

September 17, 1996

Elyse E. Rogers, Esq.
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Re: Interest on Lawyers Trust Accounts ("IOLTA")
(Your August 22, 1996, Letter)

Dear Ms. Rogers:

In your letter, you requested our opinion as to whether Pennsylvania attorneys can maintain client trust funds, in association with Pennsylvania's IOLTA Program, in share draft accounts at credit unions regulated by the National Credit Union Administration. As discussed below, the answer depends upon the credit union membership status of the clients whose funds are contained in the IOLTA account.

ANALYSIS

Generally, an IOLTA account is set-up by an attorney or a law firm as an escrow account containing pooled client funds. In a credit union, an IOLTA account would be set-up as an "agent" account. Section 745.3(a)(2) of NCUA's Regulations defines an agent account as "[f]unds owned by a principal [member] and deposited in one or more accounts in the names of agents or nominees...." The client continues to own the funds while the attorney or law firm serves only as a custodial agent.

A federal credit union (FCU) can only accept funds belonging to its member or those that qualify for membership. There are limited exceptions which permit an FCU to accept nonmember funds if it serves predominately low-income members and thereby has a "low-income" designation. 12 U.S.C. §1757(6). NCUA Regulations define a member as "those persons enumerated in the credit union's field of membership." 12 C.F.R. §745.1(b). Membership in an FCU is limited "to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." 12 U.S.C. §1759. An FCU's charter outlines its membership. 12 U.S.C. §§1753, 1754.

With an agent account, the membership status of the client (owner of the funds) and not that of the agent (attorney, law firm or IOLTA Board) is determinative as to whether an IOLTA account can be properly maintained. Consequently, in order for an attorney or law firm to maintain an IOLTA account at an FCU, either all of the clients whose funds would be deposited must be members of that FCU or the FCU must be designated as a low income which would allow it to accept nonmember funds.

Sincerely,

Richard S. Schulman
Associate General Counsel

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