLTA program will not alter an attorney's normal trust account procedure, nor counsel's traditional fiduciary relationship with the client. Under IOLTA, as now, the attorney deposits all those client funds that are either nominal in amount or to be held for a short period of time in a single account because these funds would not individually generate sufficient interest income to cover the financial institution's service charges plus the attorney's administrative costs. However, under IOLTA, unlike current practice, this commingled trust account is a negotiable order of withdrawal, or NOW account, earning

**Eldon E. Fallon**

approximately 5¼ percent interest. The interest earned on the account is paid by the financial institution, after deducting its normal service charges, directly to a recipient organization — in most cases a state's tax-exempt bar foundation. The attorney does not, and indeed cannot, receive any of the interest. The demand character of the NOW account results in no interference with the attorney's normal trust operations, and the clients' funds are federally insured and available at any time. As under current practice, any amounts the attorney determines to be significant in amount or which will be held for a long period of time and therefore able to generate more interest than the financial institution's service charges plus the attorney's administrative costs may still be deposited in a separate interest bearing account, with the interest earned being paid directly to the client.

Time-and-motion studies con-

ducted by the State Bar of Maryland indicate that it would cost approximately $50 in service charges plus the attorney's administrative costs to establish and maintain a separate interest-bearing account for each client's deposit. At 6% percent interest it would take 336 days to earn $50 on a $1,000 deposit, 69 days on a $5,000 deposit and 12 days on a $30,000 deposit. Therefore, using Maryland's example, if an attorney received $1,000 for eventual disbursement to the client, it would take nearly one year for that sum to earn sufficient interest to justify opening a separate interest-bearing account for the client. Under normal trust operations, therefore, the attorney would make the decision to place that money in a single, commingled, interest-bearing IOLTA trust account. If, however, another client, a business client for example, left with the attorney in escrow the $100,000 proceeds of the sale of a business until certain documents were recorded in another state, and the attorney was advised that this process would require approximately two weeks, it is obvious that the attorney would place this money in a separate, interest-bearing account and pay the interest earned, less service charges, to the client. Under IOLTA, with the exception that the single commingled trust account would be a NOW account with the interest earned being paid to the tax-exempt organization, these common trust account practices would not change.

Once received by the recipient tax exempt bar foundation, the funds generated by the IOLTA program may be invested and disbursed as grants or loans for any project that benefits the tax-exempt status of the organization and is allowed by the Internal Revenue Service. Currently, the parameters established by existing Internal Revenue Service rulings permit four general types of uses:

(a) providing legal services to the indigent and the mentally disabled;

(b) providing law student loans and scholarships;

(c) providing law-related educational programs for the public;

**"The need for legal services, education on legal issues and support for improvements in the administration of justice is greater now than ever. Failure to meet these needs will erode respect for the rule of law as well as the legal profession and detrimentally affect our whole society."**

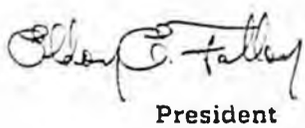
(d) supporting projects designed to improve the administration of justice; and

(e) for such other programs for the benefit of the public as may be specifically approved from time to time by the state supreme court.

In the latter part of 1984, both the House of Delegates and the Board of Governors of the Louisiana State Bar Association passed resolutions endorsing the IOLTA concept and recommending its adoption by our state supreme court. On January 14, 1985, the Louisiana Supreme Court amended Canon 9, DR 9-102 of the Code of Professional Responsibility to allow voluntary attorney participation in the Interest on Lawyers' Trust Accounts (IOLTA) program to be implemented by the Louisiana Bar Foundation.

As in other jurisdictions, the Louisiana IOLTA program has been careful to avoid imposing any additional or different administrative burdens on the attorney participant. Attorneys who wish to take part in the IOLTA program will be furnished a brief and simple form letter by which they may inform their banking institution of their participation. The letter will also instruct the institution to make the attorney's current trust account a NOW account. A similar letter will inform the Louisiana Bar Foundation of the new participation. Thereafter, all interest earned on the trust account will be made by the financial institution directly to the Foundation, with the attorney receiving statements of amounts earned and paid. Since in all other respects the NOW account operates as any other checking account, the attorney's normal trust operations will not be altered.

The Louisiana IOLTA program is in its start up phase. A pilot project is now under way to work through the "administrative kinks" that usually accompany any new program. Shortly it will be made available to the entire membership. Your participation and support will be solicited. To demonstrate our profession's commitment to public service, I encourage you to respond affirmatively.



**President**

## In Memoriam

Stephen T. Victory

February 19, 1940 - December 6, 1985

Louisiana State Bar Association

Secretary-Treasurer

Editor, *The Louisiana Bar Journal*

1983-1985

# ALASKA BAR ASSOCIATION

February 26, 1986

Representative Jim Duncan
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

FEB 2 [illegible]

Dear Representative Duncan:

Enclosed is the information which I promised to send you on IOLTA. It includes the original letter and memorandum to the Alaska Supreme Court requesting adoption of an IOLTA program; a memo from Chief Justice Rabinowitz with the court's action; a letter from the National IOLTA Clearinghouse commenting on the proposal; a chart on the 40 states which have IOLTA programs; and an article from the Louisiana Bar Journal on IOLTA.

The Trustees of the Alaska Bar Foundation are Mary Hughes, Bart Rozell, Sandra Saville, John Conway and Winston Burbank.

Sincerely,

Deborah O'Regan

Deborah O'Regan
Executive Director

vu

Enclosures

cc: Board of Governors

ROOM 418, 604 BARNETTE ST.
FAIRBANKS, ALASKA 99701
(907) 452-9300

# Supreme Court
## State of Alaska

March 6, 1986

Representative M. Mike Miller
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Representative Miller:

This will serve to confirm our recent telephone conversation regarding the Alaska Bar Foundation's IOLTA proposal. As I stated, the Bar Foundation presented its IOLTA proposal. After meeting with the Bar Foundation representatives and the President and Executive Director of the Alaska Bar Association the Supreme Court of Alaska advised the Bar and Foundation that it was agreeable to the adoption of an IOLTA rule that would have the following features:

(a) the program would be voluntary;

(b) only clients' funds in the amount of $250 or less could be deposited in the attorney's IOLTA account; and

(c) earnings from such an account, net of any service charges or fees, are to be remitted to the Alaska Bar Foundation, Inc; or such other IRS approved IOLTA fund approved by the Board of Governors of the Alaska Bar Association.

Since informing the Bar and Foundation of the Supreme Court's position I have been advised that both the Board of Governors of the Alaska Bar Association and the Alaska Bar Foundation have considered our position and wish the opportunity to further discuss certain features of the IOLTA

proposal. More particularly I have been advised informally that the Bar and the Foundation both think that the $250 cap is unrealistic and wish to reargue the point. Further, it is my understanding that the Supreme Court will be reviewing both the Bar's and the Foundation's response within the next two weeks.

Best wishes,

Sincerely,

Jay A. Rabinowitz

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 557

Title: Interest On Attorney Trust Accounts.

Sponsor: Duncan

Requestor: House Judiciary

Date of Request: 2/26/86

FISCAL DETAIL

Agency Affected: Alaska Bar Assn.

Program Category Affected: N/A

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|---|---|---|---|---|---|---|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: Attach a separate page if necessary

Prepared By: Hayden Kaden, Counsel Hayden Kaden Phone: 465-4990

Division: House Judiciary Committee Date: 2/28/86

Approved by Chairman Commissioner: Date:

Agency:

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7/1/84