



A Program of the Center for Civic Values

# IOLTA News

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

## Beware of Client E-Mail Scam

A scam targeting attorneys across the country is continuing to prompt warnings from bar associations and federal authorities. Attorneys are urged to exercise extra diligence, because banks have reported to IOLTA that at least three attempts have been made to scam New Mexico lawyers.

The scam works like this: a law firm receives a referral from someone posing as an out-of-state attorney to enforce a simple contract dispute or to collect a debt. The firm confirms that the prospective client is a real company and then enters into a fee agreement.

The firm sends a demand letter and later receives a cashier's check made payable to the law firm. The client is pleased and directs the law firm to wire the money, after deducting its fees and costs.

The law firm deposits the money into its trust account, waits for the check to clear the local bank, and then wires the funds to the client.

Things fall apart when the bank on which the check is drawn, notifies everyone that the check is a counterfeit. The scam works because the law firm erroneously believes that the check is good when it clears the law firm's bank.

THAT IS NOT THE CASE! The first clearance is only provisional. The bank has additional time under the law to verify the check.



*The first duty of society is justice.*

- Alexander Hamilton

## REMINDER

The State Supreme Court of New Mexico, upon the recommendation of its Access to Justice Commission and following a notice and comment period, issued an Order creating Rule 24-109, **effective on January 1, 2009**, which converted New Mexico's opt-out Interest on Lawyer Trust Accounts (IOLTA) program to a mandatory program with a comparability requirement. The Court's leadership in accepting the recommendations will ensure that IOLTA generates the maximum revenue possible to provide increased access to justice for the state's poverty population during these critical economic times.

CCV has certified as "eligible" those financial institutions that agree to comply with the comparability and other requirements of the new Rule (*please refer to page 4*). If you currently maintain a non-IOLTA pooled client trust account, you are required to enroll in IOLTA, convert the account to interest-bearing and maintain the account at an eligible financial institution. If you currently hold an IOLTA pooled client trust account at an institution that is ineligible, you are required to move that account to a CCV-certified financial institution.

### **Important Notice Regarding Financial Institution Eligibility**

CCV certifies that financial institutions are "eligible" because they voluntarily offer IOLTA accounts, and they are in compliance with Rule 24-109, as it pertains to interest paid on IOLTA accounts. The designation of a financial institution as eligible **does not** constitute a warranty representation or guaranty by CCV as to the financial soundness, business practices or other attributes of the financial institution.

In addition, **CCV takes no position** as to whether the institution provides insurance for funds deposited into those accounts. Each attorney should discuss the issue of insurance with a representative of the institution that holds her/his IOLTA funds

## Supreme Court Approves \$307,000 in IOLTA Grants

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**E**ight 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 2009. 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 receive \$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** will use its \$40,000 grant to advocate on behalf of battered immigrants by hiring a legal assistant to support its VAWA Immigration attorney and by expanding its volunteer activities.

**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. It's \$30,128 in IOLTA funding will be used to continue its forms clinics and its *pro se* web site.

**New Mexico Environmental Law Center** offers free and low-cost legal representation to organizations and grassroots groups throughout the state that fight environmental injustice. Its \$10,000 grant will help efforts to support low-income, minority communities that face environmental degradation and health issues.

**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 \$92,000 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.

**New Mexico High School Mock Trial** will use its \$10,000 award to conduct a six-month educational program that improves students' knowledge, skills and attitudes about the law and the legal system and helps build their understanding about their rights and responsibilities within that system.

**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 \$14,996 IOLTA grant to help fund an education/outreach program for homeless or runaway teens.

**Senior Citizens' Law Office** offers free legal assistance to persons over 60 in Central New Mexico. SCLO's \$45,000 award will provide funding for the Health Care Rights Project, which has expanded from Bernalillo County to Sandoval, Torrance and Valencia counties.

"Never doubt that a small group of thoughtful, committed citizens can change the world.

Indeed, it's the only thing that ever has."

Margaret Mead

## National News and Notes: from the ABA Commission on IOLTA

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**Texas Advocates Win Major Legislative Funding Victories** – The Texas legislature, responding to the serious funding crisis resulting from the recent decline in IOLTA revenue, has approved three measures that will essentially make up for the entire IOLTA loss for the next two years. The state budget includes \$20 million in one-time funding for legal services. A filing fee increase for certain types of cases and civil fines from deceptive trade practices cases received by the attorney general's office will provide another \$6.7 million over the same two year time period. The leadership of the Access to Justice Commission and the Texas Supreme Court made these victories possible.

**More State Legislative Funding News** – Although the ultimate results in terms of state funding this year are going to be mixed, with a number of states losing at least some of their funding for civil legal services, advocates in three states recently obtained significant increases. Programs in Connecticut will receive approximately \$7.7 million from new filing fees. In Oregon, the state appropriation for legal services was increased by \$1 million, and a bill was passed that requires abandoned property in lawyers' trust accounts be sent to the Oregon State Bar for distribution to legal aid. Legal Aid programs in Wisconsin obtained funding of \$4.6 million for the 2009-11 biennium, more than double the previous biennium, from new fees.

**Tennessee and Wisconsin Adopt IOLTA Revisions to Increase Revenue** – On July 1, 2009, the Wisconsin Supreme Court entered an order that becomes effective on January 1, 2010, approving revisions to the state's IOLTA rule to include rate comparability. On July 8, 2009, the Tennessee Supreme Court entered an order effective immediately, adopting mandatory IOLTA and IOLTA rate comparability. Tennessee lawyers, however, have until January 1, 2010, to comply with that order. Tennessee becomes the 40th state to require that all practicing lawyers participate in IOLTA, and with the addition of Wisconsin and Tennessee, there will be 26 states that have adopted rate comparability. That 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.

