

Legal Services Trust Fund Commission Meeting

Meeting Summary and Action Items

Friday, March 27, 2020

12:00 p.m. – 4:00 p.m.

Zoom Conference

OPEN SESSION

Legal Services Trust Fund Commission (LSTFC) Chair, Banafsheh Akhlaghi, called the meeting to order at 12:02 p.m.

I. ROLL CALL

Roll call was taken, and quorum was established. All members were present on Zoom or by phone.

Commission Members

Banafsheh Akhlaghi
Eric Isken
Amin Al-Sarraf
Louise Bayles-Fightmaster
Pamela Bennett
Will Boschelli
Erica Connolly
Herman DeBose
Corey Friedman
Zahirah Mann
James Meeker
Debra Meyers
Bob Planthold
Richard Reinis
Kim Savage
Christian Screiber
Christina Vanarelli

State Bar Staff

Catherine Borgeson
Erica Carroll
Brady Dewar
Elizabeth Hom
Hellen Hong
Doan Nguyen
Greg Shin

Liaisons

Salena Copeland (LAAC)
Lorin Kline (LAAC)
Bonnie Hough (Judicial Council)
Debbie Manning (BOT)
Chris Iglesias (BOT)

Public

Adrian Dollard (Former Commissioner)

Advisors

Judge Lisa R. Jaskol
Justice William J. Murray, Jr.
Judge Brad Seligman

II. CALL FOR PUBLIC COMMENT

The Chair asked if members of the public wished to comment on any items on the agenda. No one came forward.

III. CONSENT

A. Approval of Meeting Summary and Action Items from January 30, 2020 Meeting

The meeting summary and action items from the previous LSTFC meeting were included in this meeting's materials. Schreiber moved to approve the summary and action items, Planthold seconded. The motion passed by unanimous roll call vote.

IV. STATE BAR REPORTS

A. Update on Board of Trustees Actions

New Board of Trustees liaison Chris Iglesias introduced himself to the LSTFC.

B. Justice Gap Study Presentation and Feedback on Recommendations

Director of the Office of Access and Inclusion, Hellen Hong, gave updates on the results and reception of the Justice Gap Study, which was published in January 2020.

Hellen provided an overview of the study's main components:

- a. Survey conducted by NORC and modeled on Legal Services Corporation's 2017 survey
- b. Intake census completed by 62 State Bar-funded grantees
- c. Recruitment and retention findings from a study conducted by the Legal Aid Association of California (LAAC), and
- d. Survey of current law students regarding the impact of debt on career choice

She reported that the main recommendations from the study were to (1) focus on educating the public about legal issues, (2) increase the funding and availability of legal services, and (3) implement more robust recruitment and retention strategies to ensure legal aid organizations have sufficient staff capacity, including assisting with high student loan debt and encouraging internships.

Hellen responded to questions from various commissioners. She said there was consensus among the State Bar, California State Assembly Judiciary Committee, LAAC and the California Commission on Access to Justice regarding the proposals mentioned above. Some commissioners expressed concern about taking unrestricted funds and devoting them to a narrow purpose, such as student internships. Hellen stated that a task force would be required to explore any options before making changes, as the current funding structure is pursuant to statute. Discussion ensued about ways to increase law student legal aid internship funding with a focus on retention later in students' careers.

Hellen finished her presentation by informing the LSTFC that Phase II of the Justice Gap Study, which would conduct the prior NORC survey in additional languages, is postponed. Due to the impact of COVID-19 throughout the state, such a large intervening event would likely skew the survey results such that they would not be comparable to the prior administration of the survey. However, this part of the study will move forward once conditions improve.

C. Report on IOLTA and Justice Gap Fund Revenue

Hellen provided an update on the impact that changes to the Federal Funds Rate (FFR) may have on revenue to be distributed as grants to legal aid organizations. The Interest on Lawyers' Trust Accounts (IOLTA) program is a major source of funding for legal aid organizations across the state, and those funds are dependent on prevailing interest rates as well as the amount of assets held in the accounts.

Hellen explained that original estimates based on the FFR at the end of 2019 projected revenue of \$40 million from these accounts in 2020. However, the FFR fell to 0-0.25 percent in recent weeks, dropping projected revenue to \$14.5 million for 2020, which would cut the existing reserve in half if the total IOLTA distribution this year is not modified.

Hellen presented various possibilities for the LSTFC to consider, including reducing funding amounts this year to ensure greater funding in the next few years. Brady Dewar from the Office of General Counsel clarified for LSTFC members that all grant agreements state that grant awards are subject to change; it would be permissible for the LSTFC to cut some of this year's funding if it was believed to be the best course of action for sustaining services long-term.

One example discussed was holding back 25 percent of the original funding amount for 2020 to be distributed in 2021 and 2022. Holding back this much would still require that at least 68 percent of funding come from the reserve, possibly more if bank deposits decrease, which they may. Hellen recommended a 35 percent cut to ensure a minimum of \$25 million in funding each year for the next two years. The LSTFC discussed the various alternatives, as well as how this situation was handled last time during the Great Recession.

