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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456
357-1100

May 3, 1989

Office of the Board

Howard C. Mette, Esq.
Shearer, Mette, Evans, & Woodside
P.O. Box 729
Harrisburg, PA 17108-0729

Re: Pennsylvania IOLTA Program (Your
February 7, 1989, Letter)

Dear Mr. Mette:

You have asked whether Pennsylvania attorneys participating in the Interest on Lawyer Trust Accounts ("IOLTA") program may maintain client trust funds in dividend-paying share draft accounts at Federal credit unions ("FCU's"). We are enclosing two opinions from this Office which address the issue of establishing IOLTA accounts at an FCU.

As you will note from the enclosed opinions, it may not be feasible for an FCU to currently offer this type of account. Due to FCU membership requirements, owners of the funds in an IOLTA would have to be FCU members in order to establish insured accounts. Although a law firm that is an FCU member can establish an insured account at an FCU, the account would be insured as the firm's account and aggregated with other accounts of the firm for insurance purposes. Individual clients would not be separately insured. For individual clients to be insured, all clients must be FCU members.

Sincerely

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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Enclosures

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Vol 10 C Insurance Coverage



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

February 1, 1988

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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. . . .

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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.

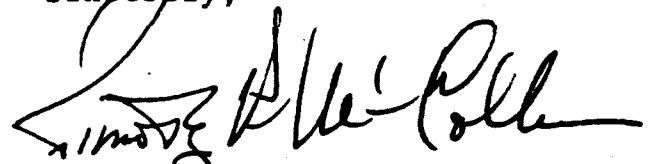
12 U.S.C. §1785(f) (Emphasis added.)

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

TPM:wm



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 6, 1989

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Office of General Counsel

Francis J. Capaldo, Esq.
Vice President
Legal and Government Affairs
Pennsylvania Credit Union League
4309 North Front Street
Harrisburg, Pennsylvania 17110-1691

Re: Michigan's Interest on Lawyer Trust Account
(IOLTA) Program (Your January 19, 1989, Letter)

Dear Mr. Capaldo:

You have asked that we reconsider our February 1, 1988, opinion regarding the ability of a Michigan attorney to maintain an account at a Federal credit union ("FCU") in connection with Michigan's Interest on Lawyer Trust Account ("IOLTA") Program. In our prior opinion we concluded that a revocable ("agent") account could be established at an FCU in connection with Michigan's IOLTA Program only if all the principals (presumably the clients) could establish member accounts there. We further stated that a suitable irrevocable trust account could be established only if all the settlors (presumably the clients) or the beneficiary Michigan Bar Foundation could establish a member account there.

You stated that characterizing the funds in an IOLTA Program as trust funds makes it unworkable for an FCU to participate in the Program since an FCU would be required to determine if each deposit into an IOLTA account came from a member of the FCU. You have asked that we reconsider our position and determine that the FCU membership requirement be satisfied by an attorney/law firm's membership in the FCU. You noted that this issue is of particular importance given the goal of the IOLTA Program and the fact that it exists in 48 states. Even if we view IOLTA funds as escrow accounts rather than trust accounts, owners of the funds (clients) would have to qualify for membership in order to

Francis J. Capaldo, Esq.

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establish legal insurable accounts under the current NCUA Rules and Regulations.

BACKGROUND

Generally, under an IOLTA program, an attorney or a law firm pools clients' escrow accounts into a single IOLTA account. Instead of the dividends on the account going to the clients for the duration of the escrow, the dividends are instead transferred to the IOLTA fund where they are used to fund legal services for the indigent. In Michigan, the 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.

ANALYSIS

You have asked that this Office reconsider its position that the funds in an IOLTA Program are trust funds. In support of this position you state:

. . . there are several unique features about the IOLTA program that do not readily fit into any traditional pattern. The funds in an IOLTA fund are escrow funds. If a client has advanced funds to an attorney as prepayment for future services, such funds would be placed in escrow. If funds are placed under the care of an attorney pending a real estate settlement between two parties, these funds would likewise be placed in an escrow account. In both cases, these funds would be placed under IOLTA accounts.

These IOLTA funds differ from trust accounts for the following reasons:

--There is no opening of a trust account. These escrow accounts are held not for the payment to a future beneficiary, but as funds temporarily held in custodial care by the attorney/law firm; - - There are no outside trust documents. There are no statements by a settlor creating the trust. In the absence of such statements, no trust (revocable or irrevocable) exists.

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Generally, escrow accounts are established as agent accounts. The insurance of escrow accounts is governed by Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. §745.3(a)(2)) providing:

Accounts held by agents or nominees. Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to \$100,000 in the aggregate.

In determining the insurance of escrow accounts which are set up as a type of agent account, the membership of the principal/owner of the funds is the critical factor. (See 12 C.F.R. 745.0.) The owners of the funds (presumably the clients) would be required to be members of the FCU.

You also asked that we view funds in the IOLTA program as analogous to funds held by a guardian for a minor. Such accounts are insured pursuant to Section 745.3(b) of NCUA's Rules and Regulations. Either the guardian or ward must qualify for membership under this section in order to have an insured account. Unfortunately, the IOLTA Program is factually not within this provision.

To make it practical for an FCU to participate in an IOLTA Program, you suggested that we determine that an attorney/law firm's membership in the FCU is sufficient to satisfy the membership requirement. In that case, the account would be insured as the firm's account under Section 745.6. Individual clients would not be separately insured.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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