Report from the Legal Services Trust Fund Commission Stakeholders Process Working Group

BACKGROUND

In its May 2017 Report, the State Bar's Governance in the Public Interest Task Force began a review of the various committees, commissions, boards, and councils (sub-entities) that operate under the organizational umbrella of the State Bar "to assess whether the structure of the sub-entities aligns with assigned tasks and appropriate oversight mechanisms are in place."1 That review, contained in Appendix I of the Report, posed a number of additional questions related to each individual sub-entity; the Legal Services Trust Fund Commission (LSTFC) was among the sub-entities included in the review.

At its November 2017 meeting, the Board of Trustees (Board) directed Bar staff and a number of Board committees "to complete the sub-entity review pursuant to Appendix I" by August 31, 2018. Staff then identified a list of common elements regarding each of the sub-entities to be considered in the review including the following questions:

- What is the legal foundation for the sub-entity?
- How does the Board exercise oversight of the sub-entity?
- What is the sub-entity's organizational structure?
- What is the division of labor between the sub-entity and Bar staff?
- How does the sub-entity compare to like entities in other states or other sector?

At its July 2018 meeting, the Board of Trustees reviewed and discussed the conceptual framework for the review as follows:

1) Role definition
2) Accountability and transparency
3) Clear lines of authority
4) Impartial, fair, and consistent decision-making
5) Engagement
6) Size

The staff presentation during the July 2018 Board meeting included a preliminary recommendation regarding the future direction of the grant-making work overseen by the LSTFC. Staff suggested a shift to staff-driven grant making and grant management, under the direct supervision of the Board of Trustees. The report and staff presentation are provided as Attachments A and B.

Due to concerns raised by both the LSTFC and Interest on Lawyers Trust Accounts (IOLTA) and Equal Access Fund (EAF) grant recipients, recommendations regarding the LSTFC were not included in the Appendix I review reports to the Board in August and September. Instead, at its September 13, 2018, meeting, the Board's Programs Committee directed staff to initiate an

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LSTFC stakeholder engagement process. The staff presentation to the Programs Committee and corresponding Committee resolutions are provided as Attachments C and D.

STAKEHOLDER WORKING GROUP COMPOSITION

The LSTFC Stakeholder Process Working Group (LSTFC SPWG), appointed in September 2018, is co-chaired by a member of the Board and a member of the LSTFC. In addition to the co-chairs, the LSTFC SPWG includes representatives from the following groups:

- LSTFC (3)
- IOLTA grantees (3)
- Non-grantee legal services programs (2)
- Assembly Judiciary Committee (1)
- Senate Judiciary Committee (1)
- Board of Trustees (1)
- Judicial Council (1)
- Legal Aid Association of California (1)

The LSTFC SPWG roster is provided as Attachment E.

WORKING GROUP MEETINGS

The LSTFC SPWG considered three primary issues over the course of its five meetings:

1. Review of statutory IOLTA formula
    - Funding goals
    - Equity and impact analyses

2. Review of non-statutory changes to grant administration and/or allocation methodology
    - To increase administrative efficiency
    - To revisit statutory interpretations impacting allocation

3. Governance
    - Grant administration roles and responsibilities: staff, LSTFC, Board of Trustees

Agendas and materials for each of the five meetings are provided as Attachments F through J.

The LSTFC SPWG developed recommendations in each principal area of focus. These recommendations are outlined below. Consensus recommendations reflect those agreed upon by all members of the LSTFC Working Group, majority those supported by a majority of members, and minority the converse.

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RECOMMENDATIONS (CONSENSUS)

STATUTORY CHANGES

1. The LSTFC Working Group does not recommend that any statutory changes be pursued at this time.

   The Working Group received numerous public comments regarding the critical importance of IOLTA as a stable and flexible source of legal services funding. Although extensive discussion occurred regarding potential statutory modifications, including in response to a presentation from the Minnesota IOLTA program illustrating a substantially different allocation approach, the LSTFC Working Group does not believe statutory changes should be pursued at this time.

NON-STATUTORY CHANGES TO GRANT ADMINISTRATION AND/OR ALLOCATION

1. The LSTFC Working Group recommends that data be collected to support an accurate analysis of the demographic composition of clients served by IOLTA/EAF funds to ensure that services are being equitably provided to all indigent populations in California.

