

# AGENDA ITEM

## NOVEMBER 164

Comparable Rates on Interest  
on Lawyers' Trust Accounts -  
Request to Petition Court to  
Rescind Order - Request for  
Interim Order

DATE: October 18, 2007

TO: Members, Board Committee on Stakeholder Relations  
Members, Board of Governors

FROM: Stephanie L. Choy, Managing Director  
Legal Services Trust Fund Program

SUBJECT: Comparable Rates on Interest on Lawyers' Trust Accounts - Request to  
Petition the Court to Rescind Supreme Court Order pursuant to Statutes  
1981, Chapter 789; Request for Interim Order to Implement AB 1723.

### **EXECUTIVE SUMMARY**

At its November 16, 2006 meeting, the Board authorized the pursuit of legislation and the implementation of court rules to increase the yield on Interest on Lawyers' Trust Accounts (IOLTA).

The resultant bill, AB 1723 (the "comparability bill"), was signed into law on October 10, 2007. The bill requires attorneys to hold IOLTA accounts at financial institutions that offer rates comparable to those paid to other depositors with similar accounts and expands the range of investment vehicles in which IOLTA accounts may be held. The existing Supreme Court order, drafted in 1981 when the IOLTA program was first established, contains language that is inconsistent with the types of investment vehicles authorized by the comparability bill. Supreme Court Order pursuant to Statutes 1981, Chapter 789 (the "Order") must be rescinded in order to implement comparability.

The Commission requests that the Board of Governors an immediate Petition to the Court to rescind the Order, and request an interim order allowing implementation of comparability.

Questions regarding this agenda item should be directed to Stephanie Choy, Managing Director, Legal Services Trust Fund Program (415) 538-2249.

## **BACKGROUND**

The Legislature created California's IOLTA program in 1981, which was codified at Business & Professions Code §§6210-6228. Section 6211 provided,

An attorney or law firm, which in the course of the practice of law receives or disburses trust funds, shall establish and maintain an interest bearing demand trust account and shall deposit therein all client deposits that are nominal in amount or are on deposit for a short period of time. All such client funds may be deposited in a single unsegregated account.

The Legal Services Trust Fund Program receives interest on these accounts, and distributes those funds to approximately 100 programs statewide that provide free legal services in civil matters to indigent Californians. Under section 6212(a), the interest bearing trust account had to be established with a bank or such other financial institutions as are authorized by the Supreme Court. Following adoption of the statute, the Board of Governors recommended, and the California Supreme Court adopted, an order authorizing members to establish a federally-insured, interest-bearing trust account with a depository that has a notice of withdrawal requirement not exceeding 30 days (Attachment 1: Supreme Court Order pursuant to Statutes 1981, Chapter 789).

The purpose of the IOLTA Program is to expand the availability and improve the quality of free legal services in civil matters to indigent persons. The amount of funds annually remitted to the Trust Fund Program varies depending on interest rates, historically ranging from a high of over \$22 million in 1992-1993 to a low of less than \$6 million in 1994-1995.

On November 16<sup>th</sup>, 2006, the Legal Services Trust Fund Commission requested the Board of Governors support legislation to amend relevant sections of Business & Professions Code §§6210-6228 drafted in 1981. AB 1723 was signed into law on October 10, 2007. The amended statute permits attorneys to hold client funds either in interest-bearing demand trust accounts or in cash management accounts that permit overnight investment into higher-yield investments backed by U.S. Government securities in order that IOLTA accounts benefit from the range of secure deposit vehicles on the market now. In lieu of allowing attorneys to establish these accounts, banks can pay comparable rates on accounts meeting minimum balance and other eligibility requirements.

However, in order to accomplish the legislative intent of 1723, we recommend a petition to the Supreme Court to rescind the Order it issued at the Board of Governors' request to support the 1981 statute. The Order currently provides that

. . . members of the State Bar, law firms or law corporations of which they are members are authorized to establish interest-bearing trust accounts with a bank, savings and loan, or other financial institution regulated by a federal or state agency, which can accept such deposits, pay interest thereon, and insure such

deposits by an agency of the federal government. . . .

This Order needs to be rescinded and an interim order put in place to remove criteria that the depository needs to be able to “insure such deposits by an agency of the federal government,” to avoid conflict with the legislative mandate. (Accompanying this agenda item is a parallel agenda item with specific recommendations for wording of a rule to be proposed to the Supreme Court. The rescission of the existing Order will enable earlier implementation of comparability.)

The implementation of comparability has significant support, as evidenced by the list of organizations and individuals that wrote to Governor Schwarzenegger requesting that he sign the bill into law. (Attachment 2: List of Supporters)

With successful implementation, California will join more than a dozen states that since 1979, have enabled some form of “sweep” account, combined with the strengthened “comparability” standard. Based on the track records from other states of IOLTA increases after implementing comparability, the LSTFP stands to lose as much as \$1 million in important legal services funding for every month of delay in implementation of the comparability bill.

#### **PERSONNEL/BUDGET IMPLICATIONS**

This recommendation will allow earlier implementation of comparability, which should increase the amount of grant money available for legal services for the indigent. This recommendation does not affect the budget. No additional staff or other expenses will be incurred as a result of this recommendation.

#### **BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

None

#### **RULE AMENDMENTS**

Related rule amendments in the Agenda Item before the Board Committee on Stakeholder Relations, Interest on Lawyers Trust Accounts (IOLTA) Rules and Regulations and Proposed Rule of Court to Implement AB 1723 - Request to Release Proposed Revisions for Public Comment

#### **RECOMMENDATION**

This proposal helps implement Long-Range Issue 3, Equal Access to Justice, Goal 3, that all people have access to high quality legal services regardless of financial or other circumstances. The Legal Services Trust Fund Commission and staff recommend the Board Committee on Stakeholder Relations and the Board of Governors petition the Supreme Court for immediate rescission of Supreme Court Order pursuant to Statutes 1981, Chapter 789, and request an interim order directing the State Bar to implement

the comparability legislation.

## **RESOLUTION**

Should the Board Committee on Stakeholder Relations agree with the above recommendation, the following resolution is suggested:

**RESOLVED**, that the Board Committee on Stakeholder Relations recommends that the Board of Governors authorize a petition to the Supreme Court to rescind the Supreme Court Order pursuant to Statutes 1981, Chapter 789, and issue an interim order directing the State Bar to implement the comparability legislation.

Should the Board of Governors concur with the recommendation of the Board Committee on Stakeholder Relations, the following resolution is suggested:

**RESOLVED**, that upon recommendation of the Board Committee on Stakeholder Relations, the Board of Governors authorizes a petition to the Supreme Court to rescind the Supreme Court Order pursuant to Statutes 1981, Chapter 789, and issue an interim order directing the State Bar to implement the comparability legislation.