



Week of **March 3, 2009**

## An Update on the Safety of IOLTA Funds

When the banking crisis began in earnest early last fall, we wrote a column that raised concern over the implications of a bank failure upon a lawyer's responsibility to keep client IOLTA trust funds safe. The concern centered on the fact that every State imposes a fiduciary duty of adequate safekeeping for clients' funds to prevent misappropriation or negligence. The lawyer is responsible for acts of an agent, which in the case of a client trust account is the bank. If the bank fails, the lawyer, in light of the rules of professional conduct, is responsible. This would particularly have been the case for trust accounts that exceeded the longtime Federal Deposit Insurance Corporation guaranteed limit of \$100,000, which in the event of bank failure would have put any amount over the limit at risk.

The worries that this situation involves have diminished, now that Congress (as part of its financial system rescue tactics) has raised the FDIC limit for the first time in 28 years, to \$250,000 rather than \$100,000. Even more significantly, the FDIC itself has issued a ruling that all amounts in a client's IOLTA trust account are protected, regardless of the amount. The account must be identified as an IOLTA account and lawyers must maintain their clients' trust accounts in accordance with generally accepted accounting principles and the trust rules of the jurisdiction for such accounts.

The FDIC's blanket protection on all IOLTA funds obviously provides some breathing room with regard to the dilemma of lawyer responsibility. However, given that many once unthinkable financial events have happened, lawyers may not want to rely only on the FDIC pronouncement. One way to further ensure that each client's IOLTA funds are safe is to identify the name of the client in bank records and the amount of dollars held for that client, in effect creating sub-accounts. Another, more direct approach is to maintain a



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separate trust account for each client whose funds are likely to be held for an extended period of time. The interest on such a separate account will belong to the client; this is not an IOLTA account.

Because this increases trust fund accounting expenses, you may consider providing in the engagement agreement for an administrative charge to cover the cost of trust account administration. The extra piece of mind that it provides for client and lawyer could be well worth it.

## Personal Commentary

I recently returned from a week in the Santa Ynez, CA area; the Amgen Tour of California started in Northern California and went south, passing through this area. I got to watch the time trial held in the Santa Ynez valley. It was exciting to see Lance Armstrong and other elite cyclists pitting themselves against the clock to see who was the fastest.

Armstrong finished 12th in the time trial, one of his specialties before retiring 4 years ago. And he finished the overall Tour in 7th. In other words, in two races he's entered (the other last month in Australia), he's finished in the top 10 ... after only a few months of training and 2 competitive races! And he is 37 years old, an age past which most cyclists are not seen in competition. What a remarkable achievement.

From a psychological perspective, the man is unhappy because he has such high expectations of himself. He has to continually be coached to recognize his progress, to understand that the plan that was prepared for his return to cycling ... which will culminate with another entry into the Tour de France ... is on schedule and working. Trust the plan. Work the plan. Good advice for Lance Armstrong, a winner in all respects. And good advice for lawyers wanting to achieve greater success.

Prepare a plan. Work the plan. Trust the plan. Make adjustments where and when appropriate as you progress through the benchmarks of your plan.

Best wishes,

Ed Poll

Ed's Tweeting! 

## What Readers Are Saying...

*Secrets of The Business of Law®* is the most insightful book I've read on this topic. It is written in an engaging, easy-to-digest style, and there was never a dull moment. I recommend it to anyone who runs a law firm and needs to turn a profit.

-CM, Massachusetts

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