   The LSTFC Working Group reviewed some data suggesting that certain populations may be under-served when comparing statewide demographics to reported client data. There was a general consensus that currently available data does not allow for an accurate or robust analysis of this issue however; due to its importance, additional data collection and study is warranted.

GOVERNANCE

1. The LSTFC Working Group recommends that the LSTFC continue to exist.

   The Working Group heard extensive public comment in support of the LSTFC and its current composition which includes client-eligible members, non-attorneys, non-voting judicial officers, and individuals familiar with the legal services community.

2. The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately[1].

3. The LSTFC Working Group recommends that no changes be made with respect to the roles of staff, the LSTFC, and the Board of Trustees, other than as reflected in the agreed-upon elements of the Functional Matrix (Attachment K).

[1] The two Board members on the LSTFC Working Group as well as the Judicial Council appointee to the Working Group abstained from voting on this recommendation.

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The LSTFC Working Group believes that some clarification and codification of roles would be beneficial to staff, the LSTFC, the Board, and the legal services community.

4. The LSTFC Working Group recommends that all procedures, policies, and practices governing the allocation and/or administration of grant funds should be codified in Guidelines and/or State Bar Rules and approved by the Board of Trustees.

   The Working Group received information suggesting that a review and reduction to writing of grant-making policies and practices, including unwritten policies and non-public staff notes, might improve consistency and transparency.

5. The LSTFC Working Group recommends that the Board receive training and regular reports about the activities of the LSTFC and the legal services funded by the State Bar.

   The LSTFC Working Group heard comments from Board members that some the Board of Trustees has not been made adequately familiar with the LSTFC or the IOTLA program. To address this concern the Working Group recommends improved training and information sharing.

6. The LSTFC Working Group recommends that the LSTFC and the Board of Trustees work together to seek additional funding for legal services.

   Public comment by legal services providers and other stakeholders focused on the significant unmet need for legal services among low-income Californians. The LSTFC Working Group recommends that the LSTFC and the Board of Trustees collaborate to secure increased legal services funding to address this need.

RECOMMENDATIONS (MAJORITY)

Majority recommendations comprise Consensus recommendations plus additions in red below.

STATUTORY CHANGES

1. The LSTFC Working Group does not recommend that any statutory changes be pursued at this time.

   The Working Group received numerous public comments regarding the critical importance of IOLTA as a stable and flexible source of legal services funding. Although extensive discussion occurred regarding potential statutory modifications, including in response to a presentation from the Minnesota program illustrating a substantially

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different IOTLA allocation approach, the LSTFC Working Group does not believe statutory changes should be pursued at this time.

NON-STATUTORY CHANGES TO GRANT ADMINISTRATION AND/OR ALLOCATION

2. The LSTFC Working Group recommends that data be collected to support an accurate analysis of the demographic composition of clients served by IOLTA/EAF funds to ensure that services are being equitably provided to all indigent populations in California.

   The LSTFC Working Group reviewed some data suggesting that certain populations may be under-served when comparing statewide demographics to reported client data. There was a general consensus that currently available data does not allow for an accurate or robust analysis of this issue however; due to its importance, additional data collection and study is warranted.

GOVERNANCE

1. The LSTFC Working Group recommends that the LSTFC continue to exist.

   The Working Group heard extensive public comment in support of the LSTFC and its current composition which includes client-eligible members, non-attorneys, non-voting judicial officers, and individuals familiar with the legal services community.

2. The LSTFC Working Group does not recommend that any changes be made to the size or composition of the LSTFC.

   The LSTFC Working Group did not receive any information supporting modifications to either the size or composition of the LSTFC.

3. The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately[2].

4. The LSTFC Working Group recommends that any proposed changes to LSTFC size or composition should be considered by the Working Group prior to consideration by the Board of Trustees.

   The Working Group believes that, in addition to review by the LSTFC itself, the Working Group should be given the opportunity to convene to review recommendations

[2] The two Board members on the LSTFC Working Group as well as the Judicial Council appointee to the Working Group abstained from voting on this recommendation

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regarding size and composition prior to any related changes being considered by the Board.

5. The LSTFC Working Group recommends that no changes be made with respect to the roles of staff, the LSTFC, and the Board of Trustees, other than as reflected in the agreed-upon elements of the Functional Matrix (Appendix X).

