

Increased Funding for Access to Justice by Bank “Rate Comparability” in IOLTA Accounts

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This article is the first in a series discussing various efforts underway to increase access to justice in Hawaii for those of low- and moderate-income. One of the efforts involves amending Rule 11 of the Rules of the Supreme Court of Hawaii to require “rate comparability” for bank accounts under the Interest on Lawyer Trust Accounts (IOLTA) program. Rule 11 requires attorneys (unless exempted) to create a pooled trust account for unearned fees and costs. The Hawaii Justice Foundation (HJF) receives the net monthly interest from these accounts and distributes these funds to Hawaii’s low-income legal service providers.

What is IOLTA Rate Comparability? An IOLTA Comparability Rule requires attorneys to place their IOLTA accounts in a financial institution that pays those accounts the highest interest rate generally available at that institution to other customers when IOLTA accounts meet the same minimum balance or other account qualifications, if any. To date, eighteen states have adopted amendments adopting rate comparability, and all have experienced dramatic increases in IOLTA income. HJF and the Access to Justice Hui have requested the Supreme Court of Hawaii to consider amending Rule 11 to provide for rate comparability. The HSBA, the banks, and the general public will have an opportunity to comment upon any proposed amendment.

What is the Impact on Practicing Attorneys? Rate comparability does not place any additional requirements on attorneys or create any additional costs to attorneys. It is the role of HJF to work directly with the participating banks to implement rate comparability.

What is the Impact on Participating Banks? Participation by banks in IOLTA is voluntary, and rate comparability does not involve “regulation” of the banks. Under rate comparability, each bank is completely free to set its rate of interest on various types of accounts. Rate comparability does require participating banks to pay IOLTA accounts the same rate of return the banks pay other comparable accounts. Banking products have evolved significantly over the last 15 years, and IOLTA rate comparability amendments allow use of these newer, higher-rate products.

Additional information will be provided on the concept of rate comparability, and the HSBA membership support will have tremendous impact upon the provision of legal services to the poor.