



Until the 2008 financial crisis and its long aftermath of near-zero interest rates, COLTAF was the second largest funding source for Colorado Legal Services, Colorado's statewide, staffed legal aid program.

Where You Bank Matters

Supporting Legal Aid Through COLTAF Accounts

BY DIANA M. POOLE

Most lawyers know that COLTAF accounts are a required and very convenient way to hold short-term and nominal client funds. What may not be as widely known is COLTAF's critical role in funding Colorado's civil legal aid delivery system. Because COLTAF's only regular source of revenue is the interest earned on lawyers' COLTAF accounts, COLTAF's funding ability is entirely dependent on the rate of return earned on the balances held in those accounts. What your bank is paying on your COLTAF account has a direct impact on access to civil justice in Colorado.

What is COLTAF?

The Colorado Lawyer Trust Account Foundation (COLTAF) is Colorado's Interest on Lawyers' Trust Accounts (IOLTA) program. IOLTA programs exist in all 50 states, the District of Columbia, and Puerto Rico. Across the country, they are among the most significant sources of funding for programs that provide essential legal help to those who would otherwise be forced to navigate our civil justice system alone, often in the face of potentially devastating consequences.

Authorized by the Colorado Supreme Court and established in 1982, COLTAF collects the interest earned on COLTAF accounts and uses

these funds to make grants. Since its founding, COLTAF has made grants totaling nearly \$40 million. Until the 2008 financial crisis and its long aftermath of near-zero interest rates, COLTAF was the second largest funding source for Colorado Legal Services, Colorado's statewide, staffed legal aid program.¹ COLTAF has also provided significant funding over the years for bar-sponsored pro bono programs and other justice-related organizations throughout the state. Today, COLTAF funds are about a quarter of what they were before the financial crisis. COLTAF grant recipients are struggling to provide services with substantially reduced COLTAF funding, and COLTAF has not been able to award any discretionary grants since 2011.

Interest Rate Comparability for COLTAF Accounts

Historically, due to the split between the legal and beneficial ownership of COLTAF accounts and thus the absence of normal competitive

pressures, there has been a significant disparity between interest rates paid on COLTAF accounts and those paid on comparable non-COLTAF accounts, most notably with respect to higher-balance accounts. Colorado took an important step toward remedying this situation in 2014, when the Colorado Supreme Court approved amendments to Colorado Rule of Professional Conduct 1.15, which, among other things, established so-called “interest rate comparability” for COLTAF accounts.² Interest rate comparability simply ensures that COLTAF accounts are treated fairly and receive the best rate for which they qualify at a particular bank. It requires banks, as a condition of being approved to provide COLTAF accounts by the Office of Attorney Regulation Counsel, to pay the highest interest or dividend rate generally available to their other customers, when their COLTAF accounts meet the same minimum balance or other requirements.

Unfortunately, to date, interest rate comparability has had little impact on COLTAF’s revenue. But this is beginning to change. When Colorado’s comparability requirement was adopted in 2014, banks were still paying near-zero interest rates on all short-term deposits, as they had been since the 2008 financial crisis. A rate comparability requirement for COLTAF accounts will only result in increased revenue if there are comparable non-COLTAF products and accounts that are earning higher rates. Very low rates on short-term deposits persisted through most of 2017, despite quarter-point increases in the Federal Funds Target Rate (FFTR) in December 2015, December 2016, and three times in 2017 (March, June, and December). With the quarter-point FFTR increase in March 2018, some banks have started to respond to the rising rate environment, and with at least two additional increases expected this year, that movement in short-term interest rates will likely continue. As a result, COLTAF, its grantees, and most important Colorado’s civil legal aid delivery system and those who rely on it for services should begin to see some benefit from the Colorado Supreme Court-approved interest rate comparability requirement.

