

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 940**

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**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,  
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

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An act to amend ~~Section 1021.5 of the Code of Civil Procedure,~~  
~~relating to attorney's fees~~ *Sections 6212 and 6213 of the Business and  
Professions Code, relating to attorneys.*

LEGISLATIVE COUNSEL'S DIGEST

AB 940, as amended, Committee on Judiciary. ~~Civil litigation;~~  
~~attorney's fees; public interest. Attorneys: IOLTA accounts.~~

*Existing law, the State Bar Act, provides for the licensure and regulation of the practice of law by the State Bar of California, a public corporation. Existing law requires an attorney or law firm receiving or disbursing trust funds to establish and maintain an IOLTA account, as defined, in which the attorney or law firm is required to deposit or invest all specified client deposits or funds. Existing law also requires an attorney or law firm establishing an IOLTA account to comply with various requirements, including, but not limited to, that the account be established and maintained with an eligible institution, as defined.*

*This bill would require an attorney or law firm establishing an IOLTA account to report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar. The bill would also revise the definition of an eligible institution.*

~~Existing law allows a court, upon motion, to award attorney's fees to a successful party against one or more opposing parties in any action~~

that has resulted in the enforcement of an important right affecting the public interest, if certain conditions are met.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6212 of the Business and Professions  
2     Code is amended to read:

3     6212. An attorney who, or a law firm that, establishes an  
4     IOLTA account pursuant to subdivision (a) of Section 6211 shall  
5     comply with all of the following provisions:

6     (a) The IOLTA account shall be established and maintained  
7     with an eligible institution offering or making available an IOLTA  
8     account that meets the requirements of this article. The IOLTA  
9     account shall be established and maintained consistent with the  
10    attorney’s or law firm’s duties of professional responsibility. An  
11    eligible financial institution shall have no responsibility for  
12    selecting the deposit or investment product chosen for the IOLTA  
13    account.

14    (b) Except as provided in subdivision ~~(e)~~ (f), the rate of interest  
15    or dividends payable on any IOLTA account shall not be less than  
16    the interest rate or dividends generally paid by the eligible  
17    institution to nonattorney customers on accounts of the same type  
18    meeting the same minimum balance and other eligibility  
19    requirements as the IOLTA account. In determining the interest  
20    rate or dividend payable on any IOLTA account, an eligible  
21    institution may consider, in addition to the balance in the IOLTA  
22    account, risk or other factors customarily considered by the eligible  
23    institution when setting the interest rate or dividends for its  
24    non-IOLTA accounts, provided that the factors do not discriminate  
25    between IOLTA customers and non-IOLTA customers and that  
26    these factors do not include the fact that the account is an IOLTA  
27    account. The eligible institution shall calculate interest and  
28    dividends in accordance with its standard practice for non-IOLTA  
29    customers. Nothing in this article shall preclude an eligible  
30    institution from paying a higher interest rate or dividend on an

1 IOLTA account or from electing to waive any fees and service  
2 charges on an IOLTA account.

3 (c) Reasonable fees may be deducted from the interest or  
4 dividends remitted on an IOLTA account only at the rates and in  
5 accordance with the customary practices of the eligible institution  
6 for non-IOLTA customers. No other fees or service charges may  
7 be deducted from the interest or dividends earned on an IOLTA  
8 account. Unless and until the State Bar enacts regulations  
9 exempting from compliance with subdivision (a) of Section 6211  
10 those accounts for which maintenance fees exceed the interest or  
11 dividends paid, an eligible institution may deduct the fees and  
12 service charges in excess of the interest or dividends paid on an  
13 IOLTA account from the aggregate interest and dividends remitted  
14 to the State Bar. Fees and service charges other than reasonable  
15 fees shall be the sole responsibility of, and may only be charged  
16 to, the attorney or law firm maintaining the IOLTA account. Fees  
17 and charges shall not be assessed against or deducted from the  
18 principal of any IOLTA account. It is the intent of the Legislature  
19 that the State Bar develop policies so that eligible institutions do  
20 not incur uncompensated administrative costs in adapting their  
21 systems to comply with the provisions of Chapter 422 of the  
22 Statutes of 2007 or in making investment products available to  
23 IOLTA members.

24 (d) *The attorney or law firm shall report IOLTA account*  
25 *compliance and all other IOLTA account information required by*  
26 *the State Bar in the manner specified by the State Bar.*

27 ~~(d)~~

28 (e) The eligible institution shall be directed to do all of the  
29 following:

30 (1) To remit interest or dividends on the IOLTA account, less  
31 reasonable fees, to the State Bar, at least quarterly.

