



IOLTA News

An Update from the New Mexico Interest on Lawyer Trust Accounts Program

A NM Wrong That Should Be Righted

Stacey Leaman, Development Director,
New Mexico Center on Law and Poverty

Joe was employed as a milker at New Mexico dairies for over 10 years. At his most recent job, he worked six days a week, 11 hours per day, for less than \$6.00 an hour. He milked cows, cleaned the milking machinery, and moved cows and bulls to various locations within the farm. In November 2008, while working at the dairy, Joe was attacked by a bull. He suffered serious damage to his upper body, including crushed ribs and spinal injuries. He required emergency medical attention and repeated hospitalization. Joe has been unable to work since the attack. He is in constant pain and continues to need medical care.

Following the accident, Joe and his family were devastated financially. Because he cannot work, his wife has had to take three jobs to make ends meet. The family had to apply for public benefits and was forced to move when they could no longer afford their rent.

Joe and his family needed help with their loss of income and medical bills after the accident. Workers' compensation would have provided just that help, if Joe had been employed in some other industry. However, he worked in agriculture, and agricultural laborers are specifically excluded from coverage under the New Mexico Workers' Compensation Act.

Joe's case is not unusual. Roughly 15,000 agricultural laborers toil on New Mexico's farms, ranches and dairies in hard and dangerous jobs, for very low pay. Field laborers earn on average less than \$7,000 a year, and dairy laborers make roughly \$18,000 per year. In a 2003 study of farm workers in West Texas and Southern New Mexico, 21% reported having been injured on the job and 57% said they have suffered symptoms of pesticide exposure. Many of these workers, born and raised in New Mexico, have worked hard all their lives, sometimes for the same employer, until a job-related injury ends their ability to work. Then, because they do not have the right to even the



minimal protections of the state's workers' compensation system, their families slip further into poverty.

Workers' compensation is rarely sufficient to cover all of the needs of injured workers, but its basic benefits are far better than being left to cope with the medical and financial implications on one's own, as most agricultural laborers are now. In some cases, employers will assist their employees when they are injured on the job.

However, that assistance is usually far less than what the workers need. In Joe's case, his employer gave him approximately \$1,800 in lost wages, and his employer's insurance paid him \$5,000 to cover some of his medical expenses. Although this might be considered generous, given that his employer was not obligated to do anything, these payments are barely tokens toward the complete loss of income and the mountain of medical bills that Joe has been facing. Nonetheless, many workers receive much less, or nothing at all.

By excluding farm and ranch laborers from the workers' compensation system, New Mexico has positioned itself in the minority. Thirty-three U.S. states, plus D.C., Puerto Rico, and the Virgin Islands, require some form of mandatory workers' compensation for agricultural laborers.

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National News and Notes: from the ABA Commission on IOLTA

Revenue Enhancements—(1) On January 28, 2010, the North Carolina Supreme Court issued an order adopting IOLTA rate comparability, effective July 1, 2010. This revenue enhancement strategy requires that lawyers place their IOLTA accounts only in a financial institution that pays those accounts the highest interest rate or dividend generally available at the institution to other customers when IOLTA accounts meet the same minimum balance or other qualifications. (2) The District of Columbia Court of Appeals issued an order adopting both mandatory IOLTA and interest rate comparability on March 22, 2010. These rule revisions become effective on August 1, 2010. (3) On June 10, 2010, the Supreme Court of Delaware entered an order adopting mandatory IOLTA and IOLTA rate comparability. These revisions will become effective on November 1, 2010. Delaware becomes the 43rd jurisdiction to require that all practicing lawyers participate in IOLTA, and the 33rd to adopt rate comparability.

FDIC Rule Change—On April 13, 2010, the FDIC Board of Directors approved an interim rule extending the Transaction Account Guarantee (TAG) Program to December 31, 2010. The interim rule also gives the Board the discretion to extend the program to the end of 2011 without additional rule making if it determines that economic conditions warrant such an extension. Participating institutions can opt out of the TAG Program effective July 1, 2010, but if they do not, they must remain in the program until it ends. Under the TAG Program, funds held in IOLTA accounts will continue to be fully guaranteed by the FDIC, without limit, for participating financial institutions. IOLTA funds held in institutions that opt out of the extended TAG program (or that previously opted out of the TAG program) will be insured up to \$250,000 per owner (i.e., client) until December 31, 2013. Institutions are required to display their status as either participating or not participating.

