

Addressing the decline in IOLTA/IOTA revenue

by Eugene P. Whetzel

"I can't afford a lawyer." This is a refrain with which I am very familiar—my office receives hundreds of letters a year with this complaint.¹ The Bar has responded both on organized and ad hoc bases to the need for representation in civil cases by performing services pro bono. Unfortunately, that is not sufficient.

Increasingly, people who cannot afford a lawyer are appearing pro se. While this is certainly within their rights, it causes undue stress on the legal system. This stress can be seen at a number of levels—the one with which I am most familiar is the number of grievances filed with the Legal Ethics and Professional Conduct Committee by pro se litigants. Most of these grievances are prompted by the litigant's unfamiliarity with legal procedures and the Rules of Evidence. But, all of them require the expenditure of time and other resources, and frequently create angst for the grieved-about judge—even when the grievance is dismissed on intake.

Creation of the Legal Services Corporation (LSC) and the Ohio Legal Assistance Foundation (OLAF) was intended to address the unmet civil legal needs of the poor. Unfortunately, that goal has not been fully realized. While the need for services has increased, legal aid societies have frozen salaries and laid off lawyers. It was just reported that the Legal Aid Society of Cleveland realized a \$1.4 million cut in services. Largely, such actions have been the result of lower Interest on Lawyers' Trust Accounts (IOLTA) and Interest on Trust Accounts (IOTA) revenues.

IOLTA/IOTA revenues were intended to fund the legal aid societies. In part, they do so; however, IOLTA/IOTA revenues declined by almost 77 percent between 2007 and 2010—and these revenues continue to trend downward. More recently, Congress has reduced funding for the Legal Services Corporation (Ohio receives 25 percent of its funding from LSC) by 14.8 percent for the remainder of 2012.

These are indeed difficult times for Ohio's legal aid societies—just as they are for many lawyers and others. However, we can do something to assist OLAF with no cost to ourselves—deposit IOLTA/IOTA funds in a bank that pays the highest interest on those funds.

Prime Partners Program

OLAF is attempting to address the issue of declining IOLTA/IOTA revenue by creating the Prime Partners Program. The program is described on the OLAF website:

The Prime Partners Program offers financial institutions an exciting new opportunity to be recognized for commitment to the Foundation's mission of improving access to justice for struggling Ohioans. The Program

will highlight institutions that demonstrate a commitment to civil legal services by paying a premium rate on IOLTA and IOTA accounts; by providing volunteers to legal aid programs, including board members; by donating resources to legal aid clinics or other community activities; and by any other efforts which promote access to justice in Ohio.

Financial institutions offering IOLTA and IOTA accounts are invited to submit an application detailing charitable giving, employee involvement and corporate support for Ohio's legal aid programs, along with more detailed information about support for IOLTA and IOTA products.

For assistance finding such banks, you should contact OLAF by telephone at (614) 752-8919, or email at mail@olaf.org.

In addition, OLAF is working with the Ohio State Bar Association to facilitate local pro bono committees in each of Ohio's appellate districts. For more information about how to get involved in this effort, contact OLAF using the above information.

New technology and trust account scams

While lawyers will hopefully deposit trust account funds in banks that are part of the Prime Partners Program, they should also be aware of one of the more recent iterations of scams using technology. Although these scams conceivably go beyond trust accounts, lawyers should be aware that unscrupulous clients are using technology—apps on smart phones in particular to scam lawyers. The basic thrust of these is that the lawyer issues a trust-account check, which the recipient then scans using an application that allows deposit on scanning. (This occurs while the lawyer is out of the room or, in some cases, where the person leaves the lawyer's office with the check.) Claiming some defect in the check, or perhaps a desire to receive funds electronically, instead, the client returns the original check. The lawyer then destroys the check and issues a replacement. Of course, both checks are deposited and the trust account takes a double hit. ■

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Endnote

¹ One of my lawyer colleagues is fond of asking the question, "Could we afford to hire ourselves?"