32 (2) To transmit to the State Bar with each remittance a statement  
33 showing the name of the attorney or law firm for which the  
34 remittance is sent, for each account the rate of interest applied or  
35 dividend paid, the amount and type of fees deducted, if any, and  
36 the average balance for each account for each month of the period  
37 for which the report is made.

38 (3) To transmit to the attorney or law firm customer at the same  
39 time a report showing the amount paid to the State Bar for that  
40 period, the rate of interest or dividend applied, the amount of fees

1 and service charges deducted, if any, and the average daily account  
2 balance for each month of the period for which the report is made.

3 (e)

4 (f) An eligible institution has no affirmative duty to offer or  
5 make investment products available to IOLTA customers.  
6 However, if an eligible institution offers or makes investment  
7 products available to non-IOLTA customers, in order to remain  
8 an IOLTA-eligible institution, it shall make those products  
9 available to IOLTA customers or pay an interest rate on the IOLTA  
10 deposit account that is comparable to the rate of return or the  
11 dividends generally paid on that investment product for similar  
12 customers meeting the same minimum balance and other  
13 requirements applicable to the investment product. If the eligible  
14 institution elects to pay that higher interest rate, the eligible  
15 institution may subject the IOLTA deposit account to equivalent  
16 fees and charges assessable against the investment product.

17 *SEC. 2. Section 6213 of the Business and Professions Code is*  
18 *amended to read:*

19 6213. As used in this article:

20 (a) “Qualified legal services project” means either of the  
21 following:

22 (1) A nonprofit project incorporated and operated exclusively  
23 in California ~~which~~ that provides as its primary purpose and  
24 function legal services without charge to indigent persons and  
25 ~~which~~ that has quality control procedures approved by the State  
26 Bar of California.

27 (2) A program operated exclusively in California by a nonprofit  
28 law school accredited by the State Bar of California ~~which~~ that  
29 meets the requirements of subparagraphs (A) and (B).

30 (A) The program shall have operated for at least two years at a  
31 cost of at least twenty thousand dollars (\$20,000) per year as an  
32 identifiable law school unit with a primary purpose and function  
33 of providing legal services without charge to indigent persons.

34 (B) The program shall have quality control procedures approved  
35 by the State Bar of California.

36 (b) “Qualified support center” means an incorporated nonprofit  
37 legal services center that has as its primary purpose and function  
38 the provision of legal training, legal technical assistance, or  
39 advocacy support without charge and which actually provides  
40 through an office in California a significant level of legal training,

1 legal technical assistance, or advocacy support without charge to  
2 qualified legal services projects on a statewide basis in California.

3 (c) “Recipient” means a qualified legal services project or  
4 support center receiving financial assistance under this article.

5 (d) “Indigent person” means a person whose income is (1) 125  
6 percent or less of the current poverty threshold established by the  
7 United States Office of Management and Budget, or (2) who is  
8 eligible for Supplemental Security Income or free services under  
9 the Older Americans Act or Developmentally Disabled Assistance  
10 Act. With regard to a project that provides free services of attorneys  
11 in private practice without compensation, “indigent person” also  
12 means a person whose income is 75 percent or less of the maximum  
13 levels of income for lower income households as defined in Section  
14 50079.5 of the Health and Safety Code. For the purpose of this  
15 subdivision, the income of a person who is disabled shall be  
16 determined after deducting the costs of medical and other  
17 disability-related special expenses.

18 (e) “Fee generating case” means a case or matter that, if  
19 undertaken on behalf of an indigent person by an attorney in private  
20 practice, reasonably may be expected to result in payment of a fee  
21 for legal services from an award to a client, from public funds, or  
22 from the opposing party. A case shall not be considered fee  
23 generating if adequate representation is unavailable and any of the  
24 following circumstances exist:

25 (1) The recipient has determined that free referral is not possible  
26 because of any of the following reasons:

27 (A) The case has been rejected by the local lawyer referral  
28 service, or if there is no such service, by two attorneys in private  
29 practice who have experience in the subject matter of the case.

30 (B) Neither the referral service nor any attorney will consider  
31 the case without payment of a consultation fee.

32 (C) The case is of the type that attorneys in private practice in  
33 the area ordinarily do not accept, or do not accept without  
34 prepayment of a fee.

35 (D) Emergency circumstances compel immediate action before  
36 referral can be made, but the client is advised that, if appropriate  
37 and consistent with professional responsibility, referral will be  
38 attempted at a later time.