   The LSTFC Working Group believes that some clarification and codification of roles would be beneficial to staff, the LSTFC, the Board, and the legal services community.

6. The LSTFC Working Group recommends that all procedures, policies, and practices governing the allocation and/or administration of grant funds should be codified in Guidelines and/or State Bar Rules and approved by the Board of Trustees.

   The Working Group heard some information suggesting that a review and reduction to writing of grant-making policies and practices might improve consistency and transparency.

7. The LSTFC Working Group recommends that the Board receive training and regular reports about the activities of the LSTFC and the legal services funded by the State Bar.

   The LSTFC Working Group heard comments from some of its members that the Board of Trustees was not adequately familiar with the LSTFC or the IOTLA program. To address this concern the Working Group recommends improved training and information sharing.

8. The LSTFC Working Group recommends that the LSTFC and the Board of Trustees work together to seek additional funding for legal services.

   Public comment by legal services providers and other stakeholders focused on the significant unmet need for legal services among low-income Californians. The LSTFC Working Group recommends that the LSTFC and the Board of Trustees collaborate to secure increased legal services funding to address this need.

RECOMMENDATIONS (MINORITY)

Minority recommendations comprise Consensus recommendations plus additions in orange below.

STATUTORY CHANGES

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1. The LSTFC Working Group does not recommend that any statutory changes be pursued at this time.

   The Working Group received numerous public comments regarding the critical importance of IOLTA as a stable and flexible source of legal services funding. Although extensive discussion occurred regarding potential statutory modifications, including in response to a presentation from the Minnesota program illustrating a substantially different IOTLA allocation approach, the LSTFC Working Group does not believe statutory changes should be pursued at this time.

NON-STATUTORY CHANGES TO GRANT ADMINISTRATION AND/OR ALLOCATION

3. The LSTFC Working Group recommends that data be collected to support an accurate analysis of the demographic composition of clients served by IOLTA/EAF funds to ensure that services are being equitably provided to all indigent populations in California.

   The LSTFC Working Group reviewed some data suggesting that certain populations may be under-served when comparing statewide demographics to reported client data. There was a general consensus that currently available data does not allow for an accurate or robust analysis of this issue however; due to its importance, additional data collection and study is warranted.

GOVERNANCE

1. The LSTFC Working Group recommends that the LSTFC continue to exist.

   The Working Group heard extensive public comment in support of the LSTFC and its current composition which includes client-eligible members, non-attorneys, non-voting judicial officers, and individuals familiar with the legal services community.

2. The LSTFC Working Group does not recommend that any changes be made to the size or composition of the LSTFC at this time.

   The LSTFC Working Group did not receive any information supporting modifications to either the size or composition of the LSTFC.

3. The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately[3].

[3] The two Board members on the LSTFC Working Group as well as the Judicial Council appointee to the Working Group abstained from voting on this recommendation

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4. The LSTFC Working Group recommends that no changes be made with respect to the roles of staff, the LSTFC, and the Board of Trustees, other than as reflected in the agreed-upon elements of the Functional Matrix (Appendix K).

   The LSTFC Working Group believes that some clarification and codification of roles would be beneficial to staff, the LSTFC, the Board, and the legal services community.

5. The LSTFC Working Group recommends that all procedures, policies, and practices governing the allocation and/or administration of grant funds should be codified in Guidelines and/or State Bar Rules and approved by the Board of Trustees.

   The Working Group heard some information suggesting that a review and reduction to writing of grant-making policies and practices might improve consistency and transparency.

6. The LSTFC Working Group recommends that the Board receive training and regular reports about the activities of the LSTFC and the legal services funded by the State Bar.

   The LSTFC Working Group heard comments from some of its members that the Board of Trustees was not adequately familiar with the LSTFC or the IOTLA program. To address this concern the Working Group recommends improved training and information sharing.

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OPEN SESSION
AGENDA ITEM

701 JULY 2018

DATE: July 19, 2018

TO: **Members, Board of Trustees**

FROM: Richard Schauffler, Principal Analyst, Office of Research & Institutional Accountability

SUBJECT: Appendix I Review: Framework for Board Committee Discussions

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EXECUTIVE SUMMARY

As directed by the Board of Trustees, Bar staff have been working to evaluate various committees, commissions, board and councils that work under the umbrella of the Bar: the subentities. The review of the work of the subentities is guided by Appendix I of the 2017 Governance in the Public Interest Task Force Report. This agenda item provides a conceptual framework for discussion by the Board with the goal of providing guidance for the Board when it engages in the detailed discussions of specific subentities.

