

**TAB 7**



## LAWYERS HELPING HOMEOWNERS

Attorneys volunteer

Click here also to find out more about our  
Free CLE...

Need help with foreclosure

Click here...

Scheduled Housing  
Clinics  
Coming soon!



The "**Lawyers Helping Homeowners**" program calls upon volunteer lawyers to assist homeowners in working with their lenders to find appropriate financial arrangements to avoid foreclosure. Keeping people in their homes helps stabilize the economy and increase family security. This initiative, coordinated by the State Bar of Arizona, the Arizona Foundation for Law Related Education, and the Arizona Supreme Court, will not save all homes from foreclosure, but will offer hope and opportunity to many who might otherwise have none.

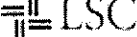
### Can a lender sell my property?

If you bought a home and signed a deed of trust giving a lender a security interest in your property, the lender can start a process to take legal action to sell the property at a Trustee's Sale. The legal process can be started if you are in default - if you do not do what you agreed when the loan was given. Usually this happens if you are behind on your payments. It also could happen if you fail to pay your property insurance or real estate taxes on the property or don't maintain the property. [Click here to find out more...](#)

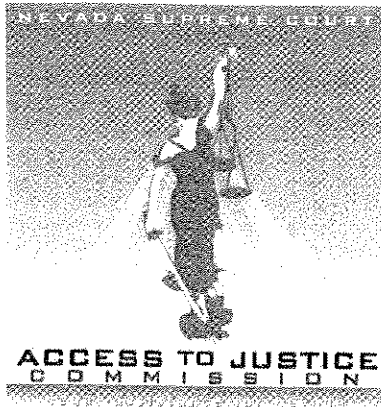
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E. Morris Institute for Justice with support from  Legal Services Corporation.





**NEVADA SUPREME COURT  
ACCESS TO JUSTICE COMMISSION**

210 South Carson St.  
Carson City, NV 89701-4702

Director: Kristina Marzec

**Judicial Members:**

Co-Chairs: Justice Michael L. Douglas & Justice James W. Hardesty  
Hon. Stephen Dahl • Hon. Frances Doherty • Hon. Elizabeth Gonzalez • Hon. Richard Glasson  
Hon. Andrew Puccinelli • Hon. Connie Steinheimer • Hon. William Voy

**Attorney Members:**

Kim Mucha-Abbott • Valerie J. Cooney • John Desmond • Paul Elcano • Cam Ferenback  
AnnaMarie Johnson • Brett Kandt • Ernest Nielsen • Sheri Cane Vogel

**Public Members:**

Tom Warden

April 1, 2008

Rural District Court Judges  
Rural Justices of the Peace  
c/o John R. McCormick  
Rural Courts Coordinator, AOC  
201 South Carson St.  
Carson City, NV 89703

*Re: Legal Services in Nevada's Rural Jurisdictions*

Dear Judge:

As you may know, the Nevada Supreme Court passed Rule 15 regarding the Commission on Access to Justice in June 2006. One of the purposes of the Commission set forth in the rule is that the Commission shall assess current and future needs for civil legal services of persons of limited means and develop statewide policies designated to support and improve the delivery of legal services.

The Commission, headed by Justices Douglas and Hardesty, has charged the executive directors of the legal service providers with gathering information and making a recommendation to the full Commission, including a plan for the delivery of legal services in rural Nevada. Representatives of our group would like to meet with you to obtain your ideas. As you know there are few legal services attorneys available to serve the vast geographic areas of rural Nevada. We would like to hear your thoughts as to how to best utilize these limited resources.

We would like to discuss with you such matters as local needs, scheduling court appearances, the use of technology to facilitate service and representation, the location of offices, intake sites, pro se forms, pro bono attorneys, use of rural filing fees collected pursuant to NRS 19.031/19.0312 and any other topics of interest to you.

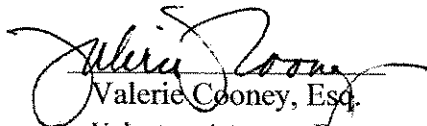
In our discussions with John McCormick, we have learned that you may be holding a rural judges conference in December. If that event takes place we would like to have a place on the agenda. We are

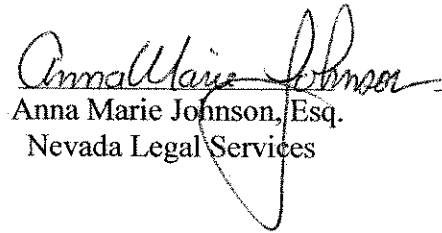
Rural District Court Judges  
Rural Justices of the Peace  
April 1, 2008  
page 2

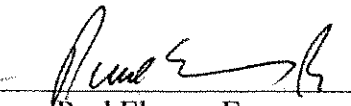
also aware that there are regional judges meetings. Perhaps we may have some time on your agenda at the regional meetings to appear in person and/or via telephone. We will be contacting you either directly or through Mr. McCormick in the near future.

Sincerely,

Directors of Legal Service Providers

  
Valerie Cooney, Esq.  
Volunteer Attorneys For  
Rural Nevadans

  
Anna Marie Johnson, Esq.  
Nevada Legal Services

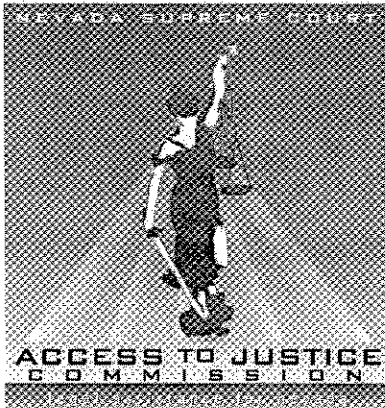
  
Paul Elcano, Esq.  
Washoe Legal Services

Joined by:

Barbara Buckley, Clark County Legal Services,  
Sheri Cane-Vogel, Senior Citizens Law Project,  
Ernest Nielsen, Washoe County Senior Law Project

cc: Justice Michael L. Douglas, Nevada Supreme Court  
Justice James W. Hardesty, Nevada Supreme Court





## MEMORANDUM

From: Kristina Marzec, Director

To: Access to Justice Commission

Date: April 10, 2008

Re: Status of Ghost-lawyering Opinion  
(Op. #34, Issued Dec. 2006)

Attachment: Opinion #34

At my request on behalf of the ATJC, Shelley Krohn, Chair of the Ethics and Professional Responsibility (EPR) Committee, agreed to hold any further action on re-issuing opinion #34 through October 2008.

Recapping the history, in December 2006 advisory opinion #34 addressing ghost-lawyering was issued and published in the normal course pursuant to SCR 225. The original opinion does not address LSP providers with specificity.

The opinion became widely used by the Office of Bar Counsel both in disciplinary proceedings and Continuing Legal Education applications, largely due to the sadly burgeoning problem of shoddy lawyering in the private sector in providing unbundled legal services and the rising use of the practice in MJP applications.

In mid-2007 several of Nevada's Legal Services Providers became aware of the advisory opinion and noted its potential negative impact on the way LSPs traditionally do business. Most agreed the long-standing policy of current Bar Counsel that LSP providers are not a subject of disciplinary enforcement concern notwithstanding, a more formal codification of these standards is warranted in the current legal landscape.

Accordingly, at the request of the Commission through LSP representatives, in October 2007 then-EPR Chair Dennis Kennedy requested that the opinion be temporarily withdrawn to allow for potential redraft to address these issues.

My conversations with relevant parties illustrates that the EPR Committee feels strongly about re-issuing this opinion i.e. opposes any suggestion at revoking the opinion, or, any of its legal conclusions. At the core of the current redraft appears to be an added section addressing the "substantial" assistance test, and how that might apply to LSPs.

SCR 225(1) provides interested parties may provide written comments and objections to any opinion drafts, or in this case, redrafts. Further, subsection (6) provides that all opinions must be submitted to the Nevada Supreme Court, which "has the authority to review the opinion and to consider any objections to it." The State Bar will not publish

an opinion without proof from the EPR that it followed this policy, and, there is in place a 30-day waiting period from such notice to publish any opinion.

It is my understanding that there are several key points amongst ATJC members on this issue, including:

- (1) a potential state-wide unbundled legal service rule (some feel for example EDCR 5.28 is too cumbersome in application
- (2) a Supreme Court Rule amendment, either to SCR 5.5 or SCR 44 for example
- (3) an annotation or treatment of LSP providers in the advisory opinion
- (4) a concern that any approach taken should encourage all lawyers to provide quality pro bono services through unbundled representation, and not create a special class- no matter how privileged-for LSP providers
- (5) the different application of the legal issues between LSP providers which are not government agencies.

Given that this opinion was already issued and published, the EPR Committee feels strongly about it, and the feedback I have received, I opine this issue will need to be substantively addressed with the EPR in October.

The EPR has been gracious about inviting our LSP providers to attend its discussions on this subject. At this juncture, I respectfully suggest a formal written response pursuant to SCR 225 is warranted. Such should clearly be a unified consensus product of the Commission as a whole. I would be happy to provide legal assistance support to a subcommittee if the Commission elects to go that route.



## STATE BAR OF NEVADA

### STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion No. 34

Issued December 11, 2006

#### QUESTIONS

1. What is "ghost-lawyering"?
2. Is "ghost-lawyering" an ethical practice?
3. What is the remedy for the appearing attorney when it is discovered or suspected that an ostensible *pro se* party is being assisted by a "ghost-lawyer"?
4. What are the ethical obligations of the appearing attorney in communicating with an ostensible *pro se* party being assisted by a "ghost-lawyer"?
5. What about "ghost-lawyering" in a non-litigation setting?

#### ANSWERS

1. *"Ghost-lawyering" occurs* when a member of the bar gives substantial legal assistance, by drafting or otherwise, to a party ostensibly appearing *pro se*, with the lawyer's actual or constructive knowledge that the legal assistance will not be disclosed to the court.

2. *"Ghost-lawyering" is unethical unless* the "ghost-lawyer's" assistance and identity are disclosed to the court by the signature of the "ghost-lawyer" under Rule 11 upon every paper filed with the court for which the "ghost-lawyer" gave "substantial assistance" to the *pro se* litigant by drafting or otherwise.

3. *An appearing attorney's remedy upon the suspicion or discovery that a party ostensibly appearing pro se is aided by a "ghost-lawyer",* is to move the court to exercise its discretion: (A) to require the *pro se* litigant to disclose whether the litigant is being assisted by a "ghost-lawyer"; (B) if so, to require the *pro se* litigant to disclose the identity of the "ghost-lawyer"; and (c) to require the "ghost-lawyer" to appear and sign all pleadings, motions and briefs in which the "ghost-lawyer" assisted.

4. An appearing attorney's obligation, when dealing with an ostensibly *pro se* litigant assisted by a "ghost-lawyer", is to consider the *pro se* litigant "unrepresented" for purposes of the Rules of Professional Conduct. That has at least two consequences: (1) the appearing attorney's communication with the *pro se* litigant is not an *ex parte* communication prohibited by Rule 4.2; and (2) the communicating attorney must comply with Rule 4.3 governing communications with "unrepresented" persons.

5. "Ghost-lawyering" in non-litigation settings:

a. A member of the bar is engaging in "ghost-lawyering" in the non-litigation setting if the lawyer gives "substantial" legal assistance, by drafting or otherwise, to a party ostensibly not assisted, with the lawyer's actual or constructive knowledge that the legal assistance will be anonymously presented to the other attorney in the transaction by the ostensibly unassisted party; and

b. "Ghost-lawyering" is an unethical practice in the non-litigation setting, unless: (1) the "ghost-lawyer's" assistance and identity are disclosed in writing to the other attorney in the transaction; and (2) the disclosure notifies the other attorney whether that attorney must communicate about the transaction with the "ghost-lawyer", the unrepresented party, or both.

#### AUTHORITIES RELIED ON

##### Rules

Nevada Supreme Court Rule 46;  
Nevada Rules of Professional Conduct 1.2, 1.16, 3.3, 4.2, 4.3 & 8.4.

##### Cases

*In re Mungo*, 305 B.R. 762 (D.C. S.C. 2003);  
*Chudasma v. Mazda Motor Corporation*, 1995 WL 6411984 (D.C. GA. 1995)  
*Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA. 1998);  
*Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001);  
*Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994);  
*Iowa Supreme Court Board of Professional Ethics and Conduct v. Lane*, 642 N.W.2d 296 (2002);  
*Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (D.C. VA. 1997);

*Ellis v. Maine*, 448 F.2d 1325 (1<sup>st</sup> Cir. 1971);  
*Wesley v. Don Stein Buick, Inc.*, 987 F.Supp 884 (D.C. Kan. 1997).

#### Treatises

Annotated Model Rules of Professional Conduct, 5<sup>th</sup> Ed., ABA (2003) at pages 37-38 and 610.

#### Ethics Opinions

Letter of Private Reprimand No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40  
ABA Informal Opinion 1414 (June 6, 1978);  
Oklahoma Bar Ethics Opinion 2001-4 (2001);  
State Bar of New York Committee on Professional Ethics Opinion No. 613 (September 24, 1990);  
Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999);  
Alaska Ethics Opinion No. 93-1 (May 25, 1993);  
Arizona Bar Ethics Opinion 05-05 (May 2005);  
Iowa Ethics Opinion 94-35 (May 23, 1995);  
Massachusetts Ethics Opinion 98-1 (1998);  
Florida Bar Ethics Opinion 79-7 (as revised 2-15-2000);  
Association of the Bar of the City of New York Formal Opinion 1987-2 (March 23, 1987);  
Connecticut Ethics Opinion 98-5 (January 30, 1998);  
Iowa Ethics Opinion 96-31 (June 5, 1997).

#### Law Reviews and Articles

23 *Los Angeles Lawyer* (September, 2000);  
Jona Goldschmidt, "*In Defense of Ghostwriting*", *Fordham Urban Law Journal* (February, 2002);  
Adams, "'Unbundled Legal Services': A Solution to the Problems Caused by *Pro Se* Litigation in Massachusetts's Civil Courts", 40 *New England Law Review* 303 (Fall 2005);  
Rothermich, "Ethical and Procedural Implications of 'Ghost Writing' For *Pro Se* Litigants: Toward Increased Access to Civil Justice", 67 *Fordham Law Review* 2687 (April 1999).

## DISCUSSION

### **Question No. 1: What is "Ghost-Lawyering"?**

"Ghost-writing" is defined as the practice of a member of the bar assisting a *pro se* litigant (without entering a formal appearance in the case as an attorney of record) by drafting, or guiding the drafting of, a substantial portion of the pleadings, motions, and briefs for the *pro se* litigant without signing them, and thus escaping the professional, ethical, and substantive obligations imposed on licensed attorneys. *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40.

This Opinion will refer to the broader term "ghost-lawyering" to refer to the practice of giving substantial legal assistance to a *pro se* party (without entering a formal appearance in the case as an attorney of record) which includes "ghost-writing", but also includes substantial legal assistance beyond the drafting of papers to be submitted to the court. *Cf. Chudasma v. Mazda Motor Corporation*, 1995 WL 6411984 (D.C. Ga. 1995) at 29 & 31; ABA Informal Opinion 1414 (June 6, 1978).

