



Monday, June 15, 2009

The Honorable Jean H. Toal
Chief Justice
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Dear Ms. Toal:

Carolina Alliance Bank has been made aware of a petition pending from the South Carolina Bar Foundation to amend Rule 412 of the South Carolina Appellate Court Rules (SCACR) relating to Interest on Lawyer Trust Accounts (IOLTA).

On behalf of Carolina Alliance Bank, I would like to make the following comments as to the potential impact of changes to Rule 412 as they relate to comparability of interest rates paid to IOLTA accounts:

- I. Increased Fees to Consumers/Businesses—If the comparability amendment is passed, banks will be forced to pass on fees to attorneys that in the past have been waived as a result of the compensating balances held in the IOLTA. Examples of these fees that involve actual hard costs to banks and that banks are currently not being compensated for under IOLTA rules include wire transfer fees, remote capture banking fees, cash management fees, and stop payment fees. Such charges will ultimately be passed on to the client of the attorney.
- II. Increased Administrative Costs to the Banks—Due to system limitations which appear to be consistent throughout the banking industry, banks will experience increased administrative costs in overseeing IOLTA accounts. In order to assess the fees under the amended comparability rule, IOLTA accounts will be subject to a manual analysis whereby “reasonable” fees would be offset against the IOLTA earnings credit but SC Bar deemed “unreasonable” fees as outlined above (wire transfer, remote capture, cash management, etc.) would be manually offset through an operating account relationship or via direct bill (another manual cost service) for the purpose of negotiating service fees.

III. Increased Expense/Overhead to Attorneys—As previously mentioned, banks will be forced to assess fees to attorneys that, prior to this time, have been waived. This will result in increased expenses to the attorney as well as the requirement to establish additional accounts to negotiate service fees in the absence of an existing operating account relationship.

It is our opinion that additional time needs to be granted before ruling on the petition to amend Rule 412 to allow compromises on core differences in recommendations between the South Carolina Banker's Association and its member banks and those of the South Carolina Bar Foundation. These core differences relate to the offset of reasonable fees versus unreasonable fees, the establishment of a benchmark rate as compensation to the SC Bar Foundation including reasonable minimum rates, and a reasonable timeframe before implementation to allow banks time to make necessary administrative adjustments to accommodate the new rules.

I appreciate the opportunity to comment to the court.

Respectively Submitted,

John S. Poole
President and CEO
Carolina Alliance Bank

Cc: Lloyd Hendricks, SC Bankers Association

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