BACKGROUND

In its 2017 Report, the State Bar's Governance in the Public Interest Task Force began a review of the various committees, commissions, boards, and councils that operate under the organizational umbrella of the Bar "to assess whether the structure of the subentities aligns with assigned tasks and appropriate oversight mechanisms are in place."[1] That review, contained in Appendix I of the Report, posed a number of additional questions related to each of the individual subentities.

At its November 2017 meeting, the Board of Trustees directed Bar staff and a number of Board Committees "to complete the subentity review pursuant to Appendix I" by August 31, 2018. Bar staff then identified a list of common elements regarding each of the subentities to be considered in the review including the following questions:

- What is the legal foundation for the subentity?
- How does the Board exercise oversight of the subentity?
- What is the subentity's organizational structure?
- What is the division of labor between the subentity and Bar staff?
- How does the subentity compare to like entities in other states or other sectors?

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[1] Governance in the Public Interest Task Force Report, 2017, p. 31.

While the answers to these questions will necessarily be different for each subentity, it is important to recall that the broader inquiry into the subentities was animated by the organizational changes underway at the Bar, specifically, the separation of the Bar's two conflicting and confusing functions, regulatory body and professional trade association. Related to the co-mingling of these functions was another issue identified by the Task Force: the reliance of the Bar on volunteer attorneys and members of the public to staff the State Bar's many committees, commissions and boards.

While the use of volunteers is not uncommon in a regulatory agency, the manner in which volunteers are used varies considerably and appears to have serious implications for the effective governance of the agency. As the California State Bar continues to reengineer its operations to function primarily as a regulatory body, it is natural that the question arises of whether and how volunteer attorneys who are licensed by the Bar should remain engaged in the work of Bar. This question emerges not as a mundane exercise in downsizing or budget-cutting, but rather as part of an effort to clarify and focus on the Bar's core mission: the licensing, regulation, and discipline of attorneys to ensure professional standards and ethics guide the practice of law. As part of that mission, the Bar also seeks to improve access to justice and inclusion in the legal system, thereby safeguarding the public interest.

The discussion below is devoted to exploring this topic and providing conceptual clarification for the issues under consideration. The first section that follows looks at the key elements of successful governance generally. After that, this discussion identifies a number of different dimensions along which subentities may differ, such as the scope of work they perform, their organizational structure, the formality and specificity of their charge, and their number and size. These differences are identified, in part, through a comparison with other regulatory agencies in California.

The final section then looks at the impact of the current organizational structure of the State Bar's subentities on the elements of successful governance introduced below. Although there is no single solution to the question of how best to organize the functions performed by the various subentities, these introductory comments are intended to provide the lens through which this work can be scrutinized and organized in the most effective manner possible to achieve the strategic goals of the State Bar.

DISCUSSION

Elements of Successful Governance

Governance consists of the processes by which an organization coordinates its work internally and with its external partners. Successful governance in a regulatory agency rests on several key features:

1) Role definition: The purpose and objectives of regulation are clear to the regulator, the regulated, and the public;
2) Accountability and transparency: The process and outcome of the work of the regulator is reported to the public and governmental partners on a timely basis and consistently. Reports include meaningful outcome measures to measure the effectiveness of the regulator's work;
3) Clear lines of authority: For each function performed by the regulator, a shared understanding about who makes decisions and how must exist within the regulatory agency itself as well as among the regulatory agency, those regulated, and the regulatory agency's partners in government;

4) Impartial, consistent, and fair decision-making: The policies and decision-making rules of the regulatory agency are explicit and those who make decisions are protected from undue influence from bureaucratic, political, or fiscal pressures; and
5) Engagement: Those regulated along with members of the public are consistently active in improving current and future operations and outcomes of the regulator's work in a process free of conflicts of interest.[2]

A regulatory agency is constantly in the process of making, managing, and evaluating its regulatory policies. At each stage, the principles outlined above are relevant to ensuring that the agency is achieving its public policy objectives. These principles provide a framework that can be used to evaluate whether and how the regulatory agency should make use of volunteers, including licensees regulated by that agency, in its work.