"Ghost-lawyering" does not include informally giving limited informal legal advice and assistance to family and friends. *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA 1998); Oklahoma Bar Ethics Opinion 2001-4 (2001).

The question, then, is what legal assistance by a non-appearing attorney to an ostensible *pro se* litigant rises to the level of "substantial" assistance so as to amount to "ghost-lawyering"?

This Committee is of the opinion that the rule that a licensed attorney crosses the line into "ghost-lawyering" when the lawyer gives substantial legal assistance, by drafting or otherwise, to a party ostensibly appearing *pro se*, with the lawyer's actual or constructive knowledge that the legal assistance will not be disclosed to the court. *In re Mungo*, 305 B.R. 762 (D.C. S.C. 2003); *Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA 1998); State Bar of New York Committee on Professional Ethics Opinion No. 613 (September 24, 1990); Oklahoma Bar Ethics Opinion 2001-4 (2001).

### **Question No. 2: Is "Ghost-Lawyering" Ethical?**

There is currently a nationwide debate whether "ghost-lawyering" is ethical. Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000). Annotated Model Rules of Professional Conduct, pp. 37-38 (5<sup>th</sup> Ed. 2003).

The early court decisions expressing judicial disapproval of "ghost-writing" were not based on ethical considerations. Jona Goldschmidt, *"In Defense of Ghostwriting"*, Fordham Urban Law Journal (February 2002) at footnote 98-102. In 1978 the ABA Standing Committee on Ethics and Professional Responsibility issued its Opinion 1414 (June 6, 1978). That Opinion concluded that it was a violation of the Rule requiring candor to the court for a non-appearing attorney to give "extensive" advice to, or prepare a court document for, a *pro se* litigant.

Today, there are differing views on the ethics of a non-appearing "ghost-lawyer".

One view is that the client has the right to limit the scope of the legal services under Rule 1.2<sup>2/</sup>, and the lawyer has the ethical right to provide "unbundled"<sup>3/</sup> legal services to the client without appearing or disclosing the lawyer's role or identity. Rothermich, "Ethical and Procedural Implications of 'Ghost Writing' For Pro Se Litigants: Toward Increased Access to Civil Justice", 67 Fordham Law Review 2687 (April 1999); Goldschmidt, at footnote 120; Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000) at footnote 8; Alaska Ethics Opinion No. 93-1 (May 25, 1993); Arizona Bar Ethics Opinion 05-05 (May 2005).

Another view that it is unethical for a member of the bar to give "substantial" assistance to a *pro se* litigant without making a formal appearance in the case. *Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA 1998); ABA Informal Opinion 1414 (June 6, 1978) (using "extensive" assistance rather than "substantial", but they appear the same); Rothermich, at footnote 118; Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000) at footnote 8; Iowa Ethics Opinion 94-35 (May 23, 1995); Massachusetts Ethics Opinion 98-1 (1998). This view holds that "ghost-lawyering" by a non-appearing member of the bar for a party who is ostensibly appearing in an action *pro se*, is an unethical practice for several reasons:

1. It is an act of misrepresentation to the court that violates the attorney's duty of candor to the court as required by Nevada Rule of Professional Conduct 3.3.<sup>4/</sup> *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001); *Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994) ("Having a litigant appear to be *pro se* when in truth an attorney is authoring pleadings

and necessarily guiding the course of the litigation with an unseen hand is ... far below the level of candor which must be met by members of the bar.”); *Iowa Supreme Court Board of Professional Ethics and Conduct v. Lane*, 642 N.W.2d 296 (2002); *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40;

2. It is a violation of subsections (c) and (d) of Rule 8.4.<sup>5/</sup> *Massachusetts Ethics Opinion 98-1* (1998); *Annotated Model Rules of Professional Conduct*, 5<sup>th</sup> Ed., p. 610 ABA (2003); Rothermich, at footnote 80;

3. It exploits the court's practice of holding *pro se* parties to a less stringent standard for pleadings than lawyers. *Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (D.C. VA. 1997) (rejecting the lawyer's argument that the lawyer was employed for the limited purpose of drafting the Complaint and no longer represented the plaintiff); *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001); *Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994);

4. It effectively nullifies the certification requirement of Rule 11 and inappropriately shields the “ghost-lawyer” from accountability under Rule 11. *Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (DC VA 1997) (rejecting the lawyer's argument that the lawyer was employed for the limited purpose of drafting the Complaint and no longer represented the plaintiff); *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994); *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40; and

5. It circumvents the withdrawal of appearance restrictions of court rules<sup>6/</sup>. *Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (DC VA 1997) (rejecting the lawyer's argument that the lawyer was employed for the limited purpose of drafting the Complaint and no longer represented the plaintiff).

This Committee believes that the better view is one which strikes a proper balance between the public policy of serving clients with unbundled legal services and that even disclosed “ghost-lawyering” is improper. This Committee is of the opinion that it is unethical to act as a “ghost-lawyer” unless both the “ghost-lawyer's” assistance and identity<sup>7/</sup> are disclosed to the court by the signature of the “ghost-lawyer” under Rule 11 upon every paper filed with the court for which the “ghost-lawyer” gave substantial assistance to the *pro se* litigant by drafting or otherwise. Rothermich, at footnotes 196 – 200; State Bar of New York Committee on Professional Ethics Opinion No. 613 (September 24, 1990); Connecticut Ethics Opinion 98-5 (January 30, 1998); Iowa Ethics

Opinion 96-31 (June 5, 1997); *Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001) (Drafting a brief for a *pro se* appellant without signature is *per se* "substantial"); *Ellis v. Maine*, 448 F.2d 1325 (1<sup>st</sup> Cir. 1971); Oklahoma Bar Ethics Opinion 2001-4 (2001).

### **Question No. 3: Remedy**

When a court is advised or suspects that a party ostensibly appearing *pro se* is actually assisted by a "ghost-lawyer", the court may, in its discretion: (A) require the *pro se* litigant to disclose whether the litigant is being assisted by a "ghost-lawyer"; (B) if so, require the *pro se* litigant to disclose the identity of the "ghost-lawyer"; and (C) require the "ghost-lawyer" to appear and sign under Rule 11 all pleadings, motions and briefs in which the ghost-lawyer assisted. *In re Mungo*, 305 B.R. 762 (DC SC 2003). Therefore, when an appearing attorney is advised or suspects that a party ostensibly appearing *pro se* is actually assisted by a "ghost-lawyer", the appearing attorney should move the court to exercise that discretion.

### **Question No. 4: Ex Parte Communication with "Represented" Person**

A reverse "ghost-lawyering" question is the ethical obligation of the attorney dealing with a party being assisted by a "ghost-lawyer". What are the ethical obligations of an appearing attorney in an action who must deal with an ostensibly *pro se* party when the attorney suspects or knows that the *pro se* party is being advised by a "ghost-lawyer"? Is it an *ex parte* communication prohibited by Rule 4.2<sup>8f</sup> for the attorney to communicate with the *pro se* party? For example, after the *pro se* party tells the attorney that another attorney is assisting the party in the case, can the attorney communicate with the ostensibly *pro se* party about settlement of the case?

Assuming the attorney "knows" that the party is being assisted by the "ghost-lawyer", the answer depends on whether the party is "represented" as that term is used in Rule 4.2.

In jurisdictions where undisclosed "ghost-lawyering" is ethical, it is consistently viewed that the *pro se* client is "representing" himself/herself for all aspects of the case. It follows in those jurisdictions that even when the attorney "knows" that the party is being assisted by a "ghost-lawyer", for purposes of Rule 4.2, the "ghost-lawyer" is not "representing" the *pro se* party, and, the attorney may ethically communicate directly with the *pro se* party concerning all matters relating to the case, including settlement. Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000).

On the other hand, in jurisdictions where undisclosed "ghost-lawyering" is not ethical, it would be inconsistent to follow the above view. In those jurisdictions, the view

should be that the "ghost-lawyer" is unethically "representing" the ostensible *pro se* party for purposes of Rule 4.2.<sup>9/</sup> In those jurisdictions, it would seem that where the attorney "knows" that the ostensible *pro se* party is actually "represented" by a "ghost-lawyer", the attorney would be precluded by Rule 4.2 from communicating with the party. In that untenable situation, the attorney obviously cannot conduct or settle litigation with a party with whom the attorney cannot communicate. The only solution would seem to be the requirement that – once an attorney knows that the ostensible *pro se* party is being assisted by a member of the bar – the attorney must advise the court and move the court to exercise its inherent power to require the party to: (1) disclose the assistance and identity of the "ghost-lawyer"<sup>10/</sup>; and (2) elect whether the appearing attorney must communicate about the case with the "ghost-lawyer", the *pro se* party, or both.

This Committee is of the opinion that the better practice - in light of this Opinion previously approving "ghost-lawyering" so long as it is fully disclosed to the court – is that the *pro se* litigant, who is assisted by a disclosed "ghost-lawyer" providing unbundled services to the *pro se* litigant, is considered "unrepresented" for the purposes of the Rules of Professional Conduct. That has at least two consequences: (1) the appearing attorney's communication with the *pro se* litigant is not an *ex parte* communication prohibited by Rule 4.2; and (2) the communicating attorney must comply with Rule 4.3<sup>11</sup> governing communications with "unrepresented" persons.

#### **Question No. 5: Non-Litigation Matters**

The remaining question concerns the ethical considerations of "ghost-lawyering" in a non-litigation setting? For example, a real estate transaction in which one of the parties is being assisted anonymously by a member of the bar. Similar considerations apply. The identified attorney is entitled to know that the ostensibly unrepresented party is being assisted by a licensed but anonymous attorney. Likewise, the identified attorney is entitled to know with whom (s)he may ethically communicate about the transaction.

This Committee is of the opinion that a similar rule for "ghost-lawyering" in the non-litigation setting is appropriate:

1. A member of the bar is engaging in "ghost-lawyering" in the non-litigation setting if the lawyer gives "substantial" legal assistance, by drafting or otherwise, to a party ostensibly not assisted, with the lawyer's actual or constructive knowledge that the legal assistance will be anonymously presented to the other attorney in the transaction by the ostensibly unassisted party; and
2. "Ghost-lawyering" is an unethical practice in the non-litigation setting,

unless: (A) the "ghost-lawyer's" assistance and identity are disclosed in writing to the other attorney in the transaction; and (B) the disclosure notifies the other attorney whether that attorney must communicate about the transaction with the "ghost-lawyer", the unrepresented party, or both.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.

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<sup>1</sup>     **"Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.**

... (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

<sup>2</sup>     See, Adams, "'Unbundled Legal Services': A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts", 40 New England Law Review 303 (Fall 2005); See, *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40.

<sup>3</sup>     **"Rule 3.3. Candor Toward the Tribunal.** (a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer..." Formerly SCR 172.

<sup>4</sup>     **"Rule 8.4. Misconduct.** It is professional misconduct for a lawyer to:

... (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;..." (Formerly SCR 203).

<sup>5</sup>     SCR 46 and Nevada Rule of Professional Conduct 1.16 (formerly SCR 166).

<sup>7</sup>     Some ethics opinions or rules require that only the fact of lawyer assistance be disclosed without disclosing the identity of the "ghost-lawyer". For example, Florida requires that all papers filed with the court contain the disclosure: "Prepared with the assistance of counsel." Florida Bar Ethics Opinion 79-7 (as revised 2-15-2000). See also, Association of the Bar of the City of New York Formal Opinion 1987-2 (March 23, 1987).

<sup>8</sup>     **"Rule 4.2. Communication With Person Represented by Counsel.** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another

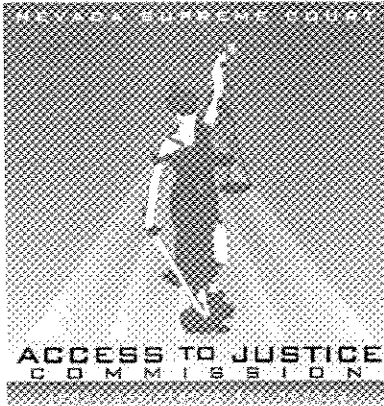
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lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Formerly SCR 182.

<sup>9</sup> *Contra*, Oklahoma Bar Ethics Opinion 2001-4 (2001).

<sup>10</sup> *Cf. Wesley v. Don Stein Buick, Inc.*, 987 F.Supp 884 (D.C. Kan. 1997).

**TAB 8**



## MEMORANDUM

From: Kristina Marzec, Director  
To: Access to Justice Commission  
Date: April 17, 2008  
Re: Presentation by Carolyn Myers

*Carolyn Myers shall be addressing the Commission on behalf of the Nevada Law Foundation addressing the following talking points.*

*Note: a written update on NLF's progress regarding the State Bar's Strategic Plan is attached, and, Grant Recipient Funding Statistics are forthcoming from Suzan Baucum and will be handed out under separate cover.*

- I. Report on national IOLTA programs.
- II. Status report on current NFL activities
  1. Banking Committee
  2. Management Overview Committee
  3. ABA/IOLTA national assistance
  4. Consultant for Strategic Planning
  5. Succession Planning

