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September 14, 1983

FILE NO. 83-012

FINANCIAL INSTITUTIONS:  
'Interest on Attorneys'  
Trust Accounts

Honorable Howard C. Ryan  
Chief Justice, Illinois Supreme Court  
111 East Jefferson Street  
Ottawa, Illinois 61350

Dear Mr. Chief Justice:

I have your letter wherein you inquire regarding the ownership of the beneficial interest in client trust funds deposited pursuant to Supreme Court Rule 9-102, as amended effective May 1, 1983 (92 Ill. 2d R. 9-102), in accounts subject to negotiable orders of withdrawal (NOW accounts). It is my opinion that, because Rule 9-102 requires that the Illinois Law Foundation be designated as the income beneficiary of any account so established, the Foundation has the exclusive

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right to the interest generated from the deposited trust funds and thus, is the owner of the beneficial interest in those funds.

Prior to 1980, Federal law generally prohibited banks and other financial institutions from allowing withdrawals from interest or dividend-bearing accounts by negotiable or transferable instruments. In 1980, however, Congress authorized banks and other financial institutions to offer interest-bearing checking accounts, which are commonly referred to as "NOW" accounts. (The Consumer Checking Account Equity Act of 1980, Public Law 96-221, Title III.) Section 303 of the Consumer Checking Account Equity Act of 1980 (12 U.S.C. § 1832), which permits the establishment of such accounts, provides in pertinent part:

"(a) (1) Notwithstanding any other provision of law but subject to paragraph (2), a depository institution is authorized to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit \* \* \*.

\* \* \*

(Emphasis added.)

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With regard to NOW accounts, the Code of Federal Regulations provides:

" \* \* \*

(3)(i) Deposits subject to negotiable orders of withdrawal may be maintained if such deposits consist of funds in which the entire beneficial interest is held by (A) one or more individuals; (B) a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or (C) the United States, any State of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(ii) Deposits in which any beneficial interest is held by a corporation, partnership, association or other organization that is operated for profit or is not operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes, or that is not a governmental unit described in subparagraph (i)(C) may not be classified as deposits subject to negotiable orders of withdrawal.

\* \* \*

(Emphasis added.) (12 C.F.R. § 217.1(e).)

Thus, it is clear that a NOW account may be maintained when the beneficial interest in such account is held by a nonprofit organization, such as those described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), which is operated primarily for a charitable purpose. (See 12 C.F.R. § 217.157(e).)

Subsequent to the enactment of the Consumer Checking Account Equity Act of 1980, several States have instituted programs allowing attorneys to deposit nominal or short term funds of clients in interest-bearing accounts, with the interest payable to a public legal service organization. The Illinois Supreme Court has established such a program by amending Supreme Court Rule 9-102, to provide in pertinent part:

" \* \* \*

(d) All nominal or short-term funds of clients paid to a lawyer or law firm, including advances for costs and expenses, may be deposited in one or more interest-bearing trust accounts established with a bank or savings and loan association, with the Illinois Law Foundation designated as income beneficiary. A lawyer or law firm electing to create or maintain such a pooled, interest-bearing trust account ('participating lawyer or law firm') shall comply with the following provisions:

(1) A participating lawyer or law firm shall establish one or more interest-bearing trust accounts with any bank(s) or savings and loan association(s) authorized by Federal or State law to do business in Illinois. Funds deposited in each interest-bearing trust account shall be insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and shall be subject to withdrawal promptly upon request.

\* \* \*

(3) A participating lawyer or law firm shall direct the depository institution to remit net interest or dividends, after deduction of charges and fees, as the case may be, on the average monthly balance in the account, or as otherwise computed in

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accordance with the institution's standard accounting practice, at least quarterly, to the Illinois Law Foundation. A statement shall be transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent, the amount of such remittance, and the rate of interest applied.

\* \* \*

"

You advise that the Illinois Law Foundation is a nonprofit charitable organization qualified under section 501(c)(3) of the Internal Revenue Code. The interest income derived from trust funds deposited pursuant to the program will be used primarily to support civil legal aid programs throughout the State.

Under Supreme Court Rule 9-102, the Illinois Law Foundation must be designated as the income beneficiary of all interest-bearing trust accounts established and maintained under its provisions. Moreover, a participating attorney must direct the bank or savings and loan association with which an account is established to remit net interest or dividends earned on the account directly to the Illinois Law Foundation.

The Illinois courts have not construed the term "beneficial interest" in this context. In the absence of statutory definitions indicating a different legislative intent, however, it is assumed that words used in a statute are intended to have their common dictionary meaning or their

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ordinary and popularly understood meaning. (Winks v. Board of Education (1979), 78 Ill. 2d 128, 137; Bowes v. City of Chicago (1954), 3 Ill. 2d 175.) The phrase "beneficial interest" has been defined as:

"Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control.  
\* \* \*" (Emphasis added.) (Black's Law Dictionary 199 (4th rev. ed. 1968).)

The word "beneficial" is defined to include:

"\* \* \* receiving or entitling one to have or receive in one's own right and for one's own benefit an advantage, use, or benefit that need not be monetary (the -- owner of securities) (a -- interest in an estate) -- \* \* \*" (Webster's Third New International Dictionary 203 (1981).)

The Federal Circuit Court of Appeals, 8th Circuit, has given the following definition of "beneficial interest":

" \* \* \*

\* \* \*[I]ts traditional meaning is understood to be the right to the use and enjoyment of property. This interest is normally owned by the legal title holder but by agreement or operation of law can be placed in another.

\* \* \* "

(Norman G. Jensen, Inc. v. Federal Maritime Commission (8th Cir. 1974), 497 F.2d 1053, 1057.)

The term "beneficial interest" is commonly used to designate the interest of a beneficiary of a trust. Sasso v. Gallucci (S.Ct. N.Y. 1982), 447 N.Y.S.2d 618, 620.

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Given the commonly understood meaning of the term "beneficial interest", it is clear that the Illinois Law Foundation holds the beneficial interest in NOW accounts established pursuant to Supreme Court Rule 9-102. The Illinois Law Foundation is entitled to all interest generated by the deposit of client trust funds in interest-bearing accounts under that Rule, even though the Foundation is not the legal owner of the accounts. Moreover, since no other person or entity is permitted under Rule 9-102 to receive interest from such accounts, it is my opinion that the Foundation holds the "entire beneficial interest" for purposes of the Federal statutes and regulations cited above. Therefore, it is my opinion that client trust funds may be maintained in NOW accounts since the owner of the beneficial interest is a nonprofit charitable organization qualified under section 501(c)(3) of the Internal Revenue Code. (See 12 C.F.R. § 271.1(e).) Final determination of the status of such funds, however, must be made by the Federal officials charged with the administration of the pertinent Federal statutes and regulations.

Very truly yours,

  
A T T O R N E Y G E N E R A L