Former Commissioner Adrian Dollard joined the call at this time to provide historical context to the current commissioners. Adrian summarized the LSTFC's response to the 2008 Great Recession and reminded current commissioners that it took several years for the economy to recover. He explained that when there is a swift economic decline, typically the inverse is true of the recovery period (i.e. expect to see gradual improvements over a longer period of time). His opinion was that the Federal Funds Rate would likely remain in stimulative mode for at least three years.

Adrian shared that, at the time of the Great Recession, grantees indicated that they were in the best position to plan their needs. He said the LSTFC ultimately opted for the smallest reductions to funding possible at the time while advertising the implications and impact that longer-term reductions would have for grantees, to encourage them to plan accordingly. He believed that it was borne out over time that this was the best plan in that moment.

Commissioner Schreiber asked about the feedback received from legal aid organizations, and Program Supervisor Doan Nguyen reported that there had been some informal discussion, but that the numbers presented at today's meeting were not available when talking with grantees previously. Hellen said she intended to send out a survey to gauge programs' preference on whether to cut funding now (which may be undesirable if needed during a time of crisis and increased demand for services), or to maintain the previously agreed-to distribution while preparing organizations for the strong likelihood that funding will drop significantly in 2021 and 2022.

More information, including projections beyond 2022 and feedback from the legal aid organizations, was requested for the next LSTFC meeting in order for the LSTFC to make a decision about which option

to pursue. There was also discussion of the possibilities for additional funding that may arise from alternative sources besides the State Bar.

D. Staff Updates on Grants Administration

Program Supervisor Doan Nguyen provided updates. She informed the LSTFC that the State Bar's offices will be closed until at least May 1 in light of stay-at-home orders in response to COVID-19, and most employees are now telecommuting full time. LSTFC meetings will continue to take place over Zoom at least until the reopening of the State Bar's offices. The governor relaxed restrictions on meetings covered by the Bagley-Keene Act, allowing commissioners to call in or participate on a Zoom call without noticing their location.

Doan also reported that many grantees are continuing to provide services to their clients remotely but that they faced a sudden transition, as well as increased demand for their services.

Partnership grants were due in mid-March and 36 applications requesting \$3 million were submitted. The exact funding amount is not yet known because it is determined by amounts collected from court filing fees. However, last year's amount was \$2.6 million. Staff is currently reviewing applications.

The 2021 IOLTA/EAF applications were scheduled to go out on April 3 and were originally due May 15. Grantees with a fiscal year ending on December 31 reported difficulty in completing their audits by the May 1 deadline because their offices are closed due to COVID-19. Due to State Bar Rules changes in recent years, staff can only allow audit extensions to the date that the application is due, but the LSTFC has the authority to extend the deadline even further under extraordinary circumstances. Staff reported that the application deadline was extended to June 15, and staff will be prepared with additional options for the LSTFC at its next meeting if organizations are still unable to meet the deadline.

Staff decided to postpone monitoring visits for a minimum of two months and is working on a contingency plan with Bonnie Hough from the Judicial Council in the event that current conditions continue and the visits cannot take place this calendar year.

E. Update on State Bar's Emergency Preparedness Plan

Staff informed the LSTFC that work is underway on the emergency preparedness plan and that staff hopes to share more details with the LSTFC soon, but for now, these meetings will continue to take place online over Zoom.

V. DISCUSS AND APPROVE 2020 LEGAL SERVICES TRUST FUND COMMISSION WORK PLAN

Program Supervisor Doan Nguyen provided an overview of the LSTFC's proposed 2020 work plan. She explained that all sub-entities of the State Bar must produce a work plan for review by the Board of Trustees, and reviewed the LSTFC's charge based on the authority of the Rules of the State Bar. She further reported that the plans and objectives incorporated in the work plan corresponded to the LSTFC's core business and grant administration functions, or directly from the State Bar's strategic plan.

A commissioner had a question about an objective referencing support for increased funding, and Doan stated that there was a campaign committee of the LSTFC specifically for that purpose in past. There was discussion about whether to add that to the work plan now.

Another question arose regarding the additional goals in the work plan and the reasonableness of the timeline given the current challenges presented by COVID-19. One example was the timeline for implementing the recommendations from the Justice Gap Study and whether that was still feasible. Discussion ensued about whether to revise the work plan to only focus on core business and priorities, or whether to add anything to address the current health crisis. There was also discussion about how the State Bar is already working with LAAC and examples of how private funders are responding to COVID-19.

Al-Sarraf moved to approve the work plan as-is with the caveat that the timing and/or focus may change depending on the impact of the current health crisis and to add language that the LSTFC will work to support increased funding; Savage seconded. Further discussion ensued. It was determined that the language of the motion was too broad, and the motion was withdrawn.

