

MEMO# 34187

June 21, 2022

Update on ICI's Lawsuit Against the California Department of Financial Protection and Innovation Over Unlawful Notice Filing Fee Increase

[34187]

June 21, 2022

TO: ICI Members

Operations Committee

Transfer Agent Advisory Committee SUBJECTS: Operations

State Issues

Transfer Agency RE: Update on ICI's Lawsuit Against the California Department of Financial Protection and Innovation Over Unlawful Notice Filing Fee Increase

As we informed you last week, the Institute recently filed suit against the California Department of Financial Protection and Innovation (DFPI) to challenge the Department's authority to change the manner in which it assesses notice filing fees on investment companies.[\[1\]](#) The Institute's suit included both a request for a Temporary Restraining Order (TRO) and a request for a Permanent Injunction.

On Thursday, June 16th, the Superior Court of California for Orange County denied, without a hearing, the Institute's request for the TRO. According to the court, our request for a TRO was denied because we were unable "to affirmatively show any 'irreparable harm' or 'immediate danger'" from the DFPI's fee increase. I understand from our California counsel that this denial was expected because, under California law, fee increases are not considered to result in "irreparable harm." The good news, however, is the court's order stated that the court will schedule a hearing on our request for a permanent injunction on "the earliest regularly available hearing date."

As noted in last week's memo on this case, in addition to seeking to enjoin the DFPI from continuing to assess an unlawful notice filing fee, we will also seek, through this litigation, a refund of excess fees filers were charged by the DFPI this year.

We will continue to inform you of meaningful developments in this action.

Tamara K. Salmon
Associate General Counsel

endnotes

[\[1\]](#) See Institute Memorandum No. 34180, dated June 13, 2022.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.