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Message from the President

Cam Ferenbach, State Bar of Nevada President



SUPREME COURT RULE 217?

“For the first time this year, members are required to state whether or not each trust account reported on the form is “an Interest on Lawyer Trust Account (IOLTA) created in accordance with SCR 217.”

In early December every member of the state bar received a 2011 membership fees and required disclosures forms packet. Fees and completed forms were due January 1, 2011, and must be received by the state bar on or before March 1, 2011 to avoid penalty assessments. These deadlines have been in effect for many years and most members get their fees and completed forms to the state bar office on time. Thanks to all of you who used the online payment and reporting options. By doing so you save yourself, and the bar, time and money.

We redesigned our forms this year for ease of processing and to provide members with an opportunity to provide demographic information. For the most part, however, the information required is the same as in years past, with one major exception. For the first time this year, members are required to state whether or not each trust account reported on the form is “an Interest on Lawyer Trust Account (IOLTA) created in accordance with SCR 217.” (See page 3 of the form.)

Supreme Court Rule (SCR) 217 was adopted in 1983 to provide for IOLTA trust accounts, whose interest would be paid to the Nevada Law Foundation to fund legal service providers and other law-related projects. This began as a voluntary program, which through amendments in the 90s and this decade, became a mandatory program with interest minimum standards.

The order amending SCR 217, entered on December 16, 2009, was initiated by a recommendation from the Access to Justice Commission and was submitted to the Supreme Court as Administrative Docket No. 419. A public hearing took place on December 1, 2009, after notice and opportunity for the submission of written comments. That order establishes interest minimum standards for Nevada IOLTA accounts as follows:

2. Interest minimum standards. The rate of interest payable upon any interest-bearing trust account shall meet any one of the following minimum standards:
 - (a) The 30-day LIBOR minus .50 percent, or, the Federal Discount Rate plus .50 percent, whichever is greater; or
 - (b) Equal to the Federal Fund Target Rate, or, the Federal Discount Rate plus .50 percent, whichever is greater; or
 - (c) Equal to or greater than a flat interest rate, which rate shall be reviewed and approved by the Access to Justice

- Commission twice annually and made public at least thirty days prior to the effective date.
- (d) Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, are permissible so long as there is no impairment of the right to withdraw or transfer principal immediately without penalty.

The interest rate set by the Access to Justice Commission pursuant to SCR 217(2)(c) is currently .75 percent.

Despite considerable efforts by the state bar and the Access to Justice Commission to notify Nevada's attorneys of the amendment process and the resulting court order, the delivery of this year's dues notices prompted some inquires from our members. The state bar devoted a portion of our website to this issue and established a hot line to respond to questions regarding this rule change. A number of members asked whether or not they needed to move their IOLTA trust accounts, if their accounts were with banks whose names did not appear on our website list, titled "**List of Participating IOLTA Financial Institutions Under SCR 217.**"

The answer is "yes." Fortunately, as of the writing of this column, 22 banks have agreed to pay interest and submit reports to the Nevada Law Foundation in a manner that will allow our members to maintain IOLTA accounts at their institutions in compliance with SCR 217. A large majority of existing IOLTA trust accounts in the state are at banks listed as participating. There is also an exception at subsection three, waiving these requirements if the member or member's law firm does not maintain an office within 20 miles of a participating financial institution.

Some members also expressed dismay that our Supreme Court is interfering with an attorney's decision on where to bank or trying to regulate banks. SCR 217 does not break new ground here. Supreme Court Rule 78.5 has regulated all attorney trust accounts for many years.

SCR 78.5(1)(a) states, in part, "Lawyer trust accounts shall be maintained only in financial institutions approved by the State Bar."

Subsection (2) and (3) of Rule 78.5 place requirements on financial institutions that must be met before they are approved to hold trust accounts.

The new interest minimum standards will have a significant, positive impact on the Nevada Law Foundation's ability to fund legal service providers, because the financial institutions will be paying commercially reasonable interest, instead of de minimis interest paid on some accounts in the past. During the first half of 2011, if you face problems because your current financial institution is not on the list, state bar staff will work with you as you transition into compliance.

We really appreciate your understanding and cooperation. If you have questions or concerns that have not been addressed through existing state bar channels, please contact me at (702) 317-1449 or camf@nvbar.org. ■