## **NLF Strategic Plan Update:**

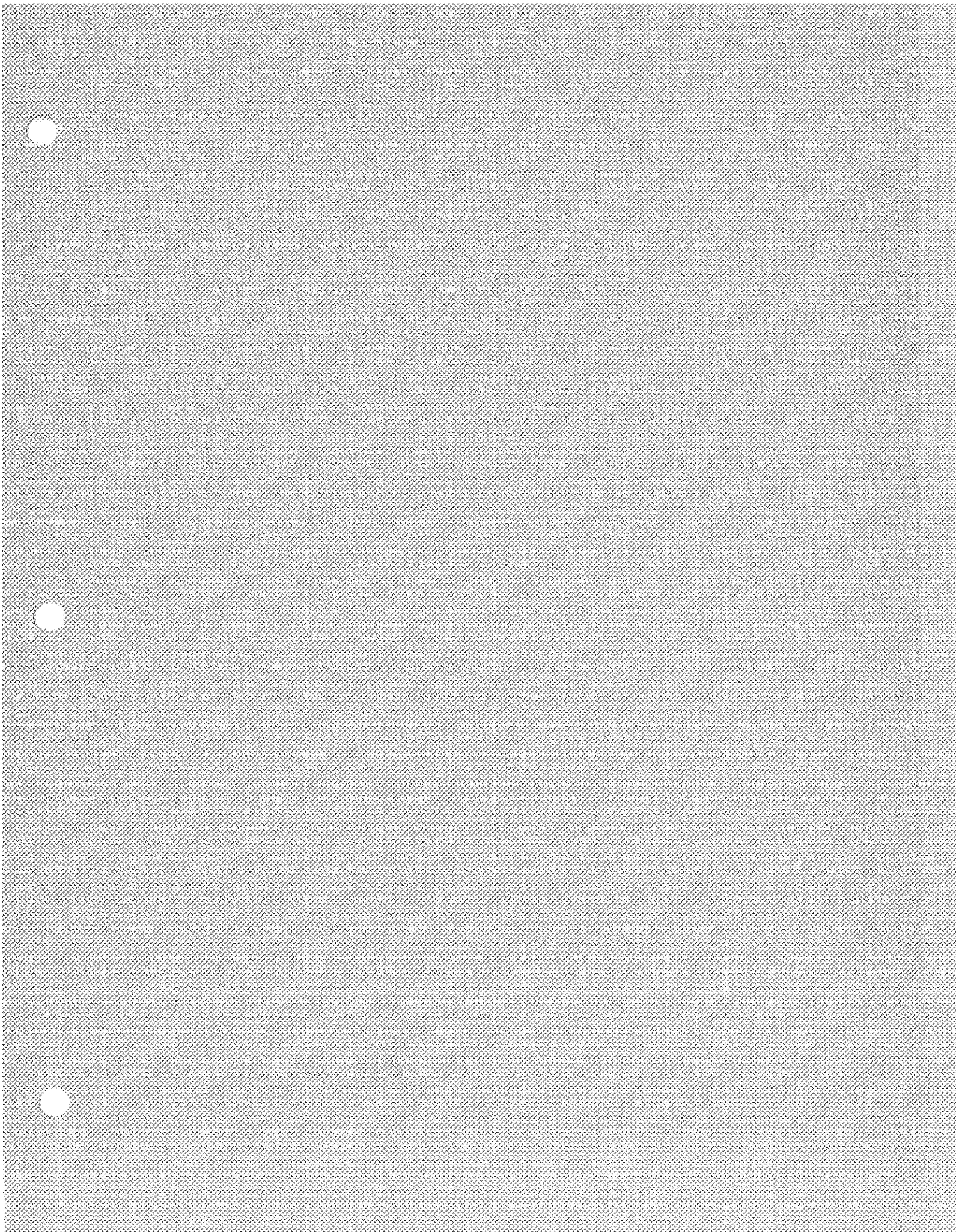
**Strategic Plan:** Carlyne Myers and I attended the ABA IOLTA program in Los Angeles in early February, where one of the major plenary sessions held was on "Creating Strategic Plans." While at this seminar we had the opportunity to network with programs all across the United States and Canada. Many IOLTA programs are currently in the early stages of strategic planning. We also had the opportunity to speak with Kim McElvey of ALLPS who has taken over for Chris Newbold. Kim recommended that the NLF speak with Carole Fish to assist us in facilitating our strategic planning sessions. Carole is currently reviewing the Newbold Report and the State Bar Action Plan for the Nevada Law Foundation. We hope to hear back from Carole next week regarding her available dates for a Strategic Planning Session.

**IOLTA Interest Rates and Bank Negotiation:** The Nevada Law Foundation has set up a banking committee to help the Foundation maximize the potential return from funds in the IOLTA program. Paul Elcano, John Sande, Steve Brown, and David McElhinney are the members of this committee and they will update the Foundation, Bar, Court and Access to Justice Commission on their progress.

**Overhead Expenses and Administration:** A committee is still being formed to work with the Foundation to clearly define and reduce administrative costs. Carlyne Myers has contacted Barbara Buckley and Steve Waldron, CPA, to serve on this committee. In addition trustee Pete Gibson will speak to Tom Thomas to see of his willingness to participate as well.

**Other:** Carlyne and I had the opportunity to meet with Justice Hardesty, Paul Elcano, and Bruce Beesley in Reno on February 25, 2008 to listen to their concerns, and assure them that we are actively moving forward on all areas addressed in the Newbold Report, and the State Bar Action Plan.

Through the strategic planning process, the Foundation will be able to address the other concerns raised in the action plan, including capping the reserve policy, fundraising policies and others. Please be assured that the Nevada Law Foundation is committed to doing its part in providing access to justice to all Nevadans and we take our role in this process very seriously. I will continue to provide the State Bar and the Supreme Court of Nevada with updates of our progress as we work on improving areas identified by Chris Newbold and the State Bar of Nevada.



## IOLTA Interest Rate Comparability

**18 jurisdictions have adopted comparability requirements as of 3/1/08:**

Alabama  
Arkansas (effective February 1, 2007)  
California (to become effective in 2008)  
Connecticut  
Florida  
Illinois (effective June 1, 2007)  
Louisiana (to become effective on April 1, 2008)  
Maryland (to become on effective April 1, 2008)  
Massachusetts (effective January 1, 2007)  
Maine (to become effective on April 1, 2008)  
Michigan  
Minnesota (effective on July 1, 2007)  
Mississippi (effective January 1, 2007)  
Missouri (to be effective January 1, 2008)  
New Jersey  
New York (effective August 15, 2007)  
Ohio  
Texas (effective March 1, 2007)

Note: Effective dates are listed for those states where comparability has been in effect for less than 18 months. These states are still in the process of implementing comparability.

Prepared by the American Bar Association Commission on IOLTA

NEVADA SCR 217

**Rule 217. Creation and maintenance of interest-bearing trust accounts.** Unless an election not to participate is submitted in accordance with the procedure set forth in subsection 4 of this rule, a member of the state bar or the member's law firm shall create or maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions:

1. An interest-bearing trust account established pursuant to this rule may be established with any financial institution approved by the state bar pursuant to Rule 78.5 of these rules. Funds in each interest-bearing account shall be subject to withdrawal upon request and without delay.

2. **The rate of interest payable upon any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular non-attorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a member of the state bar or the member's law firm on some or all deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.**

3. A member of the state bar or the member's law firm establishing such account shall direct the depository institution:

(a) To remit interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with an institution's standard accounting practice at least quarterly, to the Nevada Law Foundation, the designated tax-exempt bar foundation;

(b) To transmit with each remittance to the Nevada Law Foundation a statement showing the name of the member of the state bar or the member's law firm for whom the remittance is sent (and the rate of interest applied); and

(c) To transmit to the depositing member of the state bar or the member's law firm at the same time a report showing the amount paid to the Nevada Law Foundation.

4. A member of the state bar or the member's law firm may elect to decline to maintain account(s) as described in this rule by filing a notice with the clerk of the supreme court. Such notice need not be renewed for any ensuing year.

(a) For the 1993 calendar year, a Notice of Declination must be filed with the clerk of the supreme court on or before January 31, 1993. For any ensuing year, a Notice of Declination must be filed with the clerk of the supreme court on or before January 31 of such year. Newly admitted members of the state bar may elect to decline to participate by filing a Notice of Declination with the clerk of the supreme court within ninety (90) days of admission to the state bar.

(b) An election to decline participation may be revoked at any time, and participation may be terminated at any time, by filing with the clerk of the supreme court a notice of such revocation or termination.

5. A member of the state bar or the member's law firm that does not file with the clerk of the supreme court a Notice of Declination or Termination in accordance with subsection 4 of this rule shall be required to maintain account(s) in accordance with this rule.

[Added; effective May 27, 1983; amended effective November 6, 1992.]

## **California Business and Professions Code Section 6212, 6213**

6212. An attorney who, or a law firm which, establishes an interest bearing demand trust account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:

(a) The interest bearing trust account shall be established with a bank or such other financial institutions as are authorized by the Supreme Court.

(b) The rate of interest payable on any interest bearing demand trust account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by an attorney or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby.

(c) The depository institution shall be directed to do all of the following:

(1) To remit interest on the average daily balance in the account, less reasonable service charges, to the State Bar, at least quarterly.

(2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any.

(3) To transmit to the depositing attorney or law firm at the same time a report showing the amount paid to the State Bar for that period, the rate of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

6213. As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California which provides as its primary purpose and function legal services without charge to indigent persons and which has quality

control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California which meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center, which has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means any case or matter which, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (Public Law 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the Older Americans Act of 1965, as amended (Public Law 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act of 1975, as amended (Public Law 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

# A New Frontier for IOLTA: Interest Rate Comparability

by Jane E. Curran

*Dialogue is pleased to bring you a two-part look at IOLTA rate comparability requirements from Jane E. Curran, executive director of the Florida Bar Foundation. The first part focuses on the basics of comparability and some common questions associated with it. Part two, to be published in the Fall 2006 issue, will focus on the specifics of implementing a comparability requirement.*

Veteran IOLTA directors and trustees have long heard the phrase "revenue enhancement" in connection with IOLTA. Efforts to improve the net yield generated on IOLTA accounts are almost as old as the concept of IOLTA itself. Strategies to secure better rates have included direct negotiations with banks, campaigns by participating lawyers advocating for better rates, and public recognition of those banks paying more favorable rates. These have succeeded in producing incremental gains in many cases, and even some large gains in others.

Nonetheless, IOLTA supporters in many states have been left with a sense of frustration. After years of hard-earned agreements with banks to raise interest rates, those paid on IOLTA accounts often still fall short of those on non-IOLTA accounts. What can IOLTA programs do to level the playing field and gain access to the higher rates paid on other accounts?

Enter interest rate comparability. Interest rate comparability for IOLTA accounts may seem a jumble of vague concepts, but the result is clear. First embraced in

Alabama, Florida and Ohio in the early 2000s, comparability is yielding significant increases in IOLTA revenue. A growing number of IOLTA programs have or are in the process of adopting comparability (please see the sidebar on page 2).

These comparability requirements, distinct from principal balance increases or higher rates on consumer checking generally, have generated impressive increases in IOLTA revenue in recent years. For example, Florida's annual IOLTA income has grown by 298 percent from June 2004, when the program began implementing comparability in earnest, to June 2006.<sup>1</sup> Over that same time, because of comparability, the range of rates paid on IOLTA accounts has increased. The interest rate range for IOLTA accounts in 2004 was .1 percent to 1.75 percent; today it is .15 percent to 4.22 percent.

## Comparability defined

Under comparability, IOLTA accounts are paid the highest interest rate or dividend generally available at a bank to its other customers when IOLTA accounts meet the same minimum balance or other qualifications, if any.

Three key amendments to an IOLTA rule or official guidelines are needed for a comparability program to be effective. The first permits use of REPOs (backed by government securities)<sup>2</sup> and government money market funds for IOLTA accounts (the most common products banks offer to customers who need checking

features, but aren't willing to accept low consumer checking rates). The second officially links participating lawyers' ability to hold IOLTA funds at a particular financial institution to whether that institution pays a comparable interest rate, or dividend in the case of a government money market fund. The third defines the reference point for comparability as the highest rate or dividend available, without tying it to a specific bank product. (In contrast, early IOLTA rules were tied to standard interest-bearing consumer checking accounts.)

## No regulation of banks

"Hold on," say some. "Doesn't comparability regulate banks?" The answer is no. What comparability requirements do regulate is the behavior of lawyers, who are required to place their IOLTA accounts at financial institutions that meet the comparability requirement. Banks are not required to offer IOLTA accounts; they do so because they are profitable. Accordingly, their decision to pay comparable rates in order to keep IOLTA business is a voluntary one.

"Alright, but doesn't comparability set bank rates?" Again, no. Significantly, comparability doesn't compare rates among banks. Rates paid under comparability are set by each bank for its own customers and are based on all the factors a bank normally considers when it sets rates. This feature of comparability is very important to banks.

(continued on 2)

## Comparability

(continued from page 1)

For example, a bank makes REPOs available to every customer with consistent checking balances greater than \$100,000. However, even though an IOLTA account and the checking account of XYZ Company carry the same balance, XYZ Company gets a higher REPO rate than the IOLTA account. As long as the IOLTA account with more than \$100,000 receives the sweep rate given to other customers with that balance, it's okay for XYZ Company to get a bit more, because the bank also manages the company's 401(k) plan and provides its accounts receivable financing, creating a more profitable relationship for the bank than the IOLTA account. This is part of the bank's standard system for calculating interest rates.

### Comparability vs. negotiation

A good question raised by IOLTA programs is, "Since we've had success in negotiating higher rates from banks, why should we adopt comparability?" A good answer is, "Maybe you don't need to." While the strategy of negotiation has proved to be frustrating to some IOLTA programs, it has produced concrete gains for others. Comparability may not be a one-size-fits-all solution. But it is well worth considering how your program might fare with a comparability requirement.

Under comparability, high balance IOLTA accounts—normally \$100,000 or more on a consistent basis—qualify for a REPO or government money-market fund rate. Even smaller IOLTA accounts, with balances as low as \$2,500, may qualify for rates higher than standard check-

## Where is comparability in effect?

The basic notion behind comparability—the belief that IOLTA accounts should earn the same rates as non-IOLTA accounts of similar size—has existed in the IOLTA community for many years. The comparability requirements that are beginning to produce impressive results this decade rely on the formula described on page 1. Investment products such as REPOs are permitted, lawyers can place funds only in banks that pay comparable rates, and rates are not tied to particular products such as consumer checking accounts. States that have incorporated this formula into their IOLTA rule, statute or regulatory guidelines include the following:

Alabama  
Connecticut (effective September 1, 2006)  
Florida  
Massachusetts (effective on or before January 1, 2007)  
Michigan  
Mississippi (effective January 1, 2007)  
New Jersey  
Ohio

A number of states' rules include a comparability requirement that does not include each element in this formula. Some rules are old and may predate the common use of vehicles such as REPOs. Other rules are new and establish the principle of comparability while leaving some of the specific elements to be clarified in the future, when implementation may become more feasible for them.

ing account rates at banks which offer "tiered" checking to other customers, but may not to IOLTA. IOLTA programs will need to analyze their IOLTA accounts and compare their negotiated rates to what a bank pays its other customers to decide if the advantages of adopting comparability are worth the time and effort.<sup>3</sup>

Faced with these possibilities, most states adopting comparability were further motivated to move on from other revenue enhancement strategies by frustration with their limits: the "one step forward, two steps backward" uncertainty of bank negotiations, the seemingly endless cycles of bank acquisition, and rates on consumer checking accounts that go down fast and rise slowly (if at all).

### Other considerations and questions

For IOLTA programs taking a close look at comparability, other questions might come up. Here are a few:

- What if a bank doesn't offer higher-paying products for which IOLTA accounts qualify? Then that bank is unaffected by the comparability rule, as long as it is not discriminating against IOLTA. Under comparability, banks that choose to offer IOLTA accounts no longer can claim, "We don't have a higher-paying IOLTA product." If they pay higher rates to other customers and IOLTA accounts meet the same qualifications, then they must pay a compa-

(continued on 3)

## Comparability

(continued from page 2)

able rate on the qualifying IOLTA accounts.

