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Top court adopts IOLTA comparability rule

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Susan M. Erlichman predicts the new rule could double IOLTA funding for legal services to about \$12 million.

After a contentious hearing this summer and some compromising by representatives of the banking industry and the Maryland Legal Services Corp., the Court of Appeals on Monday unanimously approved a new comparability rule for interest on lawyer trust accounts.

Effective April 1, the rule will require Maryland banks to tie interest rates for the accounts to comparable commercial accounts. The interest on lawyer trust accounts — known as IOLTA — is used to fund legal services for the poor.

"It's been a long road, but we're very pleased," MLSC Executive Director Susan M. Erlichman said after the hearing, where she and others were trading handshakes and smiles with members of the state bar and the banking industry.

The IOLTA portion of the three-hour hearing lasted only about 40 minutes and centered mostly on some administrative aspects of the rule.

D. Robert Enten, who spoke for the Maryland Bankers Association, expressed his concern about the role to be played by the Attorney Grievance Commission should a dispute arise over the interest paid.

"My only concern is that an outside party reviews the disputes," he said, adding that "it didn't make sense" having a party to the interest rate agreement also be a mediator for disputes.

After the hearing, Erlichman said the commission is not a party to the interest rate agreement; rather, the rule calls for an interest rate agreement between MLSC and the bank, with the Attorney Grievance Commission as the first mediator for disputes. Appeals would then be passed up through the court system.

She added that she doesn't foresee any disputes over interest rates because the banks set them, not her organization. MLSC simply requires that the bank pay its IOLTA customers the highest interest rate generally paid to its own non-IOLTA customers with comparable accounts.

Erlichman said earlier this year that she didn't want to resort to a compatibility rule, but it's a strategy that has worked elsewhere. In 1982, when IOLTA got its start, the average rate for lawyer accounts was 5.5 percent and comparable to what other accounts were getting. In 2003, the rates plummeted and while other types of accounts have seen a rebound to nearly 5 percent, IOLTA rates have remained low. Today's average IOLTA rate remains less than 1 percent.

With the rule change, Erlichman predicts the lawyer trust accounts can double their annual intake to about \$12 million.

"We will be able to greatly enhance our ability to meeting the civil needs of Maryland's poor," she said.