39 (2) Recovery of damages is not the principal object of the case  
40 and a request for damages is merely ancillary to an action for

1 equitable or other nonpecuniary relief, or inclusion of a  
2 counterclaim requesting damages is necessary for effective defense  
3 or because of applicable rules governing joinder of counterclaims.

4 (3) A court has appointed a recipient or an employee of a  
5 recipient pursuant to a statute or a court rule or practice of equal  
6 applicability to all attorneys in the jurisdiction.

7 (4) The case involves the rights of a claimant under a publicly  
8 supported benefit program for which entitlement to benefit is based  
9 on need.

10 (f) “Legal Services Corporation” means the Legal Services  
11 Corporation established under the Legal Services Corporation Act  
12 of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

13 (g) “Older Americans Act” means the Older Americans Act of  
14 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

15 (h) “Developmentally Disabled Assistance Act” means the  
16 Developmentally Disabled Assistance and Bill of Rights Act, as  
17 amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

18 (i) “Supplemental security income recipient” means an  
19 individual receiving or eligible to receive payments under Title  
20 XVI of the federal Social Security Act, or payments under Chapter  
21 3 (commencing with Section 12000) of Part 3 of Division 9 of the  
22 Welfare and Institutions Code.

23 (j) “IOLTA account” means an account or investment product  
24 established and maintained pursuant to subdivision (a) of Section  
25 6211 that is any of the following:

- 26 (1) An interest-bearing checking account.
- 27 (2) An investment sweep product that is a daily (overnight)
- 28 financial institution repurchase agreement or an open-end
- 29 money-market fund.
- 30 (3) An investment product authorized by California Supreme
- 31 Court rule or order.

32 A daily financial institution repurchase agreement shall be fully  
33 collateralized by United States Government Securities or other  
34 comparably conservative debt securities, and may be established  
35 only with any eligible institution that is “well-capitalized” or  
36 “adequately capitalized” as those terms are defined by applicable  
37 federal statutes and regulations. An open-end money-market fund  
38 shall be invested solely in United States Government Securities  
39 or repurchase agreements fully collateralized by United States  
40 Government Securities or other comparably conservative debt

1 securities, shall hold itself out as a “money-market fund” as that  
 2 term is defined by federal statutes and regulations under the  
 3 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.),  
 4 and, at the time of the investment, shall have total assets of at least  
 5 two hundred fifty million dollars (\$250,000,000).

6 (k) “Eligible institution” means ~~a bank or any~~ *either of the*  
 7 *following:*

8 (1) *A bank, savings and loan, or other financial institution*  
 9 *regulated by a federal or state agency that pays interest or*  
 10 *dividends in the IOLTA account and carries deposit insurance*  
 11 *from an agency of the federal government.*

12 (2) *Any other type of financial institution authorized by the*  
 13 *Supreme Court.*

14 ~~SECTION 1. Section 1021.5 of the Code of Civil Procedure~~  
 15 ~~is amended to read:~~

16 ~~1021.5. Upon motion, a court may award attorney’s fees to a~~  
 17 ~~successful party against one or more opposing parties in any action~~  
 18 ~~that has resulted in the enforcement of an important right affecting~~  
 19 ~~the public interest if: (a) a significant benefit, whether pecuniary~~  
 20 ~~or nonpecuniary, has been conferred on the general public or a~~  
 21 ~~large class of persons, (b) the necessity and financial burden of~~  
 22 ~~private enforcement, or of enforcement by one public entity against~~  
 23 ~~another public entity, are such as to make the award appropriate,~~  
 24 ~~and (c) those fees should not in the interest of justice be paid out~~  
 25 ~~of the recovery, if any. With respect to actions involving public~~  
 26 ~~entities, this section applies to allowances against, but not in favor~~  
 27 ~~of, public entities, and no claim shall be required to be filed in~~  
 28 ~~such an action, unless one or more successful parties and one or~~  
 29 ~~more opposing parties are public entities, in which case no claim~~  
 30 ~~shall be required to be filed therefor under Part 3 (commencing~~  
 31 ~~with Section 900) of Division 3.6 of Title 1 of the Government~~  
 32 ~~Code.~~

33 ~~Attorney’s fees awarded to a public entity pursuant to this section~~  
 34 ~~shall not be increased or decreased by a multiplier based upon~~  
 35 ~~extrinsic circumstances, as discussed in *Serrano v. Priest*, 20 Cal.~~  
 36 ~~3d 25, 49.~~