



THE STATE BAR OF CALIFORNIA

LEGAL SERVICES TRUST FUND PROGRAM

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DATE: October 12, 2007

TO: Members, Board Committee on Stakeholder Relations

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

SUBJECT: 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

EXECUTIVE SUMMARY

At its November 16, 2006 meeting, the Board authorized pursuit of legislation and implementation of court rules to increase the yield on Interest on Lawyers Trust Accounts (IOLTA) by requiring banks to offer rates comparable to those paid to other depositors with similar accounts. This legislation is significant for its potential to increase the amount of IOLTA funds available for legal services programs.

The resultant bill, AB 1723 (the "comparability bill"), was signed into law on October 10, 2007. The attached revisions to the Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons and the proposed Rule of Court will help implement the comparability bill. The Legal Services Trust Fund Commission now requests that the Board Committee on Stakeholder Relations release the Rules and the proposed Rule of Court for public comment, and authorize staff to hold public hearings.

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

BACKGROUND

On November 16th, 2006, the Legal Services Trust Fund Commission requested that the Board of Governors support the Comparability Initiative (AB 1723) to increase revenue for the Legal Services Trust Fund Program ("LSTFP") by

obtaining rates from financial institutions on Interest on Lawyers Trust Accounts (“IOLTA”) comparable to those paid to other depositors with similar accounts. IOLTA hold only those client funds that are nominal in amount or are on deposit for a short period of time.¹ 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. 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.

AB 1723 was signed into law on October 10, 2007. This statute amends the legislation that was drafted to create the IOLTA Program in 1981. AB 1723 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. The bill specifies that an attorney’s IOLTA account should earn no less than the interest rate or dividend generally available to non-IOLTA depositors at the same institution when the IOLTA account meets or exceeds the same minimum balance or other account eligibility requirements. The bill also allows banks to pay comparable rates in lieu of attorneys placing the IOLTA funds into overnight “sweep” accounts. (Attachment 1: AB 1723)

PROPOSED RULES STATE BAR RULES AND PROPOSED RULE OF COURT

Implementation of the comparability bill requires revision of the State Bar Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons to bring those Rules in line with the legislation. At the same time, the proposed Rules have been organized and restructured to fit within the new organizational structure adopted by the Board of Governors July 2007 under the State Bar rules revision project. Enactment of these rules would repeal existing Rules 1-1.5 of the State Bar Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons. (Attachment 2: Proposed rules implementing comparability; Attachment 3: Redlined rules showing changes from prior rules)

The legislation also recognizes the Supreme Court’s inherent authority over formulation and enforcement of rules of professional conduct pertaining to the use by attorneys or law firms of an IOLTA account, Business & Professions Code §6211(b) and (c); and §6213(j)(3) and (k). Attached is the text of a proposed Rule of Court that parallels the State Bar Rules and exercises the Supreme Court’s authority pursuant to the comparability bill. (Attachment 4: Proposed Rule of Court)

PERSONNEL/BUDGET IMPLICATIONS

This recommendation does not affect the general fund budget. Implementation of comparability may necessitate hiring staff to manage banking relationships and

¹. When the funds of any one client are large enough or will be held for a period long enough to earn income for that client in excess of cost incurred to secure the income, the lawyer must segregate the funds so the client will receive the income.

assist attorneys and handle increased grant distribution and monitoring. The IOLTA authorizing statute provides for administrative fees of up to 15% and the administration of the IOLTA Program is wholly funded by IOLTA funds. Additional staff will fit within the 15% allowed by statute for administration.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None

RULE AMENDMENTS

This agenda item seeks to release for public comment (1) revisions to Rules Regulating Interest-bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons, currently Rules 1 through 1.5, restructured under Title 2. Rights and Responsibilities of Members, and (2) a new proposed Rule of Court.

RECOMMENDATION

This proposal helps implement State Bar of California Long-Range Strategic Plan Issue 3, Equal Access to Justice, Goal 3, that all people have access to high quality legal services regardless of financial or other circumstances. Therefore, the Legal Services Trust Fund Commission and staff recommend the Board Committee on Stakeholder Relations release the attached rules for immediate public comment. As Business & Professions Code section 6225 called for the State Bar to hold public hearings on draft regulations to implement the original IOLTA legislation, we recommend that the Committee authorize the Commission and staff to hold public hearings on the new draft IOLTA Rules and Rule of Court.

RESOLUTION

If the Board Committee on Stakeholder Relations agrees with the above recommendation, the following resolution is suggested:

RESOLVED, that the Board Committee on Stakeholder Relations authorizes publication of the proposed IOLTA rules and Rule of Court, as attached, for a 90-day public comment period.

FURTHER RESOLVED, that the Board Committee on Stakeholder Relations authorizes the Legal Services Trust Fund Commission and Staff to hold public hearings on the proposed IOLTA rules and Rule of Court.