IOLTA Financial Institutions

The financial institutions below are eligible to hold IOLTA accounts. They have achieved eligibility certification from CCV because they voluntarily offer IOLTA accounts and pay the highest rate of interest or dividends generally available to their non-IOLTA customers, when the IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications. When opening an IOLTA account, PLEASE remember that due to the waiver of minimum balance requirements or processing fees to CCV by our **Honor Roll** financial institutions, thousands of additional dollars are available annually to help the nearly 1/2 million New Mexicans who benefit from services provided by IOLTA-funded organizations.

THANK YOU

Honor Roll

THANK YOU

AmBank
American Heritage Bank
Bank 1st
Bank of Albuquerque
Bank of Las Vegas
Bank of the Rio Grande
Bank of the Southwest at Roswell
BBVA Compass Bank
Century Bank of Santa Fe
Charter Bank
Citizens Bank of Farmington
City Bank NM
Clovis National Bank
Community 1st Bank Las Vegas
Community Bank
First Community Bank
First Financial Bank NA
First Financial Credit Union
First National Bank in
Alamogordo

First National Bank of Ruidoso
First National Bank of Santa Fe
First New Mexico Bank
First Savings Bank
First State Bank of Socorro
Four Corners Community Bank
Grants State Bank
High Desert State Bank
Lea County State Bank
Los Alamos National Bank
Main Bank
My Bank
New Mexico Bank & Trust
Peoples Bank
Pinnacle Bank of Gallup
Pioneer Bank
Portales National Bank
Roswell National Bank
Southwest Securities FSB
Sunrise Bank of Albuquerque
The Bank of Clovis
The Carlsbad National Bank

The First National Bank of New Mexico
Union Savings Bank
Valley Bank of Commerce
Valley National Bank
VectraBank
Wells Fargo Bank New Mexico
Western Bank of Alamogordo
Western Bank of Clovis
Western Bank of Lordsburg
Western Commerce Bank
Western Heritage Bank

Other Eligible Institutions

Bank of America
Bank of the West
Centinel Bank of Taos
Citizens Bank of Las Cruces
Farmers & Stockmens Bank
First Federal Bank
Gallup Federal Savings Bank
International State Bank
Ironstone Bank
The Citizens Bank of Clovis

Supreme Court Approves \$307,000 in IOLTA Grants

Nine New Mexico nonprofits that provide civil legal services for the poor or legal education for the public have received more than \$300,000 in IOLTA funding for 2010. Applications were submitted in October and were considered by the seven-member IOLTA grant committee in November. That group's recommendations were reviewed by the Center for Civic Values' board of directors and were submitted to the Court for its approval in December. The Court approved funding for the following organizations.



Advocacy, Inc., which protects and promotes the interests of at-risk children and youth, will use its \$30,000 to fund a portion of the legal services necessary for court-ordered guardianships and adoptions by grandparents, relatives and friends who elect to care for children whose parents are incarcerated, drug-addicted, deceased, abusive or absent.

Catholic Charities of Central New Mexico creates hope for those in need by promoting self-sufficiency, strengthening families, fighting poverty and building community. It will use its \$35,000 grant to advocate on behalf of battered immigrants seeking immigration relief through the continued employment of a legal assistant to support its VAWA immigration attorney.

Catholic Charities of the Diocese of Las Cruces provides low-cost immigration legal services to moderate and low-income residents in the ten southern counties of New Mexico. Its \$10,000 grant will provide legal services to victims of domestic violence and individuals who qualify for citizenship or naturalization, but who lack the financial resources to pay legal fees.

Enlace Comunitario works to eliminate intergenerational violence among Latino immigrants. Enlace's \$35,000 grant will be used to offer bilingual, culturally appropriate, free legal services and education about the justice system, and to assist with

forms completion and court translation for Spanish-speaking victims of domestic violence.

Legal FACs offers face-to-face free or low cost civil legal services and referrals to low-income *pro se* litigants in domestic matters, representation in cases where *pro se* is unsuitable, and, victim advocacy. Its \$30,000 in IOLTA funding will be used to continue its forms clinics and *pro se* web site.

