

Printed from The State Bar of California website (www.calbar.ca.gov) on Wednesday, December 10, 2008

Location:

Public Comment

SUBJECT: Proposed Supreme Court Rule authorizing "Eligible Institutions" under Business and Professions Code section 6213(k)

BACKGROUND: Since the 1980s, Business and Professions Code §§6210 et seq. [Funds for Provision of Legal Services to Indigent Persons] has required that funds held in trust by California attorneys be held in interest bearing trust accounts ("IOLTA accounts"); that the interest earned by the financial institution be paid to the State Bar; and that the State Bar distribute those funds to nonprofit organizations that provide free legal aid to indigent people. 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.

In 2006, the Board of Governors supported legislation to amend relevant sections of B&P Code §§6210-6228 drafted in 1981. AB 1723 was signed into law on October 10, 2007 and went into effect on January 1, 2008.

In brief, the statute was amended to provide that: 1) IOLTA accounts 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; and, 2) IOLTA accounts may benefit from the range of secure deposit vehicles on the market, including cash management accounts that permit overnight "sweep" into higher-yield investments backed by U.S. Government or comparably conservative securities. (*Attachment 1 is the text of B&P Code §§6091.2, 6211-6213.*)

The Legal Services Trust Fund Program (LSTFP) is charged with administering the IOLTA program -- assisting both attorneys and financial institutions with complying with the statute. In the months since the statute went into effect, the LSTFP has qualified almost 300 institutions that hold IOLTA accounts, most of which held IOLTA accounts prior to implementation of the new statute.

The LSTFP has determined the need for the attached Rule of Court ("Rule"), which clarifies the types of financial institutions that are eligible to hold IOLTA accounts.

PROPOSAL: We propose a Petition to the Supreme Court requesting adoption of the following rule:

RULE 9. __

(a) [Interest on Lawyer Trust Accounts Program]

The State Bar must establish and administer an Interest On Lawyer Trust Account (IOLTA) program under rules adopted by the Board of Governors of the State Bar to deliver free legal services in civil matters to indigent persons.

(b) [IOLTA Accounts]

(1) An attorney or law firm that in the course of the practice of law receives or disburses funds that cannot earn income in excess of the costs incurred to secure such income because the funds are nominal in amount or are on deposit or invested for a short period of time must establish and maintain an IOLTA account in accordance with Business and Professions Code sections 6212 and 6213(j). The funds may be deposited or invested in a single unsegregated account.

(2) An "eligible institution" under Business and Professions Code section 6213(k) is a bank, savings and loan, or other financial institution regulated by a federal or state agency that

(a) can pay interest or dividends, and

(b) carries deposit insurance from an agency of the federal government,

(c) [Trust Accounts]

Nothing in this rule shall prohibit an attorney or law firm from establishing one or more interest bearing trust accounts earning interest or dividends payable to clients for funds that can earn income in excess of the costs incurred to secure such income.

ANY KNOWN FISCAL OR PERSONNEL IMPACT: There is no known fiscal or personnel impact.

ARGUMENTS FOR AND AGAINST: B&P Code §6213(k) defines "eligible institution" as a "bank or any other type of financial institution authorized by the Supreme Court."

Based on our experience implementing the comparability requirements and current economic conditions, we conclude that a Court rule clarifying the meaning of "eligible institutions" is important; the B&P code does not explicitly authorize any financial institution except banks, and it does not include the key safety requirement that the financial institutions carry federal deposit insurance. Financial institutions that had qualified to hold IOLTA accounts prior to implementation of the amended statute should continue to be eligible. Thus, banks, savings & loans, savings banks, and credit unions (the latter three are often referred to collectively as "thrifts") all should remain eligible to hold IOLTA accounts.

The new Rule is drafted in recognition that while not all investment vehicles authorized by the legislature will be federally insured, all IOLTA accounts must still be held at a financial institution that carries federal insurance for its deposit accounts.

Moreover, the new Rule refers to "interest or dividends" in keeping with the fact that cash management overnight "sweep" products earn dividends instead of interest. Other than those modifications, the new proposed Rule tracks the wording of the rescinded order with respect to the definition of an "eligible institution" as a "bank, savings and loan, or other financial institution regulated by a federal or state agency."

ATTACHMENTS:

- Agenda: Request for Public Comment Proposed Supreme Court Rule
- Business & Professionals Code §§6210-6228
- Proposed Supreme Court Rule 9.

SOURCE: Board Committee on Stakeholder Relations

COMMENT DEADLINE: January 07, 2009

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