Of course, it will take years for COLTAF to recover from almost 10 years of near-zero interest

TABLE 1. COLTAF LEADERSHIP BANKS

Prime Partner Banks	Benchmark Banks
5 Star Bank	Adams Bank & Trust
Bank SNB	Bank of Estes Park
Berkley Bank	Citywide Banks
Cache Bank & Trust	Colorado National Bank
Champion Bank	First Colorado National Bank
Collegiate Peaks Bank	First National Bank
Ent Credit Union	Flatirons Bank
First Southwest Bank	Integrity Bank & Trust
First State Bank of Colorado	Pikes Peak National Bank
Independent Bank Colorado	Rio Grande Savings & Loan
Mountain Valley Bank	Verus Bank of Commerce
UMB Bank	Western States Bank
United Fidelity Bank	
Vectra Bank	

rates. During that time, COLTAF’s trust account revenue fell by 85%, and its grantees suffered accordingly. A reserve, built when interest rates were higher with a more typical interest rate cycle in mind, was used, as intended, to help sustain grant levels as revenue fell. But COLTAF’s reserve was not nearly large enough to cover the prolonged shortfall in revenue, and it was exhausted completely in 2014. Furthermore, the Federal Reserve has made it clear that notwithstanding expected “further gradual increases,” “the federal funds rate is likely to remain, for some time, below levels that are expected to prevail in the longer run.”³ Even assuming nothing happens to derail or delay “further gradual increases,” it will take years for COLTAF to rebuild its reserve. And it is unclear whether COLTAF will ever be in a position to restore grants to their pre-Great Recession levels.

COLTAF’s Leadership Banks

Still, rate comparability for COLTAF accounts is good news for Colorado. Even better news is that some banks have chosen to pay rates above and beyond what rate comparability requires. These

banks are COLTAF’s Leadership Banks, listed in Table 1. Leadership Banks are recognized as such for their important role in maximizing resources for civil legal aid in Colorado. And their leadership and generosity make a big difference. COLTAF’s Benchmark Banks pay a net rate on COLTAF deposits equal to 60% of the FFTR, and COLTAF’s Prime Partners pay a net rate equal to 75% of the FFTR.

When the FFTR is expressed as a range, as it is now, the value used in determining the Benchmark and Prime Partner rates is the highest value in the range. When the FFTR is increased, the Benchmark and Prime Partner rates go up accordingly. With the March increase in the FFTR to a range of 1.50–1.75, COLTAF’s Benchmark Rate is now 1.05% and the Prime Partner rate is 1.31%.⁴ In contrast, the weighted average rate on COLTAF accounts statewide is currently only about 0.40%. The impact of this significant rate differential is illustrated in Table 2.

The leadership and generosity of COLTAF’s Leadership Banks, reflected so clearly in this chart, demonstrate a deep commitment to serving the legal community, helping to meet not

TABLE 2. IMPACT OF RATE DIFFERENTIAL BY ACCOUNT BALANCE

COLTAF account balance	Annual return at current average rate of 0.40%	Annual return at Benchmark rate of 1.05%	Annual return at Prime Partner rate of 1.31%
\$25,000	\$100	\$262.50	\$327.50
\$50,000	\$200	\$525	\$655
\$100,000	\$400	\$1,050	\$1,310
\$250,000	\$1,000	\$2,625	\$3,275
\$500,000	\$2,000	\$5,250	\$6,550

only its business needs but also its professional responsibilities. By paying premium rates on their COLTAF deposits, COLTAF’s Leadership Banks are working hand in hand with the legal community to provide access to justice for those who cannot afford or secure adequate legal counsel in civil matters.

difference in return if all COLTAF deposits were earning Leadership rates rather than the current weighted average rate of 0.40%. It provides a vivid illustration of the enormous leadership potential that has yet to be realized in the banking community with regard to the COLTAF program.

How You Can Help

Lawyers and law firms can play a very important part in maximizing resources for Colorado’s civil legal aid delivery system by taking an active interest in the COLTAF program. Find out how much your bank is paying on your COLTAF account. Thank and support COLTAF’s

Colorado’s Leadership Potential

Of course, the overall return on COLTAF deposits statewide is a function of both interest rates and balances on deposit.⁵ Currently, only 12% of COLTAF deposits are held in Leadership Banks and thus earning the premium Leadership rates. A full 88% of COLTAF deposits are in non-Leadership Banks. Table 3 quantifies the

TABLE 3. ANNUAL IMPACT OF LEADERSHIP RATES

Annual return on COLTAF balances statewide at current average rate of 0.40%	\$1,560,000
Annual return on COLTAF balances statewide at Benchmark rate of 1.05%	\$4,095,000
Annual return on COLTAF balances statewide at Prime Partner rate of 1.31%	\$5,109,000

law office accounting specialist

- & COLTAF accounting & reconstruction
- & Full-service billing, bookkeeping & payroll for law firms
- & Training & consulting for QuickBooks® Timeslips® TABSIII®
- & Forensic accounting
- & Fraud investigations (occupational fraud expert)

daphne a salone cfe, cfc
 certified fraud examiner & certified forensic consultant