**Washington Update** - Before adjourning for the July 4th recess, the House of Representatives passed H.R. 2847, the Commerce, Justice, Science appropriations bill. It includes a \$50 million increase for the Legal Services Corporation, providing \$440 million for FY 2010. The bill also lifts the restriction on receipt of statutorily-authorized attorneys' fee. During floor consideration, Rep. Jeb Hensarling (R-TX) offered an amendment to eliminate LSC; that amendment was overwhelmingly defeated 105-323.

The Senate Appropriations Committee reported out its version of H.R. 2847, providing only \$400 million in funding, but lifting the restriction on use of non-LSC funds. The full Senate will consider the bill after the recess.

The Obama Administration had requested \$435 million and asked Congress to lift the restrictions on the use of non-LSC funds, receipt of attorneys' fees and filing class actions. The ABA actively worked with both the House and Senate Appropriations Subcommittees to obtain at least \$435 million and lift these restrictions.

S. 718, Senator Harkin's bill to reauthorize LSC, continues to gain co-sponsors. A companion measure has not yet been introduced in the House.





**Washington, DC**—On July 25, the Legal Services Corporation (LSC) will celebrate 35 years of providing dedicated federal funding for the delivery of civil legal assistance to low-income individuals and families across the nation.

Established by Congress and President Richard M. Nixon on July 25, 1974, LSC is the single largest funder of civil legal aid for the poor. LSC, which operates as a nonprofit corporation, provides federal funds to 137 independent nonprofit organizations with more than 900 offices in the United States and U.S. territories.

“The work of legal aid programs is more important than ever before, as the recession puts more Americans at risk of losing their jobs, homes and access to health care,” LSC President Helaine M. Barnett said. “Going forward, we must champion public and private efforts to ensure equal access to justice, a bedrock principle of our great democracy.”

Frank B. Strickland, chairman of the LSC Board of Directors, said, “We deeply appreciate the bipartisan support of the Congress. Civil legal aid helps low-income individuals avert evictions and foreclosures, escape domestic violence and recover from hurricanes and other disasters. Without a doubt, civil legal aid strengthens communities.”

In fiscal year 2009, Congress appropriated \$390 million to LSC, and more than 95 percent of the funding was distributed as grants to civil legal aid programs. LSC-funded programs closed 889,155 civil legal aid cases in

## **IOLTA-Eligible Financial Institutions & Honor Roll**

The financial institutions below are eligible to hold IOLTA accounts. They have achieved 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. The institutions whose names are listed in bold are members of CCV’s **IOLTA Honor Roll**. Because they **waive minimum balance** requirements, **waive processing charges** to CCV or **offer competitive interest rates**, several thousand additional dollars are available annually to help the nearly 1/2 million New Mexicans who benefit from services provided by IOLTA-funded organizations.

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| <b>AmBank</b>                           | First Federal Bank                     | New Mexico Bank & Trust                      |
| <b>American Heritage Bank</b>           | <b>First Financial Credit Union</b>    | <b>Peoples Bank</b>                          |
| <b>Bank 1st</b>                         | <b>First National Bank in</b>          | <b>Pinnacle Bank of Gallup</b>               |
| <b>Bank of Albuquerque</b>              | <b>Alamogordo</b>                      | <b>Pioneer Bank</b>                          |
| Bank of America                         | <b>First National Bank of Ruidoso</b>  | <b>Portales National Bank</b>                |
| <b>Bank of Las Vegas</b>                | <b>First National Bank of Santa Fe</b> | <b>Roswell National Bank</b>                 |
| <b>Bank of the Rio Grande</b>           | First New Mexico Bank                  | <b>Sunrise Bank of Albuquerque</b>           |
| <b>Bank of the Southwest at Roswell</b> | First Savings Bank                     | <b>The Bank of Clovis</b>                    |
| Bank of the West                        | First State Bank of Socorro            | <b>The Carlsbad National Bank</b>            |
| Centinel Bank of Taos                   | <b>Four Corners Community Bank</b>     | <b>The Citizens Bank of Clovis</b>           |
| <b>Century Bank of Santa Fe</b>         | <b>Gallup First Federal Bank</b>       | <b>The First National Bank of New Mexico</b> |
| <b>Charter Bank</b>                     | <b>Grants State Bank</b>               | <b>Union Savings Bank</b>                    |
| Citizens Bank of Farmington             | <b>High Desert State Bank</b>          | <b>Valley Bank of Commerce</b>               |
| Citizens Bank of Las Cruces             | International State Bank               | <b>Valley National Bank</b>                  |
| <b>City Bank NM</b>                     | <b>Ironstone Bank</b>                  | <b>VectraBank</b>                            |
| <b>Clovis National Bank</b>             | <b>Irwin Union FSB</b>                 | <b>Wells Fargo Bank New Mexico</b>           |
| <b>Community 1st Bank Las Vegas</b>     | <b>Lea County State Bank</b>           | <b>Western Bank of Alamogordo</b>            |
| <b>Community Bank</b>                   | <b>Los Alamos National Bank</b>        | <b>Western Bank of Clovis</b>                |
| <b>Compass Bank</b>                     | <b>Main Bank</b>                       | <b>Western Bank of Lordsburg</b>             |
| Farmers & Stockmens Bank                | <b>Mesilla Valley Bank</b>             | <b>Western Commerce Bank</b>                 |
| <b>First Community Bank</b>             | <b>My Bank</b>                         |  |