

INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA)

Background

IOLTA is a program by which the interest on client monies held in lawyers' trust accounts is pooled together to form a fund from which grants are made to support activities providing legal aid to the poor or improving the administration of justice. All 50 states, the District of Columbia, and the Virgin Islands have Interest on Lawyers' Trust Account (IOLTA) programs. Twenty-seven are comprehensive, 22 are opt-out and three are voluntary. State legislatures authorized the IOLTA rules in five states, while 47 states (including DC and the Virgin Islands) have rules authorized by order of the highest court in the jurisdiction. Since 1981, national IOLTA revenues have exceeded \$1 billion, the majority of which has gone to programs that provide indigent civil legal services and related purposes. However, IOLTA programs have faced several legal challenges over the years.

On March 26, 2003, the U.S. Supreme Court issued *Brown v. Legal Foundation of Washington*, upholding the constitutionality of IOLTA under the Just Compensation Clause of the Fifth Amendment. Justice Stevens authored the 5-4 majority decision, which Justices O'Connor, Souter, Ginsburg and Breyer joined. In its ruling, the Court held that even assuming that a law requiring that the interest generated on IOLTA accounts be transferred to a different owner amounted to a per se taking, such a taking was for a valid public use and the amount of just compensation due was zero. As a result, the Court found that the operation of the IOLTA program in Washington does not violate the Fifth Amendment.

Declining interest rates and a reduced federal commitment to the Legal Services Corporation pose challenges to IOLTA programs. Efforts to offset these trends include: increasing attorney participation; negotiating with banks to waive or reduce service charges and fees on IOLTA accounts; supporting legislation to increase filing fee surcharges on civil law suits to augment funding for civil legal services; and attempting to develop alternative, higher yield bank products. Arizona, Connecticut, Florida, Illinois, Massachusetts, and New Hampshire have instituted sweep account programs. At the end of each business day and after all deposits, checks, and charges have cleared against an IOLTA account, sweep programs allow the bank to electronically transfer the remaining balance out of the account into a repurchase agreement investment earning a higher rate of interest.

Missouri Bar Activities

Missouri implemented an opt-in IOLTA program by adoption of Supreme Court Rule 4-1.15 (d) – (g) in 1985. This rule also created the Missouri Lawyer Trust Account Foundation to initiate and oversee the IOLTA program's operations. The program was converted to an opt-out program by the adoption of Rule 4-1.15 (e), issued by the Supreme Court of Missouri in 1990.

Buoyed by rising interest rates, the Missouri IOLTA program's high-water mark came in 1991, when it took in \$1.3 million. Since that time, however, interest rates have steadily declined. In 2004, the IOLTA program raised \$546,000. Of that amount, \$362,928 was awarded to the four legal services agencies serving the people of Missouri. An additional \$19,102 was awarded to special projects promoting the administration of justice in Missouri, such as the St. Louis Bar Foundation, the Kansas City Bar Foundation, and the Public Interest Litigation Clinic.

Since its inception, Missouri's IOLTA program has delivered more than \$11 million to the state's legal services agencies, and more than \$1.5 million in support of other public benefit projects.