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From the Chair...

By Lora Livingston

Commission on Interest on Lawyers' Trust Accounts

There is no doubt that these are challenging times for IOLTA: interest rates are at historic lows, principal balances have declined and the demand for legal services by our most vulnerable populations is growing. But challenges have never stopped our community in the past and the same is true today, as evidenced by the number of jurisdictions seeking and obtaining IOLTA rule revisions to increase IOLTA income.

During the past twelve months, eight jurisdictions have adopted IOLTA rate comparability revisions: Delaware, the District of Columbia, Kentucky, North Carolina, South Carolina, Tennessee, Washington and Wisconsin. With the addition of these eight jurisdictions, there are now 33 in which rate comparability is in effect. This revenue enhancement strategy requires that lawyers place their IOLTA accounts only in financial institutions that pay those accounts the highest interest rate available at the institution to other customers when the IOLTA account meets the same minimum balance or other requirements.

When interest rates were much higher several years ago, the adoption of comparability led to between three- and six-fold increases in IOLTA income in one year for the first five IOLTA programs that implemented it. While in the current rate environment such increases are not possible, I am confident that once interest rates rise, so too will the income generated as a result of comparability revisions.

Of the eight jurisdictions that moved forward with rate comparability, four – Delaware, the District of Columbia, Kentucky and Tennessee - also sought and obtained rule revisions that converted their opt-out IOLTA programs to mandatory ones. Since 1988, the American Bar Association has urged jurisdictions to implement mandatory IOLTA and today, 43 of the 52 jurisdictions with IOLTA programs are mandatory. And, conversion to mandatory IOLTA is under consideration by the supreme courts in two additional states.

Two years after [Brown vs. Legal Foundation of Washington](#) upheld the constitutionality of IOLTA, two of the programs that converted to mandatory IOLTA in 2005 reported one-year increases in IOLTA income of over fifty percent. It is interesting that while some of the jurisdictions that converted shortly after the *Brown* decision already had high rates of lawyer IOLTA participation prior to conversion, they still saw substantial increases in IOLTA income after conversion. Part of the explanation for this phenomenon in at least one state was that prior to conversion (and unknown to the IOLTA program) there were lawyers who placed some of their IOLTA-eligible clients' funds in their IOLTA accounts, but also held large amounts of IOLTA-eligible clients' funds in non-interest bearing accounts. Once IOLTA participation was mandated, all client funds held by lawyers that could not generate net interest for clients were moved to IOLTA accounts, thereby substantially increasing principal balances.

The decision to seek conversion to mandatory IOLTA or IOLTA rate comparability is one that is best made by the IOLTA program after careful consideration and research. For some programs, comparability may not produce increased income due to the small number of IOLTA accounts with

large principal balances. In others, political considerations may make pursuing mandatory IOLTA challenging. Nevertheless, given the increased income that has occurred in many jurisdictions and that is anticipated in others, I urge IOLTA programs in all jurisdictions that have not moved forward with these strategies to give each serious consideration.

The Commission on IOLTA and National Association of IOLTA Program's Joint Technical Assistance Committee remains ready, willing and able to assist any IOLTA program that is interested in considering or pursuing mandatory IOLTA or IOLTA rate comparability. Please contact Bev Groudine, Counsel to the Commission on IOLTA, at bgroudine@staff.abanet.org or 312/988-5771, if you are interested to obtaining the joint committee's assistance. For more information on IOLTA and IOLTA rate comparability, visit the ABA Commission on IOLTA website at www.abalegalservices.org/iolta.

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