- **What about service charges?** Banks can assess the same fees they charge other customers when the fee is tied to a higher-rate product.<sup>4</sup> For example, banks normally charge customers \$75 to \$150 per month to sweep available balances overnight into a REPO. IOLTA programs should expect to pay the same. Moreover, if a bank chooses to pay the comparable REPO rate on the checking account without actually setting up an overnight sweep to a REPO—the norm when comparability is implemented—the REPO rate paid under that circumstance can be lowered to offset the loss to the bank of the monthly sweep fee.<sup>5</sup> Banks can, of course, choose to waive all service charges and fees on IOLTA accounts, but they aren't required to forego fee income tied to higher rates.
- **What do attorneys and law firms have to do under comparability?** Nothing. The IOLTA programs that have implemented comparability have taken the responsibility to work directly with each bank. The result typically is that banks change their rates on existing accounts and lawyers therefore do not have to go through the steps of actually establishing a sweep account.
- **What if a bank wants to set up REPOs or government money market funds for qualifying, high-balance IOLTA accounts?** Then the IOLTA program advises the affected attorneys

## Getting help

If your program is interested in more information about comparability and revenue enhancement in general, plan to contact the ABA Commission on IOLTA and its staff:

- Commission Counsel Bev Grouding, 312-988-5771 or [bgrouding@staff.abanet.org](mailto:bgrouding@staff.abanet.org)
- Assistant Counsel David Holtermann, 312-988-5744 or [holtermd@staff.abanet.org](mailto:holtermd@staff.abanet.org)

In addition to the Commission, the Commission/National Association of IOLTA Programs Joint Technical Assistance Committee and Banking/Revenue Enhancement Committee have provided significant assistance and input to a number of states with comparability requirements. Contacting the Commission staff is the best way to tap these resources and the collective knowledge and experience of the IOLTA community. It also helps facilitate the collection of good ideas from various states that in turn can be shared with others.

When implementing a comparability requirement, you may want to consider using an outside consultant to increase your program's capacity for the data-gathering and other work that is required, such as analyzing a bank's plan to comply with the comparability rule. More information on implementation will be included in the second part of this article.

and law firms that the bank has made that choice in order to comply with the comparability rule. The program provides the necessary forms for execution by the attorney or law firm, and returns them to a central bank employee identified by the bank for that purpose. The bank has made the decision for the affected attorneys and law firms.

- **What if a bank doesn't comply with the comparability requirement, but still offers IOLTA accounts?** Ohio's comparability requirement specifically provides that the bank can be "de-certified" and attorneys and law firms advised that they must move their IOLTA accounts to a complying bank. Comparability requirements elsewhere are not as explicit, but do require that lawyers deposit IOLTA funds only at banks that pay comparable rates. Implicit in this

requirement is that lawyers would have to move the IOLTA funds if the bank failed to pay these rates.

The need to take such drastic action is unlikely, however, and is not the experience in states that have implemented comparability. Even when banks pay comparable rates, IOLTA accounts remain profitable. Banks also profit from the other, fee-generating relationships with an attorney or law firm that an IOLTA account brings.

## Conclusion

Apart from conversion to mandatory IOLTA, adopting comparability promises to be the most significant source of IOLTA revenue gains in the coming years. Now is a good time to begin investigating the possibilities for your program, as the collective experience with these requirements grows and

(continued on 4)

## Comparability

(continued from page 3)

offers beneficial insights to programs crafting requirements in the future. For example, there are bells and whistles in recently-adopted comparability rules or official guidelines that can make implementation easier, especially for smaller IOLTA programs. They include offering banks compliance options such as "safe harbor" rates (a set percentage of the prevailing Federal Funds rate) and language permitting banks and IOLTA to agree upon a set rate for a specified time period.

IOLTA programs should expect that implementing comparability won't be done quickly. IOLTA programs will want to take a reasonable and helpful approach in working with banks. After all, IOLTA itself took some time to take hold. There will be numerous meetings, conference calls and emails. Given time and care, however, comparability can reap rewards over the long haul for IOLTA's charitable purposes.

Jane E. Curran has been the

executive director of The Florida Bar Foundation since 1982. She is also a member of the ABA Commission on IOLTA.

### Endnotes

- <sup>1</sup> The formal name of IOLTA in Florida is the Interest on Trust Accounts (IOTA) Program.
- <sup>2</sup> REPOs are short-term investment vehicles in which the bank sells securities held in its own investment portfolio to a customer with the agreement to repurchase them from the customer the next day at a price which equals the original investment amount plus interest. While the interest rates paid on repurchase agreements are higher than those paid on checking accounts, there is usually a high minimum checking balance—generally \$100,000—required. Repurchase agreements are not FDIC insured and modifications to IOLTA rules or regulations may be required to allow for this investment. The safety of the principal balance is addressed by requiring REPO investments be backed by United States government securities.
- <sup>3</sup> In deciding whether to pursue a comparability requirement, IOLTA programs may wish to use the services of an outside consultant and obtain up-to-date information about the rates paid by individual banks to non-IOLTA customers.
- <sup>4</sup> In rules or official guidelines, many IOLTA programs have prohibited negative netting or defined checking activity and other fees that banks are allowed to deduct from IOLTA account interest. Comparability does not alter such rules or guidelines. IOLTA programs should continue to make clear to banks that they may pass along to attorneys and law firms certain fees, such as wire transfers and other special services, which cannot be deducted from IOLTA account interest. Banks have always been able to recover IOLTA reporting or other account-related fees through a "maintenance" cost; they can continue to do so under comparability. IOLTA programs may wish to include language prohibiting negative netting and defining allowable fees in proposed rule amendments or official guidelines when seeking comparability.
- <sup>5</sup> In the experience of programs implementing comparability, banks generally have elected to pay REPO rates on existing IOLTA checking accounts, discounted for the loss of sweep fee income to the bank, rather than setting up a sweep to an overnight REPO.

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# THE LAW STREET JOURNAL



Legal Aid of NorthWest Texas - Since 1951

VOL VNO. 1

SPRING 2008

www.lanwt.org

## Golf Anyone?

### Legal Aid to Host First Annual Golf Tournament

Fort Worth, Texas — Legal Aid of NorthWest Texas ("Legal Aid") will host its first golf tournament on May 19, 2008 at the Walnut Creek Country Club in Mansfield.

Golfers from all over North Texas are already lining up to play. In addition to a host of prizes, a brand new custom golf cart will be auctioned at the Tournament dinner.

For details and information, please call 817.649.4740 or e-mail Chandra Post at [postc@lanwt.org](mailto:postc@lanwt.org).

## Women's Advocacy Awards Slated for June

### Legal Aid's Annual Awards Event Scheduled for Fort Worth

Fort Worth, Texas — Legal Aid has announced that its annual Women's Advocacy Awards event will take place in Fort Worth at Silver Fox, 1651 S. University Dr., Fort Worth and will be hosted by Mr. Gene Street. Claudine Jackson, attorney with the firm of Brackett & Ellis, will chair the event. Ms. Jackson has announced that the honorees will be:

- ✦ Kristin Vandergriff  
Civic Leader
- ✦ Janet L. Hahn  
Pro Bono Attorney
- ✦ Barbara L. Lamsens  
Non Profit Executive

For further information, please contact Ms. Chandra Post at [postc@lanwt.org](mailto:postc@lanwt.org) or please call 817.649.4740.

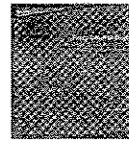
## Tying Legal Aid Together

### Texas Bar Foundation Helped Sponsor

Fort Worth, Texas — Legal Aid of NorthWest Texas ("Legal Aid") has successfully completed its video-conferencing project which now connects its 14 branch and administrative offices. Connecting all of Legal Aid's offices with video equipment has increased regular staff communication, reduced travel costs and enhanced training opportunities. The system will eventually facilitate meetings between clients and staff or pro bono attorneys in different

VIDEO cont'd. on page 4

## Foreclosures Access to Legal Aid Cited as Solution



A report by the Center for American Progress explains the dramatic increase in foreclosures projected for the foreseeable future and recommends increased access to legal aid as a solution to the problem. The report, *From Boom to Bust: Helping Families Prepare for the Rise in Subprime Mortgage Foreclosures*, notes that "...as many as 2.2 million families face

MORTGAGE cont'd. on page 3

## Legal Aid Symposium On Domestic Violence 3rd Annual Event

Legal Aid of NorthWest Texas is now planning its 3rd Annual Domestic Violence Symposium for October 2008. Along with Texas Access to Justice Foundation and the Texas Advocacy Project, Legal Aid sponsored a one-day legal symposium on domestic violence for the 73 domestic violence shelters in the Texas Panhandle, North Central, and West Texas in 2006 and again in 2007.

Every shelter director and legal advocate located in the 114 county service area of Legal Aid was invited at no cost, including travel. Event Trainers included attorneys and advocates from Legal Aid, the Texas Advocacy Project, private attorneys, the Judiciary and other advocacy organizations.

This years' event is focused on training legal advocates for the domestic violence shelters and again will be free of charge including travel. The event will be held in Dallas. For more information, go to [www.lanwt.org](http://www.lanwt.org) or call George Elliott, Regional Counsel at 800.933.4557 ext. 6000 or e-mail at [elliottg@lanwt.org](mailto:elliottg@lanwt.org).

## Stu's Views

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### Pro Bono Volunteer At Home



No, "equal justice" doesn't mean  
you get your way half the time.

Inside  
Law Street  
Prime Partners  
p. 2

Inheritance  
p. 3

WE NEED YOU NOW!!  
p. 5

# Texas IOLTA Prime Partners

The Texas Access to Justice Foundation works closely with Texas banks to ensure their participation in the Interest on Lawyers' Trust Accounts (IOLTA) Program. Per Supreme Court of Texas rules, IOLTA accounts must be held at banks that pay interest rates comparable to similarly situated accounts. Prime Partner banks go above and beyond eligibility requirements by paying at least 70 percent of the Federal Funds Target Rate. The additional interest ensures more funding for legal aid.

Since September, the Federal Reserve has lowered the Target Rate from 5.25 to 2.25, which means IOLTA projections have dropped from \$28 million to \$12.5 million.

## **You can help by doing one the following:**

1. Bank at a Prime Partner bank.
2. If you do business with a non-Prime Partner bank, persuade the bank to become a Prime Partner.
3. If you are employed by a non-Prime Partner bank, persuade the bank to become a Prime Partner.

## **IOLTA Prime Partners... Banking on Justice.**

The Texas Access to Justice Foundation, administrator of the IOLTA Program, was created in 1984 by the Supreme Court of Texas. The Foundation grants millions of dollars each year to legal aid organizations for the provision of free legal assistance to poor Texans. These organizations help about 100,000 people each year with their civil legal needs.

To learn more about IOLTA and the Prime Partner program, visit [www.teajf.org](http://www.teajf.org) or call 512.320.0099.

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FOUNDATION

### **Who are the Prime Partners in the Metroplex area?**

The IOLTA Program Prime Partner list continues to grow. Is your bank a Prime Partner?

Access 1st Capital Bank (Denton)

Amegy Bank of Texas  
(Statewide)

Citibank Texas (Statewide)

Comerica Bank (Statewide)

Compass Bank (Statewide)

Coppermark Bank (Plano)

Dallas City Bank (Dallas)

First International Bank (Plano)

First National Bank Southwest  
(Plano)

Legacy Texas Bank (Plano)

Nexbank (Dallas)

North Dallas Bank & Trust  
(Dallas)

Northstar Bank of Texas  
(Denton)

OmniAmerican Bank (Ft. Worth)

PlainsCapital Bank (Statewide)

Sterling Bank (Statewide)

Texas Brand Bank (Garland)

Town North Bank (Dallas)

VisionBank Texas (Richardson)

Washington Mutual (Statewide)

## TO PAY OR NOT TO PAY

### Appellate Court Answers the Question

Tracy Hipolito is a Legal Aid client who asked for help with a divorce in Dallas in 2004. Tracy had been separated from her husband for several years. She had received a Protective order against him in 2002. The two are parents of a handicapped child who needs constant care and attention. One of the main reasons Tracy submitted to her husband's abuse was for economic security. She did not have the means to escape and care for her son by herself.

When Tracy could no longer put up with the controlling and emotionally abusive behavior, she applied

to Legal Aid for help with a divorce and was accepted as a client. Tracy's attorney was Roger A. Jacobsen. A divorce was filed on her behalf in December of 2004. They had married in May of 1995. At a Temporary hearing in December, an agreed temporary order was submitted to the court, wherein the abuser paid child support and helped Tracy with rent and moving expenses.

Litigation continued, with discovery and depositions being conducted by both parties. On Tracy's behalf, pleadings asked for primary custody, child support and spousal maintenance. Eventually, an agreement was reached on the custody and support issues (Tracy to be primary conservator and receive

support). But, her spouse refused to pay spousal maintenance.

The Texas spousal maintenance statute has two "thresholds." Either the party ordered to pay had to have been convicted of domestic violence within the past two years at time of filing, or the duration of the marriage had to be 10 years. It was more than two years since the protective order at the time of filing in December of 2004. However, by the time we got to trial in July of 2005, the 10 year anniversary of the marriage had passed. It was argued at trial that Tracy was now eligible for spousal maintenance and needed it in order to get back into the workforce and care for their child. Opposing counsel argued that since the 10 year anniversary had not been reached at time of filing, Tracy did not qualify. No case law in Texas could be found on this issue. The court found in Tracy's favor on the issue and ordered spousal maintenance to be paid. His counsel immediately appealed.

Legal Aid continued to represent Tracy in the appeal process, filing all necessary briefs, motions and responses. On August 16, 2006, the Court of Appeals in Dallas affirmed the trial court's decision. The case is now published in the law books as Hipolito v. Hipolito. On Jan. 5, 2007, the Texas Supreme Court refused to consider Hipolito's petition for review, thus making the decision final. No case law had ever dealt with the clear meaning of the "10 year" rule. Tracy received the payments she needed.

Mortgage cont'd - page 1

the prospect of losing their homes in the coming years. This follows in the wake of more than 1.2 million foreclosure filings in 2006, up 42 percent from 2005."

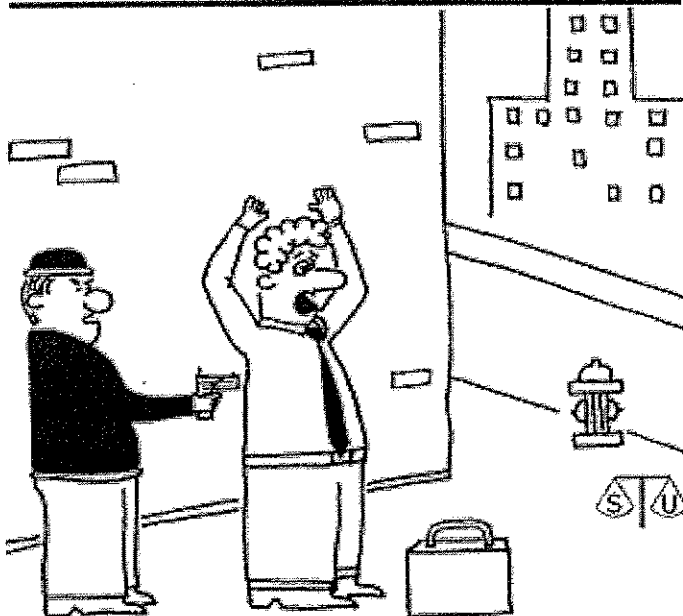
Why the increase? The report explains that "non-traditional" mortgages with "complex interest rate terms and conditions" originally designed for wealthier people have been increasingly sold to the poor and middle class in the past 6 years. After a few years, the mortgage rates increase to a level unanticipated by the homeowner, who can no longer afford the payments, and the mortgage holder then forecloses.