The Use of Volunteers by California Regulatory Agencies

The use of volunteers—members of the public, licensees, and members of related professions—to perform the functions of regulatory agencies is common. The reasons for this are essentially twofold: 1) to ensure that regulation is conducted in the public interest for the purpose of public protection and does not become a shield protecting professions from accountability; and 2) to make use of the expertise and practical experience of licensees so that the content and mode of regulation makes sense in the contemporary world.

The ways in which volunteers are used in California regulatory agencies, however, varies considerably across different agencies as summarized in Table 1, below (the additional federal example of the Securities and Exchange Commission (SEC) is offered for comparison). The first and most obvious dimension along which the use of volunteer subentities varies is in the *scope* of functions that they perform. The State Bar makes much more extensive use of volunteers than any other state regulatory body in California or the SEC.

The most common function in which volunteers are used is Licensing, followed by Policy Advisory. No other major California regulatory agency besides the State Bar uses volunteers for Adjudication, Arbitration, or Grant-making, even though their mandates may include these functions. Very few regulatory agencies use volunteers for Education, Accreditation, Wellness, or Certification.

Table 1. The scope of functions performed by State Bar subentities is much larger than that of other regulatory agencies

Function	State Bar	Dental Board	Architects Board	Veterinary Board	Medical Board	Board of Accountancy	Board of Registered Nursing	Board of Optometry	SEC (federal)
Licensing	X	X	X	X	X	X	X	X	
Regulation		X	X	X		X			
Policy Advisory	X				X	X	X	X	X
Certification	X			X	X				
Wellness	X			X					
Education	X	X	X						
Accreditation	X	X							
Adjudication	X								
Arbitration	X								
Grantmaking	X								

Another key dimension on which the use of volunteer subentities varies across the agencies shown in Table 1 is in their *organizational structure*. The organizational structure may include

[2] Adapted from OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy. Accessed July 9, 2018, at http://www.oecd.org/gov/regulatory-policy/the-governance-of-regulators-9789264209015-en.htm

the form that the volunteer subentity takes – for example, an alternative model to the Bar's use of standing committees is the formation of task forces or working groups to address specific regulatory or policy issues – and the duration of the subentities' charge – frequently taskforces and working group are established for a limited term and renewed only if necessary. This is the model used in many federal agencies, including the SEC, which typically convenes policy advisory committees for two-year periods, subject to renewal if need be.

Yet another dimension along which the use of volunteer subentities varies across agencies is in the *formality and specificity* of their charge. Volunteer advisory committees in other agencies often engage in a much more formal process of selecting and utilizing volunteers than appears to be the case with many Bar volunteers. Many agencies provide policy manuals and explicitly defined standards for participating as a volunteer, and some even include evaluation of volunteer members with respect to interpersonal skills, communication, leadership, preparedness, and participation.[3] The California Department of Consumer Affairs provides a Board Member resource center for all appointed members of boards under its authority,[4] including information on completing the mandatory orientation training required by Business & Professions Code Section 453. This comprehensive training covers the regulatory process, the legislative process, ethics training, conflict of interest regulations, sexual harassment prevention training, and more, all designed to ensure the effective participation of public members.

The formality of the employment of volunteers may also be matched by a more detailed and specific process of defining the scope of the subentity's charge. For example, in other regulatory agencies, subentities are often convened with a detailed charter, including authority, objectives and scope, meeting frequency, reporting requirements, structure and size of the committee, and required resources to support its work.[5]

Finally, the differences in the utilization of subentities across different regulatory agencies can be compared in terms of the *number* of subentities and their *size*. While it was already noted the *scope* of work performed by subentities to the State Bar is much greater than what is found in other regulatory agencies, the actual number of subentities performing that work is also greater.

Figure 1 below shows the number of subentities and the number of volunteers working in those subentities in those California regulatory agencies shown in Table 1. In Figure 1, each rectangle represents a subentity and its size is proportional to the number of volunteers who serve on it. The total number of volunteers working in State Bar subentities exceeds the total of the second largest regulatory body by a factor of five. And the size of individual subentities ranges from a high of 114 on the State Bar's California Board of Legal Specialization[6] to a low of 3 on the Dental Board's Dental Assisting Council. The insight from this additional figure is that the State Bar not only uses volunteers in more functions than other regulatory agencies, it typically uses more subentities, and more volunteers.

