

IOLTA Rates: No Disappointing Comparables Here

By Marta-Ann Schnabel

If you have ever spent more than 15 minutes in a car dealership, you are probably well familiar with the use of the word “comparable.” As in: “No, I don’t have your dream car available in the color or with the features you want, but I do have something comparable in a car twice as expensive.” This may well have happened the last time you were selling a house, too. The sale price might have depended on “comparables,” which generally meant smaller houses in another part of town which sold for much less than what you sought. Or it was used while checking into a hotel room, where the accommodations “comparable” to those you reserved are smoky and adjacent to the ice machine.

Regardless of when or how you have experienced the word “comparable,” chances are that it has led to disappointment. Until now. As of April 1, 2008, the Louisiana Supreme Court, lawyers and a majority of bankers in Louisiana have embraced “comparability” as a collaborative effort to increase the available funding for a variety of statewide programs which provide civil legal services to the poor, support for victims of domestic violence, enhancements to the juvenile justice system, and law-related education.

Given the challenges our state has endured over the past few years, it should come as no surprise that our civil legal aid programs are struggling to keep pace and are unable to garner sufficient appropriations from either the federal or the state government. Historically, the dollars derived from the Interest earned On Lawyer Trust Accounts (IOLTA) have been an important supplement to government funding and have assured the continued viability of direct legal aid, pro bono entities, and other programs designed to offer civil legal assistance to those in need. The funding source is even more important today. While the aggregate amount of interest earned on these accounts has been substantial, it has been significantly less than what

standard commercial investment accounts typically earn.

In instituting a “comparability” requirement for lawyer trust accounts, the Louisiana Supreme Court has paralleled an effort spearheaded in Florida and Texas and followed in 18 other states across the country. The court’s recent amendments to Louisiana Rule of Professional Conduct 1.15 require that lawyer trust accounts be maintained in financial institutions which offer interest rates on those accounts “comparable” to interest rates paid on other commercial accounts. Working with the Louisiana Bar Foundation, 140 banks in Louisiana have willingly created products that allow lawyers to comply with this new rule. Only three banks have discontinued IOLTA accounts, impacting only a handful of lawyer accounts, which have been easily relocated to nearby participating banks. In short, the transition has been seamless for lawyers.

The implementation of IOLTA nearly 20 years ago was not without controversy, but now 36 states have similar mandatory IOLTA provisions in their applicable rules, and some form of IOLTA exists in all 50 states. Moreover, in 2003, the United States Supreme Court upheld the constitutionality of IOLTA in *Brown v. Legal Foundation of Washington*, 583 U.S. 216 (2003). While believing that the public benefit outweighed the potential for reigniting some aspects of the original debate, the Louisiana Supreme Court did not jump on the “comparability” band wagon without careful consideration of its impact on Louisiana lawyers and clients. The court sought and received substantial input from the Louisiana Bar Foundation and the Louisiana State Bar Association through its Board of Governors. Louisiana’s Rule 1.15, as amended, specifically provides that lawyers who establish their IOLTA trust accounts in banks certified as “eligible” by the Louisiana Bar Foundation will be presumed to have complied with their ethical obligation under the rule.

Likewise, the permissible accounts assure that client funds are not at risk.

The expectation is that IOLTA proceeds will double over the course of the next year, even with the economic slowdown and reductions in the Federal Fund Target Rate. So far in 2008, the IOLTA program has funded more than \$2 million in grants. Looking ahead, increased IOLTA dollars will mean more money for legal aid providers across the state. Additionally, specific programs are envisioned or will be enlarged. The Louisiana Bar Foundation hopes to increase the availability of the loan repayment program, which provides annual grants to public interest lawyers to be used to pay their student loans. Plans are also in the works to use the increase in IOLTA funds to assist legal service providers in offering more competitive salaries so as to address recruitment and retention issues. An initiative to provide grants to the Legal Services Corp. providers in the state for paid summer internship programs is also anticipated. Moreover, IOLTA dollars will fund a Law Signature School pilot project which seeks to highlight law-related education and curricula in public schools across the state.

For many needy people in Louisiana, that dreaded word, “comparable,” signals some very good news indeed.



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For a list of Louisiana IOLTA Prime Partners and Eligible Institutions, see page 70.