The solution? The report recommends increased access to legal aid programs as a crucial element to preventing foreclosures. While traditional mortgage assistance and foreclosure prevention programs provide valuable services to homeowners, the report notes their inability to confront predatory lenders and hold them responsible. "Thus, equally important for families...are programs that include legal aid services for victims of predation.... While foreclosure prevention programs save families' homes, legal aid services provide the necessary leverage to effectively curtail predatory lenders' practices."

For an example of an effective legal aid program, the report highlights the Foreclosure Prevention Project run by South Brooklyn Legal Services, part of the LSC-funded Legal Services for New York City. The Project represents people facing foreclosure and victims of predatory lending, and provides mortgage counseling to low- and

### Stu's Views

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"Money? Ha! I'm a legal aid lawyer.  
The only thing in my wallet is an  
overdue notice for my student loans."



moderate-income homeowners. In the last two years, the program has provided 498 borrowers with consumer counseling and legal aid services.

Meghan Fox, who works on the project for SBLIS, said, "Access to legal services is essential to ensure that homeowners understand and can exercise their legal rights and save their homes. Brokers and lenders are using unscrupulous, predatory tactics to induce low-income, often minority, homeowners into exotic mortgage products that are unaffordable from their inception and completely unsuitable for the borrower. Without legal assistance, many homeowners will lose both their home and all the equity they have built up."

A recent *New York Times* editorial echoed the findings of the CAP report, saying that the "most plausible relief measures...involve federal boosts to existing state and local programs" including legal aid.

#### VIDEO - cont'd from page 1

cities. Mentoring between staff and pro bono attorneys who are located in different cities is being facilitated, and in-house CLE for all staff attorneys and pro bono attorneys will be increased.

The project was initiated with a funding from the Texas Bar Foundation. It was completed with funds from a number of private donors and the Legal Services Corporation. Legal Aid initiated use of video conference equipment in 1999 to conduct regular two-way meetings between clients located in remote locations and staff attorneys at 2 of its branch offices. These services were expanded in 2004 to 5 additional offices.

Resulting communications will improve client services by creating opportunities for more

interoffice staff interaction as staff and pro bono attorneys schedule legal specialization workgroups; and encouraging substantive work groups to invite experienced advocates and pro bono attorneys from a number of offices to discuss groups of cases; conduct hands-on reviews of case files with the same legal problem areas but from different offices; and include advocates from other legal aid programs as they are able to participate. The latter will also help identify trends that could better be addressed regionally or state wide. Workgroups will identify critical emerging issues.

Jesse Gaines, Chief Executive Officer of Legal Aid states that "This new phase now brings us closer to the day when travel expenses and staff travel time will be significantly reduced so as to expand the amount of legal aid being provided to our clients as well as increased training, mentoring, and coordination between various branch offices utilizing staff and volunteers from larger cities to enhance legal aid provided in smaller communities. We are grateful to the Texas Bar Foundation for their support of this project."

The State Bar of Texas created the Texas Bar Foundation as the charitable arm of the lawyers of Texas in 1965. The Foundation is the largest bar foundation of its kind in the nation, and it is renowned for its ongoing effort to aid the public through its charitable grant making to justice-related causes. To date, more than \$9 million in grants have been given by the Foundation to benefit the people of Texas. These grants have been awarded for projects and programs that provide legal services for the needy, education to the public, and improvements within the legal profession and the administration of justice.

#### Stu's Views



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I know our policy on smiting lawyers, but does it also apply to legal aid lawyers?



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April 2008

Every day, people come to us with urgent legal problems threatening to destroy their families. Just in the past few months:

- o A mother, whose house was paid for, thought she was borrowing money to make repairs only to discover that she was actually defrauded out of her home. We are now working to help her get it back.
- o We helped an aunt get custody of her teenaged niece and nephew after it was discovered that their uncle had sexually abused them both for 11 years while their grandmother, who had adopted them, looked the other way;
- o A mother of four was shot by her now ex-husband. After our representation, she has sole custody of the children and a permanent injunction preventing him from contacting her.

Fairness is a word that binds all Americans together as one, regardless of race, religion, political, or religious beliefs. We believe that those without the money to hire a lawyer deserve the same amount of justice as those of us who can afford to pay for legal help when we need it.

Recent interest rate reductions have cost the Legal Aid community in Texas more than \$16 million that would have supported legal aid for the poor. We need your help to ensure that those who need access to justice get access to justice.

Please help by going to [www.lanwt.org](http://www.lanwt.org) and clicking on **DONATE NOW!** Lives are at stake. Your help will make an enormous difference.

Thank you very much for your kind consideration.

Chief Executive Officer

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# THE STATE BAR OF CALIFORNIA

Wednesday, April 9, 2008

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## INTEREST RATES ON IOLTA ACCOUNTS

Print This

Through the years, many financial institutions have taken a leadership role by increasing rates and reducing or waiving fees on their IOLTA accounts. The generosity of these banks has increased access to justice for hundreds of thousands of people who otherwise would have nowhere to turn for help.

Ask your bank its current IOLTA interest rate (250- plus California banks offer IOLTA accounts), or e-mail us at [iolta@calbar.ca.gov](mailto:iolta@calbar.ca.gov).

Under amended Business & Professions Code Sections 6091.2, 6211, 6212, and 6213 effective January 1, 2008, the law requires California lawyers to place IOLTA accounts only at financial institutions that pay dividend or interest rates to IOLTA customers comparable to rates paid to similarly situated non-IOLTA customers, and that meet other requirements.

All financial institutions must be paying comparable rates by March 1, or agree to pay rates retroactively to March 1, 2008.

The State Bar is working with the approximately 280 financial institutions that currently hold IOLTA accounts to help them come into compliance with the amended law. Financial Institutions that are listed below as either "Eligible" or "Provisionally Eligible" have pledged to bring their IOLTA accounts into compliance with the comparability law.

As the Legal Services Trust Fund Program verifies the comparability of accounts (the products, rates, and fees) offered to IOLTA, financial institutions will be moved from the "Provisionally Eligible" to "Eligible" category. During this transition period, this list will be updated weekly.

- California's IOLTA-Eligible Financial Institutions

For more information about becoming an "IOLTA-Eligible" financial institution, please review the following documents:

- Guide for Financial Institutions
- Implementation Letter
- Eligibility Timeline
- Rate Information Form
- Pledge of Intent
- Remittance Report (submit in Excel or CSV format)

**Please Note:** Those institutions that have pledged to be in compliance are identified on the Provisionally "IOLTA-Eligible" list. Those institutions for which the State Bar has confirmed a plan for compliance are on the "IOLTA-Eligible" list. The State Bar is currently working with banks on the provisional list and upon confirmation will move those institutions to the eligible list. We will complete our review by April 30th. In the meantime, banks on either list are appropriate for IOLTA. If a bank holding IOLTA funds is not eligible by April 30th affected members will be notified.

#### "IOLTA-Eligible" Financial Institutions 4.01.08

1 <sup>st</sup> Centennial Bank	Comerica Bank	GBC International Bank	Presidio Bank
1 <sup>st</sup> Century Bank	Commerce Bank of Folsom	Gilmore Bank	Private Bank of the Peninsula
1 <sup>st</sup> Pacific Bank of California	Commerce Bank of Temecula Valley	Gold Country Bank	Primerica Bank
Affinity Bank	Commerce National Bank	Golden State Business Bank	Provident Bank
Alliance Bank	Commerce West Bank	Granite Community Bank	Rabobank, N.A.
Alta Alliance Bank	Commercial Bank of California	Greater Bay Bank	Redding Bank of Commerce
America California Bank	Commonwealth Business Bank	Guaranty Bank	Redwood Capital Bank
American Business Bank	Community Bank	Hanmi Bank	Regents Bank
American Continental Bank	Community Bank of San Joaquin	Heritage Bank of Commerce	River City Bank
American Premier Bank	Community Bank of Santa Maria	Heritage Oaks Bank	River Valley Community Bank
American Principle Bank	Community Bank of the Bay	HSBC Bank	Saeahan Bank
American River Bank	Community 1 <sup>st</sup> Bank	Imperial Capital Bank	San Diego National Bank
American Riviera Bank	Community West Bank	Inland Community Bank	San Diego Private Bank
American Security Bank	Contra Costa Federal Credit Union	Innovative Bank	San Diego Trust Bank
Americas United Bank	Coronado First Bank	International City Bank	San Joaquin Bank
Atlantic Pacific Bank	Cornerstone Community Bank	Ironstone Bank	San Luis Trust Bank
Banco Popular	County Bank	Irwin Union Bank & Trust	Santa Clara Valley Bank
Bank of Alameda	County Commerce Bank	Israel Discount Bank of New York	Santa Cruz County Bank
Bank Leumi USA	Delta Bank	Liberty Bank	Santa Lucia Bank
Bank of Agriculture and Commerce	Desert Commercial Bank	Lighthouse Bank	Savings Bank of Mendocino County
Bank of America	Discovery Bank	Los Padres Bank	Scott Valley Bank
Bank of Escondido	East West Bank	Malaga Bank	Security Bank of California
Bank of Feather River	El Paseo Bank	Manufacturers Bank	Security Business Bank
Bank of Guam	Evertrust Bank	Mechanics Bank	Security Pacific Bank
Bank of Hemet	Excel National Bank	Mellon 1 <sup>st</sup> Business Bank	Service 1 <sup>st</sup> Bank
Bank of Manhattan	Exchange Bank	Merchants National Bank of Sacramento	Shinhan Bank America
Bank of Marin	Far East National Bank	Metro Pacific Bank	Silicon Valley Bank
Bank of Napa	Farmers and Merchants Bank	Metropolitan Bank	Sonoma Valley Bank
Bank of Rio Vista	First Bank	Midstate Bank	South County Bank
Bank of Sacramento	First Bank of Beverly Hills	Mirae Bank	Spectrum Bank
Bank of San Francisco	First Business Bank	Mission Bank	Stellar Business Bank
Bank of Santa Clarita	First California Bank	Mission Community Bank	Sterling Savings Bank
Bank of the Orient	First Capital Bank	Mission National Bank	Stockmans Bank (a division of PremierWest)
Bank of the Sierra	First Choice Bank	Mission Oaks National Bank	Summit Bank
Bank of the West	First Commerce Bank	Mission Valley Bank	Summit State Bank
Bank of Willits	First Commercial Bank (USA)	Montecito Bank and Trust	Sunrise Bank of San Diego
Bay Cities National Bank	First Community	Monterey County Bank	Sunrise Community Bank
Bay Commercial Bank	First Federal Bank of California	Mother Lode Bank	Sunwest Bank
BBVA Bancomer USA	First Foundation Bank	Nara Bank	Temecula Valley Bank
Beach Business Bank	First Mountain Bank	National Bank of California	The Bank of East Asia (USA)
Borel Private Bank and Trust	First Nat'l Bank of Southern California	New Resource Bank	Tomato Bank
Borrego Springs Bank	First Nat'l Bank of North County	North Valley Bank	Torrey Pines Bank
Bridge Bank	First Northern Bank	Northern California National Bank	Trans Pacific National Bank
Business First National Bank	First Private Bank and Trust	Northern Trust, NA	Tri Counties Bank
Butte Community Bank	First Regional Bank	Oak Valley Community Bank	Tri-Valley Bank
California Bank and Trust	First Republic Bank	Ojai Community Bank	Umpqua Bank
California Bank of Commerce	Five Star Bank	Omni Bank	Union Bank of California
California Community Bank	Focus Business Bank	Orange Community Bank	United American Bank
California National Bank	Folsom Lake Bank	Orange County Business Bank	United Commercial Bank
California Oaks State Bank	Founders Community Bank	Pacific Capital Bank	United Labor Bank
California Pacific Bank	Franklin Templeton Bank and Trust	Pacific City Bank	United Security Bank
California United Bank	Fremont Bank	Pacific Coast National Bank	US Bank
California West Bank	Fresno County Federal Credit Union	Pacific Commerce	US Metro Bank
Canyon National Bank	Fresno First Bank	Pacific Mercantile Bank	US Trust Company
Cathay Bank	Friendly Hills Bank	Pacific State Bank	Valley Business Bank
Center Bank	Frontier Bank fsb dba El Paseo Bank	Pacific Valley Bank	Valley Community Bank
Central Valley Community Bank	Fullerton Community Bank	Pacific Western Bank	Ventura County Business Bank
China Trust Bank (USA)	Gateway Business Bank	Palm Desert National Bank	Vineyard Bank
Chino Commercial Bank		PFF Bank and Trust	Visalia Community Bank
Citibank		Plaza Bank	Wachovia
Citizens Bank of Northern California		Plumas Bank	Washington Mutual
Citizens Business Bank		Preferred Bank	Wells Fargo
City National Bank		Premier Service Bank	Westamerica
Coast National Bank		Premier Valley Bank	Western Commercial Bank
		Premier West Bank	Wilshire State Bank

#### Provisionally "IOLTA-Eligible" Financial Institutions 4.01.08

1 <sup>st</sup> Enterprise Bank	California Business Bank	Los Angeles National Bank	Professional Business Bank
Bank of Stockton	Circle Bank	Pacific Premier Bank	
Bank of Whittier	Golden Valley Bank	Premier Commercial Bank	

**STATE BAR OF CALIFORNIA  
LEGAL SERVICES TRUST FUND PROGRAM  
Interest on Lawyers' Trust Accounts (IOLTA)**

**Guide for Financial Institutions**

These guidelines are designed to answer questions regarding your administration of Interest on Lawyers' Trust Accounts (IOLTA). The interest generated by these accounts fund the Legal Services Trust Fund Program (LSTFP) of the State Bar of California.

**Background: The IOLTA Program**

The IOLTA program, authorized by the legislature at Business & Professions Code §§6211 et seq. ("Statute") requires lawyers to place short-term or nominal client funds into interest- or dividend-bearing accounts. Accounts that pool nominal and short-term deposits and pay the interest or dividends to the Legal Services Trust Fund Program are called "IOLTA accounts." Interest and dividends generated from IOLTA accounts are used to fund legal services to indigent people, seniors and people with disabilities. These funds are an integral part of a comprehensive system to ensure that low-income Californians have access to justice in the State of California. Since 1981, California bankers and lawyers have partnered to achieve access to justice for all Californians.

All funds that a lawyer or law firm receives or holds for the benefit of a client or other person in connection with the performance of a legal service or representation by a lawyer must be deposited in one or more trust accounts, but not every trust account established by a lawyer or law firm will be an IOLTA account. It is the attorney or law firm's obligation to determine which funds should be held in an IOLTA account – only those funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income should be held in an IOLTA account. If a lawyer or law firm determines that funds should be held for the benefit of individual clients or third persons, then the lawyer or firm will place the funds in a non-IOLTA account that will usually bear the social security number or tax identification number of the individual client, third person, or law firm.

