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Here Today, Gone Tomorrow:
Your Client Trust Account!

Protecting a client's money is one of the paramount responsibilities of an attorney. The loss, misappropriation or comingling of clients' funds is an attorney's fast track ticket straight to disbarment.

Therefore, it is up to the attorney to protect their clients' funds as much as possible. Would you agree? I would agree with this statement even if I did not write it. However, your State (or Commonwealth where applicable) may not agree.

For shame you say! I see you with your hands flapping in the wind wondering how I could make such an outlandish comment. How could I possibly impugn the integrity of my State! The audacity I must have. Right? Wrong!

I'm not sure if you are aware of the banking meltdown that started on September 15, 2008, with the Lehman Brothers bankruptcy? I know, as attorneys, why would you possibly keep up with banking issues if you weren't paid to. Yes, foolish of me to ask, and I sincerely apologize. (I hope the sarcasm came through)

You, as an attorney, must know that this nation's banking system was on the verge of collapse. That the very fabric that holds our capitalist economy together started to unravel and almost came completely unwound. As of the date of this writing, 374 banks closed in the United States since October 13, 2000. More notably, out of those 374 banks, 336 of those banks failed since September 15, 2008! ("FDIC Failed Bank List")*
**http://www.fdic.gov/bank/individual/failed/banklist.html*

Why does this affect Attorneys? "Anyone? Anyone?" " Bueller?.....Bueller?…..Bueller?" This affects attorneys because one of the most integral parts of our business, is depositing clients' funds in our Trust accounts.

OK, it seems that I lost some people here. Let me try to tie this together before we continue. Attorneys place client funds in a trust account, a trust account is held at a bank, banks are closing at a phenomenal rate, when the bank closes the clients' funds are lost, the loss of such funds could lead to an attorney's disbarment.

The crux of the issue becomes, what happens if the bank, where the trust account is held, fails?

Don't worry, I see you again with the hand flapping like crazy, about to jump in with an answer. Go ahead; were you going to state that 'There is no issue, my bank is FDIC insured!" Whoa, you showed me.

Of course, you are aware that FDIC insurance only covers up to a certain dollar value.

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No?

As of this writing, the FDIC permanently increased the insurance amount to $250,000.00 on July 21, 2010, with the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Previously, the original increase in the FDIC insurance from $100,000.00 to $250,000.00, was effective October 3, 2008, but was temporary and set to expire on December 31, 2013.

Better still, on noninterest-bearing transaction accounts, there is no limit on the FDIC insurance! This unlimited insurance coverage, approved on a rule change by the FDIC on January 18, 2011, includes Interest on Lawyer Trust Accounts (IOLTAs). Yeeaaa, attorneys dance in the streets with joy. Attorneys now have no issues to worry about with regard to their client funds. All is right with the world!

Just one small caveat. The FDIC unlimited insurance coverage for noninterest-bearing transaction accounts, to include IOLTAs, expires on December 31, 2012.

What does this mean? Attorneys need to make sure that their clients' funds are protected.

This is where the tricky part comes in. The rule change regarding FDIC insurance as it relates to noninterest-bearing transaction accounts, effects 'transaction' accounts. Yes, I see that quizzical look on your face. Let me explain.

Banking 101: When you deposit money in a bank account, the bank gives you interest on your money. The bank is paying you for the use of your money, placing your money on its balance sheet, while simultaneously lending your money out to other people. (Obviously at a higher interest rate than they are paying you.) This breaks down to you giving the bank a loan. Unfortunately, if the bank goes under, like the 336 banks stated above, any money you 'lent' the bank is gone. This is where the FDIC comes in. The FDIC insurance will cover your loss up to a certain dollar value, here $250,000.00 for regular accounts and an unlimited amount for noninterest-bearing transaction accounts.

As discussed just moments ago, that unlimited FDIC insurance is only temporary and will expire on December 31, 2012. So what happens after December 31, 2012? Who knows!

The only acceptable answer with regard to any question trying to predict the future events of an elected body is: "I have absolutely no idea!" (A dumb look and shrugging of the shoulders is also an acceptable answer)

Therefore, attorneys need to be vigilant and prepared. Here in Connecticut, 'The Rules

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of Professional Conduct – Rule 1.15' require that attorneys have and maintain an IOLTA account. If your total balance in the IOLTA account will not exceed $250,000.00, then you have nothing to worry about and you have read this article for naught.

On the other hand, if your IOLTA account will exceed $250,000.00 and that total balance will carry past December 31, 2012, then you need to take Banking 102.

What is Banking 102? I'm glad you asked.

Banking 102: When you deposit money in a bank account, and the bank does NOT pay interest on the account and the account is a non-transactional account and you pay the bank an administrative fee for the use of the account, then the bank does not place your deposited funds on its balance sheet. This is similar to withdrawing cash and placing the cash in a safety deposit box. If the bank were to fail, the cash in the account is not affected and the total principal may be withdrawn.

Great news? Absolutely!

Not only have you continued to read my amazing, in-depth and brilliant narrative, but you will now know what the problem is. There is one tiny itsy bitsy problem placing your money in a non-interest bearing account.

Most banks in Connecticut do not offer this service.

Yes, I agree with you completely! We shall rise up against such tyranny, put an end to this unjust behavior and WE SHALL RULE THE DAY! Umm, well, maybe not.

There are two issues why we might not be able to change the bank's position; The first issue is the banks. The banks want your clients' funds on their balance sheet. Why you ask? Because banks make more money when they have more money. And in the end, aren't banks in the business of making money?

So we shall bring our cause to the government, because the government truly cares about our clients. Yeah, I'm not so sure about this one either. This now brings us to the second issue. If an attorney placed client funds in a non-interest bearing account, there would be a direct decrease in funds placed in IOLTAs. Why is this an issue you ask? This is an issue, because the State of Connecticut wants that interest. That's right, your clients don't get the interest earned on this account, it gets placed in a state fund. And what do government officials like more than helping your clients? That's right, your clients' money.

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I see you jumping around in your seat, hand all a flapping, dying to ask why would the government care about a few dollars earned on an IOLTA account. The State of Connecticut cares about those few dollars because since the inception of the IOLTA account in 1987 here in Connecticut, Connecticut was given an additional $160,397,671 to spend. Which State Senator or State Representative is going to want to give up that money and help your clients?

So what should attorneys do? Attorneys must be extremely diligent of their account balances and their banks financial strength. If your bank seems weak or in trouble, move your accounts. If you don't want to move your accounts, demand non-interest bearing accounts that protect the total value of deposited funds. Worst case, upon proper notification and acknowledgment from your client, withdraw the funds in cash and deposit them in a safety deposit box. Before you do this, tell the bank exactly why you are doing this because banks have KYC/EDD, SARs and CTRs issues they must observe.

PLEASE NOTE: in the prior paragraph, I stated the withdrawal of cash, and not cash equivalents. The withdrawal of cash equivalents creates a completely new set of issues. A set of issues that will be explained at a later date in Banking 201.

As always, any problems, inconsistencies or inaccuracies in this article are all mine and mine alone to bear. (This is be because I wrote this all by myself and have no one else to blame) And lastly, if you have any questions, comments or tirades with regard to this article, feel free to contact me at:

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Attorney Michael Richard Powers started his professional career as an Investment Banker in Manhattan then moved to institutional portfolio management focusing on international equities.

Attorney Powers is admitted to the bar in New York and Connecticut. Furthermore, Attorney Powers is a Certified Public Accountant (CPA), a Certified Fraud Examiner (CFE) and a Certified Anti-Money Laundering Specialist (CAMS).

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