

From: Irma.Raker@courts.state.md.us [mailto:Irma.Raker@courts.state.md.us]
Sent: Tuesday, November 11, 2008 4:30 PM
To: Comments
Cc: Pamela.Ortiz@courts.state.md.us; Kelley.O'Connor@courts.state.md.us;
jstrandlie@staff.abanet.org
Subject: RIN #3064-AD37

November 11, 2008

To Whom it May Concern:

On behalf of the Maryland Access to Justice Commission, I am writing to urge you to include IOLTA accounts in the Temporary Liquidity Guarantee Program (TLCP) recently created by the FDIC. The Interim Rule adopted by the FDIC Board does not fully cover IOLTA accounts and could create an incentive for lawyers to move client funds out of IOLTA accounts.

As you know, IOLTA accounts are trust accounts held by attorneys and firms on behalf of their clients. Interest from those accounts is used in each state to fund legal services. Since the decline of funding for legal services at the federal level, IOLTA funds have become a critical source of funding for legal services for the poor. The Maryland Legal Services Corporation, the State's IOLTA organization, received more than 6.7 million dollars in State Fiscal Year 2008 from IOLTA accounts, and used that to make grants to more than 38 legal services providers in the State. MLSC grantees opened more than 126,000 cases last year in a broad range of case types including among others, public benefits, domestic, housing and foreclosure matters.

The TLCP Interim Rule provides full coverage for *non-interest bearing* deposit transaction accounts. While it was perhaps unintended, this means that a client's total funds in one financial institution exceeding \$250,000 are eligible for unlimited insurance only if they are moved to a non-interest bearing deposit transaction account. Lawyers have a primary fiduciary responsibility to their clients. Unless the Interim Rule is amended to include IOLTA accounts, lawyers may have a fiduciary duty to move large client accounts out of IOLTA accounts and into one of these protected accounts. Much of the income states receive from IOLTA accounts comes from large deposits held for a short period of time.

In states, like Maryland, with mandatory IOLTA participation, the Interim Rule creates an ethical dilemma for attorneys. In some instances, for example, real estate transactions there are large amounts of funds in the IOLTA account. The attorney may be faced with the problem of complying with mandatory IOLTA rules, or protecting the client's fiduciary interests.

I urge you to consider amending the Interim Rule to include IOLTA accounts. Please preserve this critical funding which supports access to justice for all.

Judge Irma S. Raker (Ret.) (Court of Appeals of Maryland)
Maryland Access to Justice Commission
Irma.Raker@Mdcourts.gov