



THE STATE BAR OF CALIFORNIA

LEGAL SERVICES TRUST FUND PROGRAM

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DATE: June 17, 2008

TO: Members, Board Committee on Stakeholder Relations

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

SUBJECT: Title 3, Rules 3.60 – 3.92 of the Rules of the State Bar, re Legal Services Trust Fund Program Request for 45-day Extension of Public Comment

EXECUTIVE SUMMARY

In January 2008, the Board adopted revised Rules at Title 2, Rules for Interest on Lawyers' Trust Accounts (IOLTA), which deals with rights and responsibilities of members. As a part of the State Bar's continuing rules revision project, proposed revisions for the remaining Legal Services Trust Fund Program (LSTFP) rules came before the Board Committee on Stakeholder Relations on May 16, 2008. The committee authorized a public comment period of forty-five days, beginning on May 16, 2008 and expiring on June 30, 2008.

The LSTFP noticed public comment generally on May 17, and on May 27, sent notice to all IOLTA-funded programs advising of a series of upcoming meetings for providing comment on the rules. The LSTFP held the first in the series of meetings with IOLTA-funded programs on June 9, 2008. That meeting, which was held by videoconference between San Francisco and Los Angeles, included 21 representatives of qualified support centers who had comments on both the substance of the rules as well as wording issues. Given the scope and extent of initial comment, the LSTFP requests extending the time for public comment by 45 days to allow additional time for comment from the field, and to provide the rules drafting committee with enough time to synthesize those comments and make an appropriate recommendation to the Committee on Stakeholder Relations regarding adopting or revising the rules.

Board members with questions about the proposal may contact Stephanie Choy at (415) 538-2249 or stephanie.choy@calbar.ca.gov, or contact Mary Yen at (415) 538-2369 or mary.yen@calbar.ca.gov.

BACKGROUND

The rules revision project will integrate the State Bar's more than two dozen sets of rules into one comprehensive structure and make the rules simpler, clearer, and more uniform. Revising these sets of rules into the new structure, called "Rules of the State Bar," requires the collaboration of many subject matter experts and is being undertaken in stages. The Board adopted the organizational scheme for the Rules of the State Bar at the July 20, 2007 meeting.

The Board adopted a set of revised rules for governing member IOLTA (Interest on Lawyers' Trust Accounts) at its January 2008 meeting. Those rules implement Assembly Bill 1723, which was enacted in 2007 to increase the yield on IOLTA by requiring attorneys to hold IOLTA funds at financial institutions that offer rates comparable to those paid to other depositors with similar accounts. The revised rules that are the subject of this agenda item govern the Legal Services Trust Fund Commission and the administration of grants funded through the Legal Services Trust Fund Program.

The Board Committee on Stakeholder Relations approved sending these proposed rules out for public comment at its May meeting. Accordingly, notice of public comment was posted on May 16, 2008 and this item was scheduled to return from 45-day public comment on June 30, 2008. As a part of public comment, the LSTFP scheduled a series of meetings with a variety of IOLTA-funded stakeholders in several geographic regions in California. Five meetings were scheduled, for completion of public comment before June 30, as follows: 1) qualified support centers by videoconference San Francisco and Los Angeles, June 9; 2) San Diego, June 18; 3) Los Angeles, June 19; 4) San Francisco, June 23; and 5) teleconference, June 25.

The first meeting, held June 9, 2008 by videoconference between San Francisco and Los Angeles, was attended by 21 representatives of 19 of the 23 qualified Support Centers that receive IOLTA funds. Because of the extent of interest in the revised rules, the meeting (originally scheduled for three hours) lasted close to five hours. Comments included substantive concerns about the grant application process and the documents that the trust fund commission and staff should review as a part of that process.

The comments raised in the June 9th public comment meeting, and the additional comments that are anticipated in the upcoming meetings, will need to be discussed by the State Bar staff and rules revision committee of the Legal Services Trust Fund Commission before a recommendation can be made to the Committee on Stakeholders Relations and the Board of Governors.

RECOMMENDATION

Given the extent of the comments received to date, and the number of meetings remaining, it is recommended that the public comment be extended an additional 45 days to August 14 to: 1) allow ample opportunity for the public to comment; and, 2) provide adequate opportunity for the rules committee of the Legal Services Trust Fund Commission, and State Bar staff, to synthesize the comments and proposed revisions to the draft rules, or determine whether the rules should be adopted as originally drafted.

At the November meeting of the Board Committee on Stakeholders' Relations, the LSTFP will make recommendations regarding proposed rules either for adoption or for public comment on recommended revisions. At that time, we will also make recommendations for re-designated rule numbers based on reorganization of the State Bar Rules after this matter was initially sent out for comment.

EFFECTIVE DATE OF PROPOSAL

The proposed rules will be effective on the date the Board acts.

FISCAL IMPACT

No fiscal impact is anticipated.

RULE AMENDMENTS

This proposal would result in new rules for the Legal Services Trust Fund Program in Title 3 of the Rules of the State Bar and repeal of the Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons.

BOARD BOOK IMPACT

Upon return from public comment, this item may impact Tab 15, Article 7, in Section 1: make appropriate changes in the text to reflect that at least two members of the Commission must be or have been indigent persons as defined by statute (word change is in quotation); and in Section 3 delete the second sentence and replace it with "Under the Legal Services Trust Fund Program rules, the commission shall administer the legal requirements and program rules for revenue from IOLTA (Interest on Lawyers' Trust Accounts) funds and other funds remitted to the program."

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee on Stakeholder Relations agree with the proposed recommendation, adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Stakeholder Relations authorizes a forty-five day extension of public comment on the proposed Rules of the State Bar, Title 3 rules 3.60 through 3.92 (Legal Services Trust Fund Program) beginning July 1, 2008 and ending August 14, 2008.

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.