Native American Disability Law Center offers free legal assistance, advocacy and education to Native Americans with disabilities. Its \$10,000 grant will support the Center's ability to represent the best interests of Navajo children involved in abuse and neglect cases.

New Mexico Center on Law and Poverty advocates for effective, systemic solutions to poverty and the problems facing those who are poor. The Center will use its \$87,000 to improve the administration of public assistance, to increase access to healthcare at hospitals serving the needy, to improve protections for poor laborers, and, to augment the quantity and quality of civil legal services available to low-income New Mexicans.

Gene Franchini High School Mock Trial offers to schools statewide an exciting education program that gives students a hands-on experience in the law and the legal system and helps build their understanding about their rights and responsibilities within that system. Its \$10,000 award will be used to support the 2011 program.



Pegasus Legal Services for Children promotes, supports and defends the legal rights of children to safe and stable homes, quality education and healthcare, and, a voice in the decisions that are made about their lives. Pegasus will use its \$20,000 grant to help fund its Youth Law Project to provide legal services to young people which helps them overcome barriers to

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“This law is a relic of a past when discrimination against low-income workers was commonplace,” said native New Mexican Dolores Huerta, who co-founded the United Farmworkers with Cesar Chavez. “Farmworkers’ work in grueling conditions to provide us with the food we eat every day, and it is an injustice that they are treated so unfairly. We value hard work in this country. So why don’t we value the hard work of our farm and ranch workers?”

An effort is underway to reverse this injustice. With funding from the Center for Civic Values (IOLTA), the Public Welfare Foundation, the Con Alma Health Foundation and others, the NM Center on Law and Poverty has been pushing to include farm and ranch laborers in the Workers’ Compensation Act. We began by working with agricultural laborers and their advocates to learn about the problem. We made presentations to policymakers and the public. We then tried to negotiate a solution with the agricultural industry by working with the Farm and Ranch Worker Taskforce in 2008. When that failed, we tried to pass a bill during the 2009 state legislative session to amend the state Workers’ Compensation Act to include farm and ranch laborers. In the face of strong opposition from the agricultural industry, the bill was defeated. Another bill may be introduced in a future session.

In the meantime, the matter is being pursued in the courts. The Center is representing farm and ranch laborers in a lawsuit challenging the constitutionality of the exclusion. The case, *Griego, et al v. New Mexico Workers’ Compensation Administration, et al, CV 2009-10130*, was brought in state district court under the state constitution. The plaintiffs claim that the statutory exclusion of farm and ranch laborers from the NM Workers’ Compensation Act, see 1978 NMSA § 52-1-6, violates the equal protection clause of the state Constitution. The Center on Law and Poverty is joined in the suit by private co-counsel Nancy Simmons and by two national poverty law centers.

New Mexico’s law and policymakers should acknowledge the unfair and unnecessary suffering we put upon our agricultural workers by excluding them from the workers’ compensation system. They should amend our Workers’ Compensation Act to include agricultural workers.

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their own healthy growth and development and that of their young families.

Senior Citizens’ Law Office offers free legal assistance to persons over 60 in Central New Mexico to ensure they receive the benefits to which they are entitled. SCLO’s \$40,000 award will provide funding for the Health Care Rights Project which serves Bernalillo, Sandoval, Torrance and Valencia counties.



IOLTA Calendar

- 07/01/10—Grantee progress reports due
- 07/15/10—2nd disbursements to grantees
- 09/01/10—Grant applications available online
- 10/01/10—Grant applications due
- 11/01/10—Grantee final reports due
- 11/09/10—Grant committee (“GC”) meeting
- 11/15/10—3rd disbursements to grantees
- 12/16/10—GC recommendations to CCV board
- 12/20/10—GC recommendations to Supreme Court
- 02/01/11—Grantee notification of 2011 funding

2009 IOLTA Revenues

Thanks to last year’s conversion to mandatory IOLTA with comparability approved by the State Supreme Court, 2009 revenues were higher than anyone could have hoped, given the catastrophic decline in interest rates that began in late 2008. With the addition of monies from IOLTA’s Grant Stabilization Fund. CCV was able to maintain the 2010 grant budget at the 2009 level, rather than reducing it significantly. The chart below reflects 2009 revenues totaling \$356,451.

