

**MASSACHUSETTS
ACCESS TO JUSTICE COMMISSION
c/o Hon. Herbert P. Wilkins, Chair
Boston College School of Law
885 Centre Street
Newton MA 02459**

February 12, 2009

Honorable Roderick L. Ireland
Chair, Rules Committee
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
John Adams Courthouse
Boston, Massachusetts 02108

Dear Justice Ireland,

I write as chair of the Access to Justice Commission to supplement the letter of this date to the Justices concerning an amendment to S.J.C. Rule 4:03 to permit the addition of an opt-out fee to the annual registration statement of attorneys.

As the Commission developed this proposed rule change, we discussed the concept with the Board of Bar Overseers. The Board indicated a willingness to collect the funds but did not want to be involved in making any judgments concerning the distribution of funds. As the rule has developed, the distribution of funds involves no discretion. It would seem reasonable to remove the IOLTA Committee from involvement and to provide for the Board to distribute the funds as the proposed rule indicates. This would eliminate any need for a change in the IOLTA rule. It would appear appropriate to amend S.J.C. Rule 4:01, section 5 (3), to add an authorization of the Board to receive and distribute funds pursuant to any rule of the Supreme Judicial Court (or perhaps just the funds collected pursuant to S.J.C. Rule 4:03 (2)).

There is a reference to the Access to Justice Commission in the proposed opt-out rule. Because the Commission may not exist in future times, it may be preferable specifically to delete in the second paragraph of (2) the words: "the Massachusetts Access to Justice Commission, as well as other". . . .

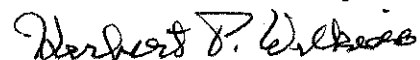
One of our predecessors once wrote that "and/or" is a seductive substitute for precision. I think that the word "or" would be an adequate replacement for "and/or" in the second paragraph of (2) and one could add at the end of the sentence "or both."

The Board will need time to put the new rule into effect. Therefore, the effective date will have to be coordinated with the Board. The Commission is available to assist the Board

in the preparation of the revised annual statement form and with the drafting of any explanatory statement that will accompany the new form.

I and other Commission members are available to assist the Rules Committee on request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Herbert P. Wilkins". The signature is written in a cursive style with some loops and flourishes.

Herbert P. Wilkins, Chair

Chief Justice Marshall
Justices Spina and Cowin
Mr. Moran
Ms. Lyons