

Garnishments

When Schwartz initially retained Fleisher, Schwartz asked Fleisher how to protect his life savings. Schwartz had checking accounts, savings accounts, an IRA, and an inheritance not yet due him from his mother's recent death.

At the onset of his representation Fleisher said, "You can safely put all of that money in my IOLTA account, and no one can touch it." While Schwartz was incarcerated, unused funds from the IOLTA were seized without Fleisher's responsible and appropriate objections. In fact, with the proper affidavit from Fleisher, the seizure of the IOLTA account could have been prevented.

Garnishments of IOLTA may be fully protected by the attorney who must follow certain prerequisites. Fleisher could have prevented the garnishment by taking needed steps and presenting the correct law, which he failed to do.

Schwartz worked in the law library at the Federal Prison Camp, and he provided research, laws, facts, and other legal theories for Fleisher to employ to prevent the IOLTA garnishment. Schwartz sent Fleisher citations for the "laws of priority."

An attorney, as holder of an IOLTA fund, has a "legal priority possessory interest." An Affidavit could have been filed by Fleisher showing that Fleisher had a personal interest in the funds, and therefore they may not be taken.

Fleisher filed a brief that fatally ignored the legal arguments and facts that Schwartz had provided. The lower court, without Fleisher's needed affidavit, permitted the seizure of the IOLTA account.

An appeal was filed by Schwartz, *pro se*, while incarcerated. The Judge ruled that the garnishment of the IOLTA account was technically proper due to the failure of Fleisher to assert the correct legal procedure that would have protected the account from garnishment. The appellate opinion brutally stated what Fleisher could have done to prevent the IOLTA garnishment.

The funds could have been saved if he had done one or more of the following:

1. Claim a personal interest in the funds. Fleisher had to file an Affidavit that he had the right of possession and a personal interest in the IOLTA funds.
2. The IOLTA Contract with Fleisher would have disclosed the terms of his interest in the account.
3. Fleisher had to claim the Uniform Statutory Right of Possessory Interest initially in the lower court.

The Court of Appeals went out of its way to state what Fleisher could have and should have done. The Opinion from the Court of Appeals stated that while the cited law would have made a difference, an Appellate Court could not consider the argument for the first time in the Court of Appeals when it was not first presented by Fleisher in the lower Court.

Fleisher misrepresented his ability to provide competent representation in regard to garnishments and the preservation of the IOLTA account. **RULE 1.1: COMPETENCE** A lawyer shall provide **competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.**

Upon paying the garnishment, Fleisher immediately withdrew as counsel, because there was no money in his garnished IOLTA to paid him. The way he withdrew also violated **RULE 1.16: TERMINATING REPRESENTATION**, as to how a lawyer may withdraw from employment.