970.527.3075
 dsalone@lawandequityltd.com

law & equity ltd
 serving lawyers and small businesses since 1993

MORE WAYS TO IMPROVE ACCESS TO CIVIL JUSTICE IN COLORADO

1 Remit any unclaimed funds in your COLTAF account to COLTAF.

Colorado Rule of Professional Conduct 1.15B was amended, effective November 3, 2016, to allow lawyers and law firms to remit unclaimed funds to COLTAF if, after reasonable efforts, the owner of the funds cannot be identified or, if identified, cannot be located.

2 If you're counsel in a class action, propose to the court and to the opposing party that 100% of any residual be remitted to COLTAF.

Colorado Rule of Civil Procedure 23 was amended, effective for settlements approved on or after July 1, 2016, to require that not less than 50% of any residual funds be remitted to COLTAF to support activities and programs that promote access to the civil justice system for low income Coloradans.

3 Provide at least 50 hours of pro bono service every year. Colorado Rule of Professional Conduct 6.1 provides that every lawyer “should aspire to render at least fifty hours of pro bono publico services per year.”

4 Give generously to the Legal Aid Foundation (legalaidfoundation.org) to support Colorado Legal Services, our statewide legal aid program.

Colorado Rule of Professional Conduct 6.1 provides that every lawyer “should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.”

5 Actively support increased federal funding for legal aid. The federal government provides funding for civil legal aid through an annual appropriation to the Legal Services

Corporation, an independent non-profit corporation governed by an 11-member bipartisan Board of Directors, appointed by the President and confirmed by the Senate. The Legal Services Corporation provides 40% of the funding for Colorado Legal Services.

6 Actively support continued state funding for legal aid. The state provides funding for legal services to victims of domestic violence through an annual appropriation to the Family Violence Justice Fund. The funds are distributed to organizations statewide based on the number of victims served. Colorado Legal Services typically receives approximately 80% of the funds.

Leadership Banks, and encourage those banks paying lower COLTAF rates—particularly if one of them is your own bank—to join the COLTAF Leadership group.⁶ Both the legal and banking communities are essential to the health and vitality of our state. Together, in partnership through COLTAF, we can do a better job of maximizing resources to meet the critical community need for meaningful access to civil justice. **CL**



Diana M. Poole is the executive director of COLTAF and the Legal Aid Foundation of Colorado. She is also vice chair of the Colorado Access to Justice Commission.

NOTES

1. Colorado Legal Services' single largest funding source is the Legal Services Corporation (LSC), an independent federal agency that receives an annual appropriation from Congress to provide financial support for civil legal aid across the country. LSC funding currently accounts for 40% of Colorado Legal Services' annual budget.

2. See Colo. RPC 1.15E(c)(7).

3. Federal Reserve press release, issued March 21, 2018, 2 p.m. EDT, following the March meeting of its Open Market Committee: “The Committee expects that economic conditions will evolve in a manner that will warrant further gradual increases in the federal funds rate; the federal funds rate is likely to remain, for some time, below levels that are expected to prevail in the longer run.”

4. Some of the interest rates cited herein, including the FFTR, may have changed since this article was submitted for publication in May 2018.

5. The Colorado Supreme Court's 2014 amendments to Colo. RPC 1.15 included a new Comment intended to ensure that interest earned on client funds held in connection with the practice of law in Colorado is used to support Colorado's civil legal aid delivery system. It provides guidance to the many law firms that operate in more than one state and thus participate in more than one IOLTA program:

If a lawyer or law firm participates in Interest on Lawyer Trust Account (“IOLTA”) programs in more than one jurisdiction, including Colorado, IOLTA funds that the lawyer or law firm holds in connection with the practice of law in Colorado should be held in the lawyer or law firm's COLTAF account The lawyer or law firm should exercise good faith judgment in determining which IOLTA funds it holds in connection with the practice of law in Colorado.

6. The benefits afforded COLTAF's Leadership Banks include increased visibility within the legal community and prominent listing on the COLTAF website, recognition in legal community publications and by the Colorado Supreme Court, and sample language and data to include in Community Reinvestment Act filings.