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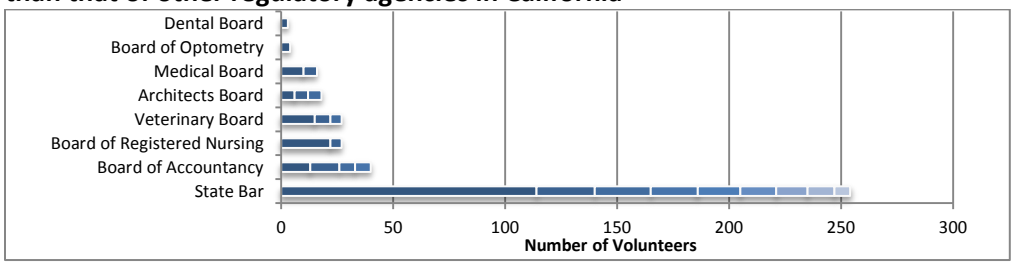
[3] See for example the Committee Member Resource Guide of the California Board of Accountancy, accessed at http://www.dca.ca.gov/cba/about-cba/cm_resource_guide.pdf June 7, 2018.
[4] Accessed at http://www.dcaboardmembers.ca.gov/ June 7, 2018.
[5] These Federal advisory committees are governed by Federal Advisory Committee Act (FACA) (Pub.L. 92–463, 86 Stat. 770, enacted October 6, 1972).
[6] The California Board of Legal Specialization comprises 15 members, and coordinates the work of an additional 99 volunteers; together, these total 114.

Figure 1. The number of volunteers and number of subentities used by the State Bar are much larger than that of other regulatory agencies in California



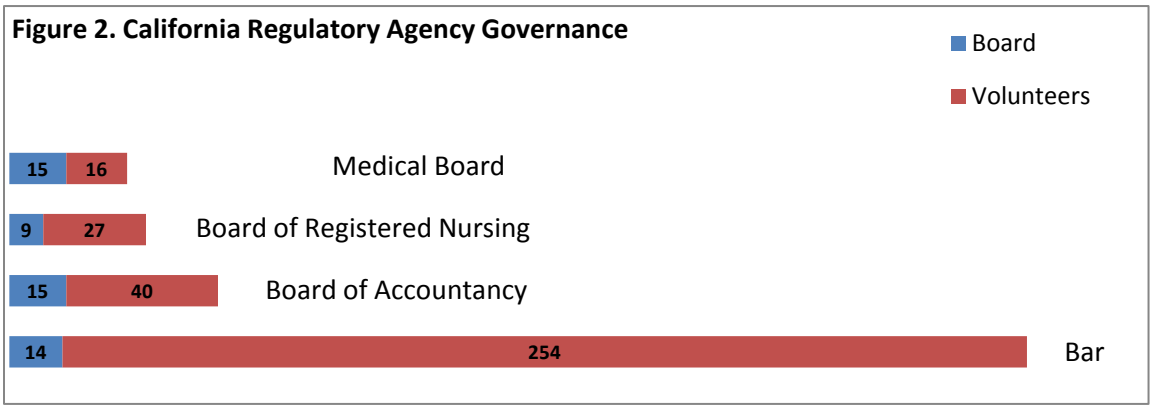
The Bar's Current Use of Volunteers

Why have licensees of the California State Bar and bar associations throughout the U.S. been so widely and actively engaged in the work of the bar itself? The most straightforward answer to this question lies in understanding the dual functions of a bar as both a regulatory agency and professional association. Professional associations are membership organizations, and such organizations typically rely on their members to provide member services aimed at career building (e.g., conferences, networking, continuing professional education) and direct services in support of their profession such as negotiated discounts for direct benefits provided by others (e.g., insurance, vendor discounts, notary services, legal research) as well as services that benefit all members (e.g., legislative lobbying, public relations campaigns). A membership organization is constantly seeking to engage its members in the work of the association as volunteers, and the level of that engagement serves as a barometer of the health of the organization.

A regulatory agency, on the other hand, seeks to make selective and focused use of volunteers to explore new issues arising in its field, to help ensure that proposed regulations in the public interest are informed by the real world experience and perspective of the regulated.