Savage made a substitute motion to adopt the work plan as presented with the modification of including a comment noting that, beyond the LSTFC's core business and responsibilities, the rest of the work plan must be flexible due to the current health crisis, and to add more specific language that the LSTFC will work to support increased funding under Goal 4, objective a. Planthold seconded. Roll call vote was taken, and the motion passed by unanimous vote.

VI. DISCUSS AND APPROVE HOW PASS-THROUGH FUNDS ARE TREATED IN THE 2021 IOLTA/EAF APPLICATION FOR THE PURPOSE OF DETERMINING WHETHER AN APPLICANT HAS MET THE PRIMARY PURPOSE REQUIREMENT

Senior Program Analyst, Greg Shin, presented to the LSTFC on the relevance of pass-through funds when making a determination about whether a grantee has met the primary purpose and function requirement. Greg explained that an issue arose in the past year regarding the interpretation of the definition of "pass-through" in the grant application. Historically, funds were considered pass-through in instances of subcontracting or subgranting, to avoid double counting (i.e. using the same funds to count as qualified expenditures by two separate organizations).

Greg presented two options: (1) adding clarifying language to the current application instructions regarding pass-through funds, or (2) reverting to prior staff practice of deducting pass-through funds after calculating qualified expenditures

Program Supervisor Doan Nguyen encouraged adoption of the first option, because the second would likely demand more time from staff and the LSTFC. This is because the second option/method would see more applicant organizations fall below the standard 75 percent threshold for qualified expenditures to meet the primary purpose presumption.

Discussion followed by the LSTFC about both options and which would meet the prior concerns of misinterpretation regarding pass-through funds. The LSTFC did not find either option ideal, and noted that the Rules Committee plans to address this issue as part of the codification process over the next year and a half. A suggestion was made to maintain the status quo for now, to avoid further confusion or multiple revisions. No motion was made, and no vote was taken, leaving the current instructions on pass-through funds in place.

VII. DISCUSS REDISTRIBUTION OF UNUSED BANK GRANT FUNDS

Chair of the Bank Grant Committee, Kim Savage, gave an overview of the current amount of returned or unused Bank Grant funds and reminded the LSTFC that past practice has always been to hold unused funds for future distribution. However, she also noted that the amount of unused funds this year is higher than typical.

She informed the LSTFC that the Bank Grants Committee had considered various options but voted at its last meeting to continue the practice of reserving unused funds for future use. She explained this decision was due in part to the fact this is a subject for the Rules Committee to address during the codification process, so the Committee did not wish to deviate from past practice until further recommendations were made.

Kim reminded the LSTFC about the authority governing unused funds: If less than 10 percent of the grant or \$10,000 remains unused by the grant recipient, then the grantee can inform the State Bar and carry over to the next year; if between 10-25 percent of the grant remains unused, the recipient must report it to the State Bar and the Director of the Office of Access & Inclusion has discretion to approve; and if more than 25 percent of the grant is unused, the grantee reports this to the State Bar and the LSTFC reviews.

The LSTFC discussed how to deal with unused discretionary funds moving forward and whether the current circumstances were likely to recur before being addressed through the codification process. Some commissioners thought the current unused amount was an unusual circumstance and might not lend itself to codification while others commented that too much flexibility may lead to inconsistent decision-making when working with multiple funding sources and approximately 100 grantees. This was an informational agenda item for discussion; no vote was taken.

VIII. RULES COMMITTEE UPDATE

A. Discuss Timeline and Process to Codify Grant Administration Practices

Chair of the Rules Committee, Amin Al-Sarraf, provided an update and reminded the LSTFC that the codification process will provide greater guidance to staff regarding major decision points or considerations in administering grants through the Office of Access & Inclusion.

Amin explained that discussions of various topics will be staggered to obtain previews and initial feedback, and there will be working groups of commissioners and State Bar staff assigned to each topic. Working groups include members of the LSTFC at large, not just the Rules Committee. The groups were designed based on commissioners' expertise and background.

The goal is to have in-depth discussions to provide staff with feedback, and to obtain and incorporate public comment, before preparing concrete amendments for a vote by the LSTFC and, later, the Board of Trustees. He encouraged everyone to look at the Rules Committee work plan from March 4 to confirm their working group assignments and to provide any feedback if necessary. If commissioners were unable to participate in their assigned working group, they were requested to contact staff.

IX. ADJOURN

After the Rules Committee discussion, the LSTFC entered closed session, where a vote was taken. There was discussion of possibly meeting more frequently given the many challenges to the legal aid community presented by COVID-19. The meeting was adjourned at 4:04 p.m.

CLOSED SESSION

I. DISCUSS AND APPROVE ELIGIBILITY AND AWARD ALLOCATION FOR LEGAL AID SOCIETY OF SAN BERNARDINO FOR 2020 FUNDING

(Closed pursuant to Gov. Code § 11126(e)(2)(B)(i))