



1.15A(i)

STATE OF WASHINGTON  
COURT OF APPEALS  
BY: J. J. [illegible]  
CLERK

April 29, 2005

Ms. Lisa Bausch  
Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

RE: Proposed Changes to Washington State RPC 1.15A(i)

Dear Ms. Bausch;

Thank you for the opportunity to comment on the Washington State Bar Association's proposed changes to Rule 1.15A(i) of the Rules of Professional Conduct. The Washington Credit Union League (League), as the trade association for credit unions in the State of Washington, is very interested in the outcome of this proposed rule, and concerned that this change will erode the powers of credit unions and harm the Legal Foundation of Washington, the very institution that the WSBA is seeking to protect.

Specifically, the League is concerned with the rule change mentioned above, which is reproduced below:

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation. In the exercise of ordinary prudence, a lawyer may select any bank, savings bank, or savings and loan association that is insured by the Federal Deposit Insurance Corporation, is authorized by law to do business in Washington and has filed the agreement required by ELC 15.4. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

Credit unions are fully insured and backed by the full faith and credit of the United States Government. However, the insurance protection their members enjoy is derived from the National Credit Union Share Insurance Fund (NCUSIF), an insurance fund strictly for the credit union industry.

The change proposed by the WSBA would exempt credit unions from accepting trust, or IOLTA, deposits, and would instead require these deposits to be placed in financial institutions insured by the FDIC.

We certainly understand the Bar's desire to protect these funds, and share your concern that protection of depositor funds should be paramount. However, we point out that the ultimate beneficiary of these deposits, the Legal Foundation of Washington, is served almost entirely by the interest earned from these deposits; and banks, while entirely competent in providing these services, generally do so at both higher cost and at a lower interest rate than credit unions. In short, credit unions can provide more income while providing adequate insurance protection in many cases, as this letter will demonstrate.

The League questioned members of the WSBA staff extensively to determine the rationale behind this rule change. The issue pointed to was a 1996 Legal Opinion Letter published by the National Credit Union Administration (NCUA); letter number 96-0841, reproduced in relevant part below:

With an agent account, the membership status of the client (owner of the funds) and not that of the agent (attorney, law firm or IOLTA Board) is determinative as to whether an IOLTA account can be properly maintained. Consequently, in order for an attorney or law firm to maintain an IOLTA account at an FCU, either all of the clients whose funds would be deposited must be members of that FCU or the FCU must be designated as a low income which would allow it to accept nonmember funds.

According to WSBA staff, the concern raised is that attorneys' clients are not necessarily members of the credit union where the IOLTA resides, and funds are therefore not insured should failure occur within the financial institution.

While we concede that membership is an issue, and that an attorney would need to be vigilant in ensuring that their clients are members, and therefore eligible for insurance, we believe the WSBA's exclusion of any deposit insurance outside of the FDIC is shortsighted.

First, we point out that the NCUA has not stated that IOLTA funds are uninsurable, simply that the clients of the attorney must be members of the credit union. While it may seem unlikely that all of an attorney's

clients would be members of the same credit union, there are many parts of our state where a credit union is the primary financial institution serving their community. In these instances, it is not only possible, but a strong probability that the membership criterion is met. In these instances an FDIC requirement would be a disservice to all parties involved.

Second, if an attorney's clients are members of the credit union, IOLTA funds are fully insured. If a credit union serving as a depository for an IOLTA adds "all of the clients served by our attorney-members" to its field of membership, clients with funds in an IOLTA are eligible for membership. In other words, membership accounts could be established for each of the clients with funds in an attorney's IOLTA. These accounts could be administered as sub-accounts of the attorney's account, and administered in trust for the client-members. While this alternative presents some additional work for the credit union, it would achieve the WSBA's desire to have all client funds insured.

Third, as the NCUA opinion points out, low-income credit unions are eligible for deposits from non-members that are insured. For example, TULIP (Thurston Union of Low Income People) Credit Union in Olympia services underprivileged persons in Thurston County and would be eligible for these deposits, and deposits would be fully insured by the NCUSIF.

A full prohibition on all but FDIC insured funds discounts the possibility of future changes of interpretation by the National Credit Union Administration. The League is actively lobbying the NCUA to amend or rescind its opinion concerning this type of pass-through insurance, and the NCUA has indicated its willingness to listen to our arguments.

Washington law currently allows the Department of Financial Institutions to approve private alternatives to federal share insurance. If a private alternative to federal share insurance is approved in the State of Washington, these accounts would be fully insured. Once again, a prohibition on all but FDIC insurance discounts the possibility of this occurring.

With these possibilities for change in mind we respectfully request that the WSBA reconsider its proposed changes to RPC 1.15A(i). As

alternatives we submit the following suggestions:

- Retain the old language that requires simply that IOLTA funds be insured. This will require some due diligence on the part of attorneys, but will result in the highest earnings for the Legal Foundation of Washington.
- Allow any credit union that has added the clients of attorney-members with an IOLTA to its field of membership.
- Allow deposits within low-income credit unions where they will benefit both the Legal Foundation and those of modest means.

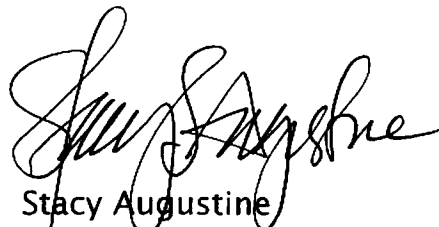
Alternatively, in the event a change is made, we request a grandfathering of the change. Many credit unions currently accept these deposits. Requiring attorneys to move their accounts would be cumbersome and burdensome. If a change must be made, we respectfully request that it occur through the normal processes of attrition as attorneys retire, close their accounts, or move to other areas.

Again, thank you for the opportunity to comment on this proposed rule change. Credit unions continue to be a vital part of our communities and we hope to see them continue to be a part of the legal community as well. We are, of course, available to discuss this or other matters with you at your convenience.

Respectfully yours,



Glenn Bishop  
Regulatory Analyst



Stacy Augustine  
SVP/General Counsel