**Eligible Financial Institutions**

Participation in the IOLTA program is voluntary for financial institutions, but a lawyer cannot keep an IOLTA account at a financial institution that does not meet the requirements set forth in the Statute.

**Duties of IOLTA Eligible Institutions**

An IOLTA eligible institution must pay comparable interest rates or dividends as required by Statute (the "comparability requirements") and may choose to do so in one of three ways:

- **Establish IOLTA accounts as comparable rate products:** Comparable rate products are eligible accounts that earn no less than the highest interest rate or dividend generally available from the institution to non-IOLTA account

customers when the IOLTA account meets the same minimum balance or other eligibility qualifications;

- **Emulate the comparable product rate:** Instead of converting IOLTA accounts to higher paying products such as money market or other business sweep accounts, an institution can simply choose to pay the equivalent rates, less chargeable fees, if any, of those products in the IOLTA deposit accounts meeting the same minimum balance and other requirements. Financial institutions that select this option benefit from ease of administration and the option to keep IOLTA funds on the financial institution's operations balance sheet.
- **Pay the Established Compliance Rate:** In lieu of paying the comparable rate, financial institutions may opt to pay the "Established Compliance Rate." The initial Established Compliance Rate will be an amount on funds that is equal to 68% of the Federal Funds target rate as of the first business day of the quarter or other IOLTA remitting period, which amount is deemed to be already net of allowable reasonable fees. This Established Compliance Rate may be adjusted once a year by the LSTFP, upon 90 days written notice to financial institutions participating in the IOLTA program.

At a minimum, interest or dividends must be calculated in accordance with the institution's standard practice for non-IOLTA customers with comparable accounts, but institutions may elect to pay a higher rate on IOLTA accounts.

#### **Eligible Accounts**

An "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

1. An interest-bearing checking account.
2. An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund.
3. Any other investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et

seq.), and, at that time of the investment, shall have total assets of at least \$250,000,000.

Although the rate comparability requirement applies to all IOLTA accounts, the amended IOLTA statute affects most significantly those IOLTA accounts whose high balances and other characteristics qualify them for investment sweep accounts, premium checking accounts, or other high-rate accounts offered to non-IOLTA customers holding comparable balances. Typically, those "high balance" accounts hold average balances of \$100,000 or more. Financial institutions do not have to create new products if these are not already offered to other customers.

The LSTFP will work with both financial institutions and lawyers whose accounts are affected to facilitate implementation of the rate comparability provision. Financial institutions should let lawyers who call know that they are working with the LSTFP as to affected accounts, and can feel free to direct any lawyer inquiries to the LSTFP.

#### **Benefits to Financial Institutions**

Participation in IOLTA is a great way for banks to show they care about the communities they serve. IOLTA grants provide needed legal service to people who otherwise would have nowhere to turn for access to justice. Because IOLTA is a charitable program serving public purposes, many financial institutions choose to waive all service charges on IOLTA accounts, choose to pay a higher than comparable rate of interest or dividends, or otherwise increase the IOLTA yield.

- The Legal Services Trust Fund Program will regularly publicize to its 157,700 active member lawyers and others, the names of those institutions that choose to contribute by voluntarily increasing the yield on IOLTA accounts to a level significantly higher than strictly required under the comparability requirement.
- A financial institution may report on its CRA Statement (for use under the Community Reinvestment Act of 1977, as amended (12 U.S.C. §2901) that it is eliminating or reducing fees on IOLTA accounts or paying higher interest rates on IOLTA accounts than on comparable business accounts to reflect its contributions to the communities in which it is located.
- A financial institution may also reflect IOLTA contributions in banking information brochures, newsletters, and annual reports to shareholders. By doing this, you let investors and customers know that the financial institution is playing an active role to support the justice system and worthwhile law-related programs in your community.

#### **Administrative Costs to Adapt Systems**

If a financial institution expects to experience administrative costs to adapt its system to comply with the provisions of the Statute or in making investment products available to IOLTA members, the financial institution should notify the LSTFP, advising of the amounts and nature

of the anticipated costs. The LSTFP will consider whether there are options to help financial institutions defray such reasonable up-front costs. Itemized costs should be submitted at least 60 days in advance for approval by the LSTFP.

### **Procedures to Establish an IOLTA Account**

To set up the IOLTA account, lawyers will deliver to their financial institution a completed form, which can be obtained from the Legal Services Trust Fund Program, or downloaded from [www.calbar.ca.gov](http://www.calbar.ca.gov). Most lawyers or law firms will not have more than one IOLTA account because eligible deposits can all be pooled in one IOLTA account.

Information for attorneys about opening and maintaining attorney-client trust accounts can be found on the State Bar's website at [www.calbar.ca.gov](http://www.calbar.ca.gov).

**Signature Cards and Corporate Resolutions:** One way for financial institutions to streamline their IOLTA account procedures is to accept the attorney form and not require new signature cards or corporate resolutions when an account is enrolled in IOLTA. This form is signed by the same authorized persons who sign customary signature cards or corporate resolutions for the account.

### **Remittance to the State Bar**

Financial Institutions may remit interest or dividend payments monthly (LSTFP's preference) or quarterly for all the accounts they hold. Interest or dividends earned on the accounts should be calculated based on the aggregate average balance of each individual IOLTA account.

**Remittances are due the 10<sup>th</sup> of the month following the end of the reporting period,** and will be considered delinquent on the last day of the month following the end of the reporting period. One way to facilitate the remittance process is to flag and coordinate all IOLTA accounts to the same closing date or statement cycle.

Financial institutions may:

- Hold the interest or dividends in the depositing attorney's account until remitted.
- Debit the depositing attorney's account for the interest or dividends when paid and hold it in a separate account until remitting it to the State Bar.
- Pay interest or dividends directly into a separate account until remitting the interest or dividends to the State Bar or pay interest or dividends directly to the State Bar.

**Reasonable Service Charges:** Financial institutions may only deduct the following service charges from the interest or dividends earned on each IOLTA account: per-check charges, per-deposit charges, monthly fees such as fees in lieu of minimum balance, federal deposit insurance fees, or sweep fees. Fees and charges must be calculated in accordance with the institution's standard practice and may be deducted only from the interest or dividends earned on the IOLTA account. These charges may not be deducted from the principal balance, and they may not be deducted from the interest or dividends earned on other IOLTA accounts. All other charges are

the responsibility of and may be charged to the lawyer or law firm account holder. Financial institutions may choose to waive any and all fees on IOLTA accounts.

Reasonable service charges include only those charges listed in the above paragraph; therefore, they do not include other costs such as the cost of check printing, deposit stamps, NSF charges, collection charges, and fees for cash management services. These other charges are deemed to be ordinary business expenses that must be paid for by an attorney or law firm that receives or disburses trust funds.

**Send remittance to:** Financial institutions may remit interest to the State Bar by check mailed directly to: The State Bar of California, Legal Services Trust Fund Program, Department 05-590, San Francisco, California, 94139; or by wire transfer to Wells Fargo Bank Routing Number: 121000248 Account Number: 4159-394709.

### **Reporting to the State Bar**

The "IOLTA Remittance Report" allows the LSTFP to record IOLTA interest or dividends by individual lawyer/law firm IOLTA accounts, using the account number assigned by the financial institution. Submit remittance advice for each IOLTA account even if no interest or dividend is being paid for the remitting period. Information reported on the remittance advice must show the IOLTA account number, the name of the lawyer or law firm, the amount of the remittance attributable to each account maintained by each lawyer or law firm, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance on which the interest or dividends were paid (for example, average daily collected balance) for the period for which the report is made.

**Electronic remittance:** To improve accuracy and speed data entry, the LSTFP has instituted electronic forms for use in remittal of IOLTA statements. Templates in Microsoft Excel and a plain text format (comma delimited values) can be downloaded from the State Bar website at [www.calbar.ca.gov](http://www.calbar.ca.gov). Electronic remittance reports should be sent to [iolta@calbar.ca.gov](mailto:iolta@calbar.ca.gov).

### **Reporting to Law Firm**

The financial institution must also send the lawyer/law firm holding the account a report in accordance with normal procedures for reporting to depositors. The lawyer/law firm address should be used for this statement. This statement should **not** be sent to the LSTFP.

### **Unproductive Accounts**

If service charges exceed interest and dividends for any account during a remitting period, the financial institution has several options: 1) maintain the account and write off or absorb any uncollected charges; 2) maintain the account and accrue charges, offsetting them against future interest earnings on that account; 3) pass these service charges and costs to the lawyer or law firm customer's operating account; 4) require the lawyer or law firm to maintain a reasonable

balance in the IOLTA account to cover the excess charges/fees; or, 5) if the account is deemed "unproductive" by the LSTFP under the criteria below, close the account.

An account is "unproductive" if:

1. On an annual basis, the account has been negative for at least two years; **and**,
2. Where service charges would still exceed interest even if the interest rate were increased by 100 basis points

Upon notice from the financial institution that an account is unproductive, the LSTFP will send written notice to the account holder that the account holder has 60 days to make arrangements to maintain a reasonable balance in the IOLTA account to cover the charges and fees, or notify the financial institution that it will cover those charges out of a general account. If the attorney or attorney firm does not respond within 60 days, the State Bar will send 30-day notice to the account holder that it will direct the bank to convert the IOLTA account to a non-interest bearing trust checking account and that the State Bar will no longer pay for services charges/fees. The State Bar at that time will notify the bank that it should remove the State Bar's Federal Taxpayer Identification number from the account.

#### **Tax Identification and No Withholding**

In order to report to the appropriate taxing authorities, financial institutions should use the State Bar of California's Taxpayer Identification number 94-6001385 on all Interest on Lawyers' Trust Accounts. This number is to be set up as a Taxpayer Identification number and not as a Social Security number.

The State Bar is not subject to any interest withholding requirements and pursuant to regulations promulgated by the Internal Revenue Service need not file an exempt certificate unless required by the financial institution.

#### **Adjustments and Errors**

**Remittance errors:** The State Bar will make refunds when interest or dividends have been remitted in error, whether the error is that of the financial institution or the attorney. Attorneys requesting payment of interest or dividends on funds placed in an account in error should submit a timely request to the financial institution for a refund of interest or dividends on the identified funds. The financial institution should make a timely request in writing, accompanied by documentation of the error. As needed for auditing purposes, the State Bar may request additional documentation. In no event will the refund exceed the interest or dividends actually received by the State Bar.

**Reconciliation of account information:** Semi-annually the State Bar reconciles the information in financial institution remittance reports with the compliance reports that California attorneys

provide to us. The cooperation of financial institutions in finding and correcting errors is appreciated.

**Erroneous deductions:** If the LSTFP becomes aware that a member business expense is erroneously deducted from IOLTA funds, the LSTFP will inform the financial institution and request the error be corrected.

### **Miscellaneous**

**Contact person:** Financial institutions are encouraged to designate an "IOLTA Contact Person" for their institution to serve as a liaison with the LSTFP. Financial institutions should advise of any new "IOLTA Contact Person" by e-mailing the contact's name, title, address, phone, fax, and email address to [iolta@calbar.ca.gov](mailto:iolta@calbar.ca.gov). Also, please provide immediate notice if the financial institution acquires, merges with or is acquired by another financial institution.

**Distributing IOLTA procedures to branch personnel:** It is requested that financial institutions distribute their IOLTA procedures, and any updates, to branch personnel who most often deal directly with customers. Branch personnel may be encouraged to call the LSTFP with any questions.

### **Assistance is Available**

The LSTFP will work with lawyers and financial institutions to make California's IOLTA program a success. Staff is available to answer questions and to help financial institutions with their IOLTA accounts. Additional copies of the Statute, relevant State Bar Rules, and IOLTA forms are available upon request, or may be downloaded from [www.calbar.ca.gov](http://www.calbar.ca.gov).

Additionally, the LSTFP is available to assist institutions to comply with the Statute and implementing rules in the following ways:

- Discuss defraying reasonable up-front costs to adapt IOLTA compliance systems;
- Provide detailed reporting and remittance specifications, including technical support;
- Assist in identifying IOLTA accounts to be placed in higher-paying products; and,
- Coordinate communications and assistance to affected lawyers and law firms to move IOLTA accounts to higher-paying products.

For assistance or additional information, please contact our compliance auditor, Legal Services Trust Fund Program, the State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, or email [iolta@calbar.ca.gov](mailto:iolta@calbar.ca.gov). You also can call one of the compliance auditors at (415) (415) 538-2046 or (415) 538-2227. The LSTFP welcomes your comments and suggestions.

**THE STATE BAR OF CALIFORNIA  
LEGAL SERVICES TRUST FUND PROGRAM  
IOLTA Remittance Report**

**Part I: Summary Statement**

**Report by email with wire transfer (preferred) to**  
[iolta@calbar.ca.gov](mailto:iolta@calbar.ca.gov); or

mail this statement (or similar detail statement) along with a  
check for Remitted Interest made payable to :

The State Bar of California  
Trust Fund Program  
Department 05-590  
San Francisco, CA 94139

Institution Name: \_\_\_\_\_

Name/Title of Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Report Period: From: \_\_\_\_\_ Through: \_\_\_\_\_

Federal Number: \_\_\_\_\_ District Number: \_\_\_\_\_

Reporting Financial Institution (ABA number): \_\_\_\_\_

Financial Institution Number: \_\_\_\_\_

Check/Wire#: \_\_\_\_\_ Date: \_\_\_\_\_

**Summary:**

- A) Number of L.S.T.F.P. accounts being summarized by this statement..... # \_\_\_\_\_
- B) Total of Average Available Daily Balance for all L.S.T.F.P. accounts..... \$ \_\_\_\_\_
- C) Total interest earned in the period for all L.S.T.F.P. accounts..... \$ \_\_\_\_\_
- D) Total service charges charged for all L.S.T.F.P. accounts during the period..... \$ \_\_\_\_\_
- E) Net Payment (Amount Due) (C minus D) for the period..... \$ \_\_\_\_\_

**Applicable Interest or Dividend Rates**

**1. If same for all accounts:**

Rate (APR): \_\_\_\_\_

**2. If tiered rates apply, please complete the chart below, indicating the tier breaks (principal balances) and rate applied to each tier**

Principal Balance		Rate (APR)
From:	To:	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	

## Part II: Detail Statement

[illegible]

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December 21, 2007

Dear Compliance Officer:

We are writing to remind you of recent changes affecting IOLTA accounts in California and to outline the process and timetable for implementing those changes.

As we indicated in our November 21, 2007, letter, the California legislature recently amended the statute governing Interest on Lawyers' Trust Accounts (IOLTA), effective January 1, 2008.<sup>1</sup> The amendments update the kinds of accounts in which IOLTA funds can be placed, allowing the use of sweep accounts that invest the funds overnight in conservative, high-yield bank products such as repurchase agreements backed by government securities or money market mutual funds invested in government securities.

