Background on the Texas Litigation
Challenging the Constitutionality of IOLTA

Prepared by the ABA Commission on IOLTA

In 1994 an action was filed against the Texas Equal Access to Justice Foundation (TEAFJ), the administrator of IOLTA funds in the state, and the Texas Supreme Court in federal district court. The plaintiffs – a Texas attorney, his client and the Washington Legal Foundation – alleged that the TEAFJ operated the IOLTA program and made grants in violation of their rights under the First and Fifth Amendments.

The U.S. District Court for the Western District of Texas, Austin Division, dismissed the plaintiffs' complaint in 1995. Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al., 873 F.Supp. 1 (W.D. Tex. 1995). It ruled that the plaintiffs failed to allege any legally recognized claim under the Fifth Amendment with regard to the interest generated by the funds placed in IOLTA accounts. In addition, the court ruled that because the plaintiffs had not shown a property interest in the interest generated by IOLTA accounts, they could not claim that they were being forced to support financially the organizations that receive funding from IOLTA.

On appeal, the Fifth Circuit Court of Appeals ruled that, under Texas law, clients have a "property interest" in the funds generated from IOLTA accounts. Washington Legal Foundation, et al. v. Texas Equal Access to Justice Foundation, et al., 94 F.3d 996 (CA5 1996). It denied requests for panel rehearing and rehearing en banc, and the Texas program's subsequent petition for certiorari was granted by the U.S. Supreme Court.

1998 Supreme Court Decision
On June 15, 1998, the U.S. Supreme Court issued an opinion affirming the earlier Fifth Circuit ruling that clients have a property interest in the interest generated from their attorneys' IOLTA accounts. Phillips, et al. v. Washington Legal Foundation, et al., 524 U.S. 156, 118 S.Ct. 1925 (1998). The high court, remanded the case to the lower courts to determine whether those funds had been "taken", and if so, whether any just compensation was due to the plaintiffs.

District Court Trial

In analyzing the Fifth Amendment claims brought by the plaintiffs, the district court found that there was no taking of client property, and further held that the complaining client did not suffer a compensable loss, noting that client funds are only placed in IOLTA accounts if they cannot earn net interest for the client.
Regarding the First Amendment claim, the district court held that the IOLTA program itself did not engage in expressive activity. According to the court, even though the IOLTA program's funding of certain litigation could potentially qualify as expressive activity against which the plaintiffs could make a First Amendment claim, their claims failed because supplying legal services to the poor is germane to the "government's vital policy interest" of making legal services accessible to all. Therefore the plaintiffs’ First Amendment claims were dismissed.

**Appeal to the Fifth Circuit and Petition for Certiorari**
The plaintiffs subsequently appealed the district court decision to the Fifth Circuit Court of Appeals. The court issued a 2-1 decision on October 15, 2001, holding that that the Texas IOLTA program violated the Fifth Amendment. The court found that, as administered in Texas, the IOLTA program amounted to a per se taking of client property and entitled the plaintiffs to declaratory and injunctive relief. *Washington Legal Foundation v. Texas Equal Access to Justice Foundation*, 270 F.3d 180 (5th Cir. 2001)

The Texas IOLTA program and the Texas Supreme Court filed a petition for rehearing en banc, which was denied in May 2002. The defendants subsequently filed their petition for writ of certiorari with the Supreme Court.

**U.S. Supreme Court Action**
On March 31, 2003, the U.S. Supreme Court granted certiorari, and vacated the Fifth Circuit Court’s decision. The Supreme Court remanded the case to the Fifth Circuit “for further consideration in light of the Court’s decision in *Brown v. Legal Foundation of Washington,*" *Phillips v. Washington Legal Foundation*, 538 U.S. 942, 123 S.Ct. 1654 (2003) (Mem.).

**Dismissal of Case**
The Supreme Court remanded the case to the Fifth Circuit for consideration in light of *Brown*, apparently requiring the ultimate dismissal of the plaintiff’s Fifth Amendment claims but not addressing the First Amendment issues. In late 2003, however, the plaintiffs decided not to pursue these claims any further, and agreed to dismiss the case with prejudice. The Fifth Circuit Court entered the dismissal order on October 30, 2003.