



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

February 1, 1988

GC/HMU:sg  
8010

Office of General Counsel

Ms. Linda K. Rexer  
Executive Director  
Lawyer Trust Account Program  
Michigan State Bar Foundation  
306 Townsend Street  
Lansing, MI 48933

Re: Michigan's Interest on Lawyer Trust Account  
(IOLTA) Program (Your September 4, 1987, Letter)

Dear Ms. Rexer:

You have asked our opinion on whether a Michigan attorney may maintain an insured, dividend-paying, share-draft, trust account at a Federal credit union ("FCU") in connection with Michigan's Interest on Lawyer Trust Account ("IOLTA") Program. Because of peculiarities in Federal insurance of credit unions, the answer is more complex than for other federally-insured financial institutions. A revocable trust ("agent") account can be established at an FCU in connection with Michigan's IOLTA Program only if all the principals (presumably the clients) can establish member accounts there. A suitable irrevocable trust account can be established only if all the settlors (presumably the clients) or the beneficiary Michigan Bar Foundation can establish a member account there.

Background

Disciplinary Rule 9-102 of the Michigan Canons of Professional Ethics provides the legal basis for the IOLTA Program:

. . . a lawyer who or a law firm which receives client funds shall maintain a pooled interest-bearing trust account for deposit of client funds. . . . The account(s) shall include all client funds which are not expected to earn more than \$50 in interest during the period it is anticipated such funds are to be held. . . . The lawyer or law firm shall direct the . . . credit union to . . . remit the interest, less reasonable service charges, at least quarterly to the Michigan State Bar Foundation. . . .

FOIA IV (A) (2) Payment of Insurance

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The funds deposited with a credit union must be "insured by an agency of the federal government." Id. The Michigan State Bar Foundation, a 501(c)(3) organization, uses the interest or dividends primarily to fund legal services for the poor.

The Michigan Attorney General has rendered an opinion that the Michigan Bar Foundation will own the entire beneficial interest in and will have exclusive right to all the interest or dividend income earned on trust accounts established under the IOLTA Program. The Federal Reserve Board, Federal Deposit Insurance Corporation, and Federal Home Loan Bank Board have issued opinions that the "entire beneficial interest" of IOLTA Program accounts "is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit."

#### Limitations on Federal Insurance of FCU Accounts

The NCUA Board only insures FCU "member accounts." 12 U.S.C. §1781(a). A "member account" is defined as:

[1] a share, share certificate, or share draft account of a member of a credit union. . .which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member;. . .[2] in the case of a credit union serving predominantly low-income members. . .(when referring to the account of a nonmember served by such credit union). . .a share, share certificate, or share draft account of such nonmember which. . .evidences money or its equivalent received or held by such credit union in the usual course of business and for which it has given or is obligated to give credit to the account of such nonmember; [3] share, share certificate, or share draft accounts of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof . . . ;and [4] . . .custodial accounts established for

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loans sold in whole or in part pursuant to  
section 107(13) of this Act. . . .

[12 U.S.C. 1752(5).]

A revocable trust account (other than a testamentary account) is considered an account held by an agent or nominee; all principals (settlers or owners of the funds) must be able to establish member accounts for this type of trust account to be insured. 12 C.F.R. §745.3(2). An irrevocable trust account is treated more liberally; all settlers or all beneficiaries must be able to establish member accounts.

Federal Credit Union Power to Pay Dividends on Share Draft Accounts

Because of the peculiar "member" orientation of credit unions, Congress added a "member" classification to the credit union share draft authorization, making the provision different from the one applicable to other federally-insured financial institutions.

(f)(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United

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States, and State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

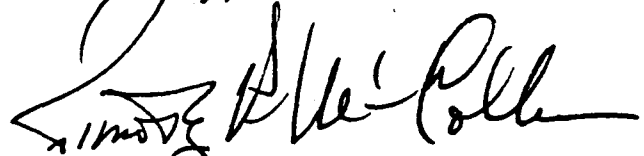
12 U.S.C. §1785(f) (Emphasis added.)

Application to Michigan IOLTA Program

The major problem we foresee with lawyers and law firms using FCU's in connection with Michigan's IOLTA Program is in assuring the account is federally-insured. If a revocable trust (agent) account is established, all the clients must be able to establish member accounts. If an irrevocable trust is established, all settlors (presumably the clients) or the beneficiary Michigan Bar Foundation must be able to establish member accounts.

If this obstacle can be overcome, a lawyer can properly use a credit union account to participate in Michigan's IOLTA Program. The "entire beneficial interest" in the account would be held by a "member," or, as has been recognized by the other Federal deposit insurers and regulators, by "an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit."

Sincerely,



TIMOTHY P. MCCOLLUM  
Assistant General Counsel

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