Implications of Bar's Current Use of Volunteers for Governance

The challenge for the Board of Trustees and the Bar executive management team is plainly illustrated in Figure 2 below. In this figure, the Bar has a board that is comparable in size to the other regulatory agencies shown (Board of Accountancy, Board of Registered Nursing, Medical Board) but only the Bar's Board is dwarfed by the number of volunteers.



The sheer number of volunteers (both lawyers and public members) makes governance more difficult. When so many are involved, it becomes increasingly difficult to focus effort, ensure alignment, and accomplish practical work based on shared goals and priorities. Thus, the Board's ability to achieve effective oversight is compromised.

In addition to the governance challenge, the staff workload of administering the participation of these volunteers is increased. Each additional volunteer is one more person who must be identified, recruited, ranked, nominated (or not), and voted upon by the Board. Once put in place, each volunteer's availability, travel, and participation must be administered by staff. The result has been that subentities of the Bar vary in the efficiency and effectiveness of their functioning. The larger the subentity, the more difficult it is to ensure consistent participation. When absenteeism from meetings runs 20-30 percent and when subentities fail to achieve a quorum for conducting official business, the work product is delayed.

Among the larger subentities, size is attributable to the nature of their charge and the extent to which external partners are involved. For example, size of the California Commmission on Access to Justice (26 members) and the Council on Access and Fairness (25) can be attributed to the political process which led to their creation. For others, such as the Legal Services Trust Fund Commission (21 members) and Committee of Bar Examiners (19), the size evolved by a combination of the process by which they were established and the extent to which volunteers are engaged in a wide variety of roles within those subentities.

What is the right size for a subentity? There is no one correct size, but the principles that govern size need to be applied in rethinking the functioning of subentities that the Bar retains. These include the idea that form should follow function. If the role and scope of a committee or commission is well defined, then the size and composition of membership is determined defining the access to expertise and perspectives required for the purpose.[7] A classic study of private sector organizations discovered that every member of a committee beyond 7 members reduced the decision-making effectiveness of that group by 10 percent;[8] other studies place the ideal number as 5 to 7. Thinking only about size, it would appear that few of the Bar subentities are designed to be efficient and effective.[9]

The Challenges of Subentity Organization to Effective Governance

Returning to the key elements of successful governance discussed above and looking at these in light of information derived from the detailed examination of the subentities illustrates how this framework applies to the present-day Bar.

Role Definition

The Bar is well on its way to improving the shared understanding of its role as a regulatory agency, having made a number of symbolic and substantive changes in the last two years. The Bar's focus on its regulatory functions is sharper in its terminology (e.g., "licensees" rather than "members") and in the formal separation from the Bar of the sections (which focus on the networking and professional association functions of their members). The role of the subentities, their organizational structure, and relationship to the Board, however are open questions that remain to be answered.

[7] See BoardSource, Leading with Intent: 2017 National Index of Nonprofit Board Practices, pp. 17, 19.

[8] Marcia Blenko, Paul Rogers, and Michael Mankins, Decide and Deliver: Five Steps to Breakthrough Performance in Your Organization, Harvard University Press. 2010.

[9] Note that the size of a Board of Directors is optimized at a higher number, since the purpose of that body is different. Currently, the national average for nonprofit organizations is 15 members. (BoardSource, op. cit.)

Accountability and Transparency

Among the subentities, in many cases the volunteers have been reluctant to implement measures to evaluate the effectiveness of their work. As a result, most programs managed through the subentities have never been subjected to a rigorous evaluation to determine the effectiveness of the program's work and whether it is achieving its intended outcomes. Evaluation requires knowing what questions to ask and creating the data required to answer those questions. Many subentities do not know what questions to ask and do not collect data that would provide answers. In some cases data exists but it has never been used to provide insight into program effectiveness.

Clear Lines of Authority

Related to the concept of Role Definition in the subentities, some subentities are genuinely confused about what authority the Board of Trustees has delegated to them and what approval they need from the Board for actions they wish to undertake. Others have assumed authority they do not have, for example the submission of amicus briefs or legislative advocacy without seeking Board approval. Some subentities believe they exercise management control over Bar staff, budget, or the allocation of non-General Fund revenues. This persistent lack of clarity has made it impossible for the Bar to speak with one voice to its judicial and governmental partners or for the Executive Director to maintain effective control over Bar resources.