Under the amendments, participation in IOLTA remains voluntary for financial institutions. Attorneys, however, may deposit client funds only in financial institutions that are "eligible," as defined, in part, by the statute's new interest rate comparability requirement:

"... if an eligible institution offers or makes investment products available to non-IOLTA customers, in order to remain an IOLTA eligible institution, it shall make those products available to IOLTA customers or pay an interest rate on the IOLTA deposit account that is comparable to the rate of return or the dividends generally paid on that investment product for similar customers meeting the same minimum balance and other requirements applicable to the investment product."

Because the amendments become effective January 1, 2008, we are notifying your Bank about the amendments and the process that the Legal Services Trust Fund Program of the State Bar will undertake in the weeks ahead to assist your bank in determining what, if any, changes in your IOLTA accounts will be needed. We are committed to working with you to make the implementation as smooth as possible for you and your IOLTA customers.

The Legal Services Trust Fund Program, as the administrator of the California IOLTA program, requires certain information to determine whether your bank already meets the rate comparability requirement or must adjust rates in order to obtain approval as an IOLTA-eligible financial institution. We are working, therefore, with each IOLTA-participating bank to ensure that California attorneys continue to be able to hold IOLTA accounts in their current financial institutions. This letter, with enclosures, outlines the following:

- Request for rate and fee information from your bank
- Process and timetable for implementation
- Approaches for achieving comparability
- Comparability status of financial institutions
- Pledge of intent to comply by March 1, 2008, or retroactively to that date

**Request for information from your bank by January 31, 2008**

In order to determine whether your bank is an eligible financial institution under the amended IOLTA statute, and to keep this process on schedule, we ask that Your Bank fill out the enclosed California IOLTA Rate Comparability Information Form. Please return the completed form, along with copies of relevant bank brochures or other account documents requested, to the Trust Fund Program in the enclosed envelope **no later than January 31**. We will review that information and advise your bank of any changes needed.

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<sup>1</sup> Business and Professions Code §§6091.2, 6211, 6212, 6213.

**Process and timetable for banks to implement the amended IOLTA statute**

The Trust Fund Program will take a number of steps in the weeks ahead to assist you in determining what, if any, changes to your bank's IOLTA accounts will be needed to implement the amended IOLTA statute. We understand that the statute may require significant changes for some banks, and we will work with your bank to make the process proceed as efficiently as possible. **The enclosed timetable summarizes those steps and the deadlines necessary for your bank to achieve full compliance.**

We ask that you pay special attention to the **January 31 reply deadline** for the return of rate and fee information and the **March 1 compliance deadline** for aligning IOLTA rates with the comparability requirement of the amended IOLTA statute. You should contact the Trust Fund Program immediately if Your bank anticipates that it cannot meet the enclosed timetable. In addition, we ask that each financial institution sign the enclosed Pledge of Intent and return it by January 31. The Pledge of Intent specifies that should a bank's eligibility and implementation process extend beyond the March 1 deadline, the financial institution will pay the comparable rate(s) (as defined by the IOLTA statute) retroactive to March 1. Any delay in implementation could jeopardize your bank's approval as an IOLTA-eligible financial institution.

The Trust Fund Program recognizes that some banks might be in compliance already with the interest rate comparability requirement. We will deem a financial institution in compliance if it provides documentation enabling the Trust Fund Program to certify that the rates or dividends the institution pays IOLTA are no less than the bank pays non-IOLTA customers when IOLTA accounts meet or exceed the same minimum balance and other eligibility qualifications. Otherwise, the bank will need to choose an approach for coming into compliance as outlined below.

**Approaches for complying with the rate comparability requirement**

Although the rate comparability requirement applies to all IOLTA accounts, the amended IOLTA statute affects most significantly the IOLTA accounts whose high balances and other characteristics qualify them for investment sweep accounts, premium checking accounts, or other high-rate accounts that your bank currently offers to its non-IOLTA customers holding comparable balances. Typically, those "high balance" accounts hold average balances of \$100,000 or more.

An IOLTA-eligible institution must pay comparable interest rates or dividends as required under Business and Professional Code 6212(b) and 6212(e) and may choose to do so in one of three ways:

- **Approach 1: Establish IOLTA accounts as comparable products** – Banks may comply by establishing IOLTA accounts as the highest-rate product(s) for which IOLTA accounts are eligible. As an example, if your bank's highest-rate IOLTA-eligible product is an overnight REPO sweep or money market mutual fund sweep account, then IOLTA accounts that meet the same minimum balance and other requirements could be moved into that product. Those IOLTA accounts would be assessed the same sweep fees and other fees allowable under the amended statute and implementing rules. The Trust Fund Program would take responsibility for obtaining executed sweep account forms by the lawyer or law firm. Smaller accounts not qualifying for the sweep rates might earn the bank's highest interest checking rates. If your bank does not have a business sweep account for which IOLTA is eligible, but offers tiered checking accounts to non-IOLTA customers for which IOLTA is eligible, the bank could apply those checking rates and tier structures to its IOLTA accounts.
- **Approach 2: Emulate the comparable product rate** – Instead of establishing IOLTA accounts as highest-rate products such as money market or other business sweep accounts, an institution simply can choose to pay the equivalent rates, less chargeable fees, if any, of those products on the IOLTA deposit accounts meeting the same minimum balance and other requirements. The bank will be deemed to be in compliance if it emulates the rates (less chargeable fees) of its highest-rate product or if the resulting blended net yield of the IOLTA portfolio, earning those

December 21, 2007

Page 3

rates and paying those allowable fees, equals the blended net yield of an equivalent portfolio of non-IOLTA accounts meeting the same principal balance and other requirements.

- **Approach 3: Established Compliance Rate** – A financial institution may comply by adjusting the net yield on its IOLTA accounts to a rate determined by the Legal Services Trust Fund Commission, with the rate currently set at 68 percent of the Federal Funds Target Rate. An institution that chooses this approach will be deemed in compliance and will remain eligible as long as it maintains this relationship between IOLTA net yield and the Federal Funds Target Rate, as well as meeting other requirements of the amended IOLTA statute. This Established Compliance Rate may be adjusted once a year by the Trust Fund Program, upon 90 days' written notice to financial institutions participating in the IOLTA program.

In summary, the Trust Fund Program is committed to helping your institution comply with the changes in the IOLTA statute and has outlined a process and timetable to work together efficiently to achieve that goal. The Trust Fund Program has contracted with The Resource for Great Programs, Inc., for technical assistance in implementing these changes. The Resource for Great Programs is a national consulting firm that assists IOLTA programs and financial institutions in Florida, Michigan, Connecticut, Texas, and other states in implementing similar comparability changes.

If you are not the appropriate contact for IOLTA rate comparability implementation at your bank, please forward this letter and the enclosures to the appropriate bank representative(s).

The Legal Service Trust Fund Program, California lawyers, and financial institutions have been in partnership for more than 20 years. The Trust Fund Program distributes IOLTA funds to approximately 100 nonprofit organizations statewide that provide free legal services to help meet the basic civil legal needs each year of thousands of the most vulnerable Californians, including the elderly, children, and people with disabilities. We look forward to our continued partnership.

If you have any questions, please contact me at your earliest convenience.

Sincerely,

Stephanie L. Choy  
Managing Director

# California IOLTA Rate Comparability Information Form

Bank Name:	Date:
Contact Person:	Title:
Mailing Address:	City:
Telephone:	State:
Email:	Zip:
	Fax:
	Website:

## Part One: Status of Bank's Compliance with the Rate Comparability Requirement of the IOLTA Rules

Important Note: Please complete this section describing your bank's approach for complying with the Rate Comparability Requirement, based on your bank's best available information. If you have questions or need further information, please contact Stephanie L. Choy, Managing Director, at the California Legal Services Trust Fund Program, using the contact information at the bottom of this form.

### Please check one box:

☐ **A. Established Compliance Rate.** Our bank will comply by adjusting our IOLTA net yield to the initial Established Compliance Rate of 68 percent of the Federal Funds Target Rate. See Note 1 below. *If this is your bank's compliance approach, you do not need to complete Parts Two and Three of this form.*

Effective Date of new rate(s) no later than:

March 1, 2008

(First day of earning period) -- See Note 2 below.

☐ **B. Already in compliance.** The rate of interest or dividends we pay on all IOLTA accounts is no less than the highest interest rate or dividend generally available to non-IOLTA account customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. *Please also complete "1" & "2," below, and Parts Two and Three on the next page.*

1. Product name of bank's highest-paying account for which IOLTA is eligible under the IOLTA statute and implementing rules:

2. Current rate(s) paid on that product:

Be sure these rates are entered in Part Three, sections B or C of this form, whichever is your highest-paying product.

☐ **C. Compliance planning is underway.** Our IOLTA rates are not yet comparable to the highest rates we pay non-attorney customers, but we are making changes aimed at getting into compliance. *Please complete "1" through "4" below, and Parts Two and Three on the next page.*

1. Product name of bank's highest-paying account for which IOLTA is eligible under the IOLTA statute and implementing rules:

2. Current rate(s) paid on that product:

Be sure these rates are entered in Part Three, sections B or C of this form, whichever is your highest-paying product.

3. Effective date of new rates no later than:

March 1, 2008

(First day of earning period) -- See Note 2 below.

4. Compliance approach: Brief description of changes being made -- Fill in here or attach separate sheet:

Note 1: An eligible institution may choose to pay the Established Compliance Rate determined by the Legal Services Trust Fund Commission. The Commission has set the initial Established Compliance Rate at 68% of the Federal Funds Target Rate, as of the first business day of the quarter or other IOLTA remitting period, which amount is deemed to be already net of allowable reasonable fees. The Established Compliance Rate may be adjusted once a year by the Trust Fund Program, upon 90 days written notice to financial institutions participating in the IOLTA program.

Note 2: To be in compliance with the IOLTA Rules, your bank understands that the rate of interest or dividends your bank pays on any IOLTA account shall not be less than the highest interest rate or dividend generally available to non-IOLTA account customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. A bank must pay interest or dividends at those rates as of, or retroactive to, March 1, 2008, although a bank may require more time, up to April 30, 2008, to make any operational changes needed for complying with this requirement.

## Part Two: Information about Accounts Offered by Your Bank

### A. IOLTA Accounts

1. Your bank's IOLTA accounts currently are maintained as follows:

a. Product name:	
b. Product classification:	

2. Rate and fee information: *Please complete Part Three, section A.*

### B. Interest- or Dividend-Bearing Checking and Cash Management Accounts Offered to Non-IOLTA Customers

1. Sweep Accounts. Does your bank offer overnight REPO sweep, money market mutual fund sweep, or other overnight business sweep accounts? (If "Yes," please complete Part Three, section B. **Important Note:** Overnight REPO, mutual fund, and other business sweep accounts should be made available to qualifying IOLTA account customers.)

Yes or no?

2. Other Accounts. Does your bank offer other interest- or dividend-bearing checking accounts? (If "Yes," please complete Part Three, section C. **Important Note:** These types of accounts should be made available to qualifying IOLTA account customers.)

Yes or no?

## Part Three: Interest Rate and Service Fee Data

### A. IOLTA Accounts

1. Interest Rates Offered by Bank, by tier range and earning period

Earning Period	Tier 1		Tier 2		Tier 3		Tier 4		Tier 5		Tier 6	
	From >>	To >>	From >>	To >>	From >>	To >>	From >>	To >>	From >>	To >>	From >>	To >>
1/1/2008												
<< Enter current date & rates here >>												

### 2. Method of Computing Interest

a. Interest is computed and applied at the following intervals:

Monthly	Monthly	Daily	Other (specify)
Collected Balance	Ledger Balance		Other (specify)

b. Interest is paid on the following balance:

### 3. Service Fees Charged on These Accounts

a. Monthly maintenance / in lieu of minimum balance fee, if any

b. Minimum balance for waiving maintenance fee

c. Per-transaction / activity fees (Yes or No)

d. Any other fees charged? (Yes or No) -- If "Yes," please describe in #4 below and give amount(s) in an attachment

4. Other information or comments -- Please enter below or in an attachment

**B. REPO Sweep, Mutual Fund Sweep, or Other Overnight Business Sweep Accounts (if any) Available to Non-IOLTA Customers**

**Important Note:** Your bank must fill out this section if it offers REPO sweep, money market mutual fund sweep, or other overnight business sweep accounts because IOLTA accounts meeting the same minimum balance or other eligibility qualifications may be eligible for these products. Please see Note 3 below.

>> Product Name:

**1. Interest Rates Offered by Bank, by tier range and earning period**

Earning Period	Tier Range: From >>		Tier 1		Tier 2		Tier 3		Tier 4		Tier 5		Tier 6	
	To >>		\$		\$		\$		\$		\$		\$	
1 / 2008														
<< Enter current date & rates here >> (and attach rate schedule)														

**2. Requirements Applied to, and Service Fees Charged on, these Accounts**

a. Monthly sweep fee		\$	
b. Other monthly maintenance / in-lieu-of-minimum-balance fee, if any		\$	
c. Minimum balance for waiving maintenance fee		\$	
d. Per-transaction / activity fees charged? (Yes or No)		\$	
e. Any other fees charged? (Yes or No) -- If "Yes," please describe in #3 below and indicate amount(s) in an attachment	Please attach fee schedule		
f. Minimum Target Balance (un-swept) required, if any		\$	
g. Is an Earnings Credit applied to the un-swept balance in "f" above to offset fees? If so, enter rate:		Percent	

**3. Eligibility criteria - Please enter below or in an attachment**

**4. Other information or comments -- Please enter below or in an attachment**

Note 3: Per the IOLTA Statute, types of accounts that may be used as IOLTA accounts consist of "(1) An interest-bearing checking account; (2) an investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund; (3) any other investment product authorized by California Supreme Court rule or order. A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations.

"An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a 'money-market fund' as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at that time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000)."

### C. Highest-Rate Other Interest- or Dividend-Bearing Accounts (if any) Available to Non-IOLTA Customers

**Important Note:** Your bank must fill out this section if it offers any of these types of accounts, because IOLTA accounts that meet the same minimum balance or other eligibility qualifications may be eligible for these products. Please see Note 3 on the previous page.

>> Product Name:

#### 1. Interest Rates Offered by Bank, by tier range and earning period

Earning Period	Tier 1		Tier 2		Tier 3		Tier 4		Tier 5		Tier 6	
	From >>	To >>	From >>	To >>	From >>	To >>	From >>	To >>	From >>	To >>	From >>	To >>
1/1/2008												

#### 2. Method of Computing Interest

a. Interest is computed and applied at the following intervals:

b. Interest is paid on the following balance:

#### 3. Service Fees Charged on These Accounts

a. Monthly maintenance / in-lieu-of-minimum-balance fee, if any

b. Minimum balance for waiving maintenance fee

c. Per-transaction / activity fees (Yes or No)

d. Any other fees charged? (Yes or No) -- If "Yes," please describe in #4 below

and give amount(s) in an attachment

#### 4. Eligibility criteria - Please enter below or in an attachment

#### 5. Other information or comments -- Please enter below or in an attachment

Thank you very much! The Trust Fund Program will review your information and contact your bank if further information or action on your part is required.

Please direct questions about this request to:

Stephanie L. Choy, Managing Director

Legal Services Trust Fund Program

The State Bar of California

180 Howard Street, 5th Floor

San Francisco, CA 94105

Phone: 415-538-2159; Fax: 415-538-2529

Email: iolta@calbar.ca.gov

December 21, 2007

**PLEDGE OF INTENT  
TO BRING IOLTA ACCOUNTS INTO COMPLIANCE WITH THE  
STATUTE GOVERNING INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA),  
AS AMENDED EFFECTIVE JANUARY 1, 2008.<sup>1</sup>**

To the Legal Services Trust Fund Program of the State Bar of California:

\_\_\_\_\_ (the "Financial Institution") commits that it intends to bring the IOLTA accounts that it offers to lawyers and law firms into compliance with the requirements of the statute governing Interest on Lawyers' Trust Accounts (IOLTA), as amended effective January 1, 2008.

The Financial Institution further commits that it will pay rates or dividends, and assess chargeable fees, if any, on such accounts, either effective before March 1, 2008, or retroactive to March 1, 2008, with such rates or dividends and fees in accord with the amended statute and implementing rules.

If the Financial Institution is unable for objective reasons either to implement the new rates or dividends and fees effective March 1, 2008, or establish them retroactively with precision, the Financial Institution may provide documentation to support an agreement with the Trust Fund Program that results in a retroactive payment equivalent to that which would be remitted under the interest rate comparability requirement.

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Financial Institution: \_\_\_\_\_

Date: \_\_\_\_\_

Please return this completed form to:  
Stephanie L. Choy, Managing Director  
Legal Services Trust Fund  
The State Bar of California  
180 Howard Street, 5th Floor  
San Francisco, CA 94105  
Phone: 415-538-2159; Fax: 415-538-2529  
Email: [Stephanie.Choy@calbar.ca.gov](mailto:Stephanie.Choy@calbar.ca.gov)

<sup>1</sup> Business and Professions Code §§6091.2, 6211, 6212, 6213.

**THE STATE BAR OF CALIFORNIA  
LEGAL SERVICES TRUST FUND PROGRAM  
IOLTA Remittance Report**

**Part I: Summary Statement**

**Report by e-mail with wire transfer (preferred) to**

[iolta@calbar.ca.gov](mailto:iolta@calbar.ca.gov) or

mail this statement (or similar detail statement) along with a  
check for Remitted Interest made payable to:

The State Bar of California  
Legal Services Trust Fund Program  
Department 05-590  
San Francisco, CA 94139

**Institution Name:**

Name/Title of Contact:

Address:

City:

State:

Telephone:

E-mail:

Zip Code:

Report Period: From: / /

Through: / /

Federal Number:

District Number:

Reporting Financial Institution (ABA number):

Financial Institution Number:

Check/Wire#:

Date: / /

**Summary:**

A) Number of L.S.T.F.P. accounts being summarized by this statement

#

B) Total of Average Available Daily Balance for all L.S.T.F.P. accounts

\$

C) Total interest earned in the period for all L.S.T.F.P. accounts

\$

D) Total service charges charged for all L.S.T.F.P. accounts during the period

\$

E) Net Payment (Amount Due) C minus D for the period

\$ 0.00

**Applicable Interest or Dividend Rates**

1. If same for all accounts:

Rate (APR):

2. If tiered rates apply, please complete the chart below, indicating the tier breaks (principal balances) and rate applied to each tier.

Principal Balance		Rate (APR)
From:	To:	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	
\$	\$	

Click on  
Part II-Detail Statement  
at bottom of screen to complete

## Status of IOLTA Programs

IOLTA programs are created either by order of a jurisdiction's highest court order or by state statute. There are three types of programs:

- (1) **Mandatory**, in which all lawyers in the jurisdiction who maintain client trust accounts must participate.
- (2) **Opt-out**, in which all lawyers participate unless they affirmatively choose not to participate.
- (3) **Voluntary**, in which lawyers must affirmatively decide to participate.

MANDATORY	OPT-OUT	VOLUNTARY
<i>Alabama</i>	<b>Alaska</b>	South Dakota
<i>Arizona</i>	Delaware	Virgin Islands
<b>Arkansas</b>	District of Columbia	
<i>California (L)</i>	<b>Idaho</b>	
<b>Colorado</b>	<b>Kansas</b>	
<b>Connecticut (L)</b>	<b>Kentucky</b>	
<b>Florida</b>	<b>Maine*</b>	
<i>Georgia</i>	<b>Nebraska</b>	
<i>Hawaii</i>	<b>Nevada**</b>	
<b>Illinois</b>	<b>New Hampshire</b>	
<i>Indiana</i>	<b>New Mexico</b>	
<i>Iowa</i>	Rhode Island	
<b>Louisiana</b>	<b>Tennessee</b>	
<b>Maryland (L)</b>	<b>Virginia</b>	
<b>Massachusetts</b>	<b>Wyoming</b>	
<i>Michigan</i>		
<i>Minnesota</i>		
<i>Missouri</i>		
<i>Mississippi</i>		
<i>Montana</i>		
<i>New Jersey</i>		
<b>New York (L)</b>		
<i>North Carolina</i>		
North Dakota		
Ohio (L)		
<b>Oklahoma</b>		
<b>Oregon</b>		
<i>Pennsylvania</i>		
<i>South Carolina</i>		
<b>Texas</b>		
<i>Utah</i>		
<b>Vermont</b>		
Washington		
<b>West Virginia</b>		
Wisconsin		
35	15	2

### Notes:

States in **Bold** converted from voluntary status.

States in *italics* converted from opt-out status.

(L) denotes programs created by state legislature (state statute). All other programs were created by state Supreme Court order.

\*Maine will become the 36th mandatory IOLTA program as of April 1, 2008.

\*\*Nevada will become the 37<sup>th</sup> mandatory IOLTA program as of May 1, 2008.

**TAB 9**

## Message 205 of 262 in (Inbox))

**Date** Wednesday, April 9, 2008 at 5:44:51 AM GMT+00:00  
**From** Robert Echols <echols@suscom-maine.net>  
**To** kristinam@nvbar.org  
**CC**  
**Subject** Access to Justice Headlines

**New at [www.ATJsupport.org](http://www.ATJsupport.org)**

**ABA Day in Washington.** On ABA day, April 16-17, the need for increased funding for the federal Legal Services Corporation will be a top priority as ABA members visit their U.S. Congressional delegations. In his President's Message in the February issue of *ABA Journal*, ABA President William H. Neukom urged ABA members to lobby Congress for increased federal funding for legal aid.

**National Meeting of State Access to Justice Chairs.** Over 110 bench and bar leaders from 35 states and DC have registered for the seventh annual National Meeting of State Access to Justice Chairs, to be held in Minneapolis on May 9 in conjunction with the 2008 Equal Justice Conference. New Hampshire Chief Justice John Broderick, Jr., will be the keynote speaker and Minnesota Chief Justice Russell Anderson will welcome the group.

**California Symposium.** The California Access to Justice Commission will celebrate its 10th anniversary on April 23 with a symposium on *The Future of Access to Justice in California: Developing a Vision for the Next Decade*.

**Local Access to Justice Hearings in Mississippi and South Carolina.** The South Carolina Access to Justice Commission has launched a series of hearings around the state on barriers to justice. The Mississippi Access to Justice Commission will hold a similar series of hearings in each U.S. Congressional district in the state, beginning this month.

**North Carolina Access to Justice Initiatives.** The North Carolina Bar Association continues its *4All* campaign promoting the importance of access to justice, the signature initiative of NCBA President Janet Ward Black. The most recent event was "Ask a Lawyer" day on April 4, staffed by volunteer lawyers. The Spring issue of the *North Carolina Bar Journal*, the publication of the North Carolina State Bar, highlighted Access to Justice.

**Pennsylvania Lobby Day.** Funding for legal aid will be a top priority when Pennsylvania lawyers "take their case to Capitol Hill" on May 5, the Pennsylvania Bar Association's annual "lobby day." Last winter, the Bar Association passed resolutions supporting increased funding for legal aid and a civil right to counsel in cases where basic human needs are at stake.

**New York Civil Right to Counsel Conference.** Under the leadership of President Kathryn Grant Madigan, the New York State Bar Association convened a conference in early March on *Creating a Blueprint for Civil Right to Counsel in New York*. Other speakers included Wade Henderson, President of the Leadership Conference on Civil Rights; Andrew Sherer, President of Legal Services for New York City; and Hon. Juanita Bing Newton, Deputy Chief Administrative Judge for Access to Justice Initiatives.

**New Hampshire Web Site.** The New Hampshire Access to Justice Commission has launched a new web site, which will function both as the Commission's home page and as a link to legal aid and support services for self-represented litigants.

**New at Selfhelpsupport.org.** Among the new materials at [www.selfhelpsupport.org](http://www.selfhelpsupport.org) this month is a folder of materials on plain language and the law.

**Second Act Grants.** The Pro Bono Institute is accepting applications for grants for *Second Act* pilot projects supporting retired attorneys engaged with public interest organizations serving low-income communities.

**New Jersey Poverty Report.** Legal Services of New Jersey has issued *Poverty Benchmarks 2008: Assessing New Jersey's Progress in Addressing Problems of Inadequate Income*. The report documents key poverty trends and examines the impact of selected anti-poverty programs.

**Protocol for Protecting against Scam Legal Aid.** The National Technology Assistance Project has developed *Practical Steps to Protect Your Legal Aid Organization from Cyber Piracy*, a protocol designed to help legal aid programs protect their identities from misuse by fraudulent organizations.

**Louisiana Bar Pro Se Resolution.** The House of Delegates of the Louisiana State Bar Association has adopted a resolution supporting the development of court rules and policies encouraging the participation of judges, courts, legal aid programs, and bar associations in programs for self-represented litigants. The resolution also urges Louisiana judges and courts to take a

leadership role in expanding and coordinating such programs and identifying unmet needs.

*For additional information, documents and links, go to [www.ATJsupport.org](http://www.ATJsupport.org), or contact Bob Echols, State Support Consultant, ABA Resource Center for Access to Justice Initiatives, [echols@suscom-maine.net](mailto:echols@suscom-maine.net).*

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# Representing Child Victims of Abuse & Neglect

3 General CLE Credits

**When:** Wednesday, April 30, 2008, 9:00 a.m. to 12:15 p.m.  
(Light breakfast will be provided.)

**Where:** CCBA Offices, 725 S. Eighth St., Las Vegas

**Cost:** **Free** - All attorneys who attend the CLE must agree to take an abuse/neglect pro bono case through the Clark County Pro Bono Project/Children's Attorneys Project. You must be a Nevada-licensed attorney in good standing at the time of the CLE.

**What you will learn:**

The history and role of the Children's Attorneys Project, Theory of Representation, The Role of County/State Agencies, What is Foster Care, Planning for Permanency, What the Court Expects.

**Issue:**

Currently nearly two thirds of the children in the abuse and neglect system in Clark County do not have attorneys. The Children's Attorneys Project was established to provide our community's tiniest victims a voice in the court system. Although Clark County Legal Services currently has eight staff attorneys and approximately 150 pro bono volunteers representing child victims, many still go unrepresented. This seminar will provide training to attorneys who are willing to represent these children on a pro bono basis.

**Speakers:**

Steve Hiltz, Esq.

*Directing Attorney of CAP, CCLS*

Greg Ivie, Esq.

*CAP Staff Attorney, CCLS*

Melissa Casal, Esq.

*CAP Staff Attorney, CCLS*

If you are unable to attend this CLE seminar but are willing to take a Abuse/Neglect Pro Bono Case, please contact Kimberly Mucha Abbott, Pro Bono Project Director at 386-1070, Ext. 137

**Sponsors:** Clark County Bar Association, Children's Attorneys Project (CAP) and the Pro Bono Project of Clark County Legal Services

PLEASE FAX OR MAIL REGISTRATION

**One name per form please.**

Name \_\_\_\_\_

Firm Name \_\_\_\_\_

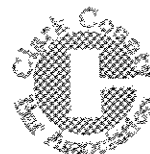
Bar Number \_\_\_\_\_

Phone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

\_\_\_\_ Yes, please register me for the FREE 3-hour abuse/neglect pro bono training seminar. I agree to accept one NEW pro bono abuse/neglect case from Clark County Legal Services. I understand cases will be assigned at the seminar. You must be a Nevada licensed attorney at the time of this seminar and available to take a pro bono case.

Representing Child Victims of Abuse  
& Neglect CLE Seminar  
4/30/08  
9:00 a.m. to 12:15 p.m.  
3 General CLE Credits



**FAX OR MAIL TO:**

Clark County Bar Association

P.O. Box 657

Las Vegas, NV 89125

702-387-6011 or FAX 702-387-7867

Co-Sponsored by Clark County Legal Services and Clark County Bar Association's CLE Committee  
and produced by Clark County Legal Services.



# Child Custody & Support Jurisdiction: Separate but Equally Necessary

## LAS VEGAS

Thursday, May 22, 2008, 1:30pm - 4:45pm

George Federal Courthouse

3 CLE Hours

(a Pro Bono Family Law CLE)

### Many individuals with family law problems in our community cannot afford an attorney!

These individuals are being denied access to their children or property and cannot navigate the legal system themselves in order to obtain a divorce and/or custody and child support. This seminar will assist you in helping these community members. However, it will also provide you with information and skills that will assist you in your practice, as a large number of potential clients move in and out of our state each year.

#### WHAT YOU WILL LEARN:

- ✓ Making sense of all those acronyms (UCCJEA, PKPA, UIFSA, FFCCSOA);
- ✓ What to file, where to file it, and what it must say to obtain jurisdiction in Nevada to enforce and modify other States' orders;
- ✓ Which aspects of a foreign child support order may not be changed in a modification proceeding;
- ✓ Which statutes prevail over which others in case of conflict;
- ✓ 2007 changes to UIFSA, and
- ✓ The critical difference between motions to modify child and spousal support orders entered elsewhere ... **and more!**

#### FEATURED SPEAKERS:

##### Hon. William Potter

8th Judicial District Court  
Family Division—Department M

##### Ed Ewert, Esq.

Chief Deputy D.A., DA Family Support

##### Marshal Willick, Esq.

Managing Partner, Willick Law Group

#### Co-Sponsored By:

Clark County Legal Services/  
Clark County Pro Bono Project  
State Bar of Nevada CLE Committee  
State Bar of Nevada Family Law Section

----- Registration Form -----

### Child Custody & Support Jurisdiction Pro Bono

\_\_\_\_ **Yes!** Please register me for the **FREE 3-Hour Family Law Pro Bono Training Seminar.**

**I agree to accept ONE PRO BONO FAMILY LAW CASE** from Clark County Pro Bono Project. (Attendees must be Nevada - licensed attorneys in good standing and available to take a new Pro Bono case at the time of the CLE).

\_\_\_\_ Please indicate here if you are able to assist a Spanish-speaking client.

NAME: \_\_\_\_\_ BAR #: \_\_\_\_\_

FIRM: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

E-Mail: \_\_\_\_\_