Impartial, consistent, and fair decision-making

Some subentities have managed their decision-making function (e.g., awarding grants, adjudicating claims) using documented polices and precedents that ensure consistent decision-making, while others have not. This inconsistency exists among subentities as well as within subentities: in one subentity, one of its subcommittees uses formal scoring matrices and explicit criteria and documents its decisions, while another subcommittee doing similar work does not.

Engagement

The level of engagement of volunteer lawyers and public members varies widely among the subentities. Many subentities have no formal criteria in place to ensure that the subentity members encompass the relevant set of skills and experience needed for the purpose at hand. Too often, subentities engage in activities (e.g., education and training) for which they do not have professional training and which therefore fails to meet professional standards or take advantage of appropriate technologies and techniques for the work at hand.

In addition, for many subentities criteria are not formalized to best represent the various types of legal practice and populations in California to ensure appropriate statewide perspective. In addition, subentities have not always adhered to terms of service, allowing members to participate as ad hoc "emeritus" members and allowing stakeholders to participate in subentity policy-making without Board authorization.

Conclusion

Over the years the Bar has benefitted greatly from the thousands of hours of volunteer work contributed by public members and lawyers to maintain and improve the practice and law in California. To ensure effective governance in the public interest, the Board of Trustees is undertaking this review of the numerous subentities and their volunteers in order to ensure that the work undertaken is appropriate to the Bar's regulatory function and is being carried out in a manner that makes the best possible use of the experience and knowledge of practicing attorneys and the perspective and expertise of public members. It is incumbent on the Board to ensure that the subentities to which it has delegated specific responsibilities and authority act in concert and are aligned with the Bar's strategic direction.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 1. Successfully transition to the "new State Bar"— an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: 1c: Determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.

The State Bar *of California*

Governance in the Public Interest Task Force: Appendix I Review

Richard Schauffler
Senior Program Analyst
Office of Research & Institutional Accountability

The State Bar of California, Board of Trustees Meeting, July 19, 2018

The State Bar *of California*

California Commission on Access to Justice

Policy Advisory

(26 members)

- **Challenges**
  - Size
  - Role definition
  - Clear lines of authority
- **Future Direction**
  - Will CCAJ remain within the Bar?
  - If yes, how clarify its role and authority and align its work with Board priorities and strategic plan

The State Bar *of California*

Council on Access and Fairness

Policy Advisory

(25 members)

- **Challenges**
  - Size
  - Role definition
  - Clear lines of authority

- **Future Direction**
  - Need to clarify its role and authority
  - Integrate and align its work with Board priorities and strategic plan
  - Implement Board strategy re diversity and inclusion

California Board of Legal Specialization

Licensing

(15 members plus 99 volunteers)

- **Challenges**
  - Size
  - Engagement

California Board of Legal Specialization

- **National perspective**
  - 3% of all active attorneys
  - 5 states prohibit claims to specialization
  - 16 states allow but disclaim
  - 15 states allow through private providers
  - 11 states provide through Bar
- **California**
  - 3% of all active attorneys
  - Offers 11 certifications directly, contracts with ABA-accredited providers for 11 certifications (3 overlap)

California Board of Legal Specialization

- **Future Directions**
  - Outsource to other providers
  - Eliminate certified specialization
  - Status quo but streamline

The State Bar *of California*

Legal Services Trust Fund Commission

Grantmaking

(21 members)

- **Challenges**
  - Size
  - Role definition
  - Clear lines of authority

The State Bar *of California*

Legal Services Trust Fund Commission 2018 Grants

- **Formula-driven (76%)**
  - IOLTA—$14M, of which
  - Equal Access Funds—$23.1M
- **Discretionary (24%)**
  - Equal Access Fund—Partnership $2.9M
  - Bank Settlement Funds—$9.9M*

*of $44.9M one-time revenue booked in 2016-17.

Legal Services Trust Fund Commission

- **Future Direction**
  - Shift to staff-driven grant–making and grant management
  - For each category of grants, staff develops/provides policies, guidelines, and decision rules to Board for review and approval

Operationalizing Governance

- Role definition
- Accountability & Transparency
- Clear lines of authority
- Impartial, consistent, & fair decision-making
- Engagement

- **Thank You**

- Richard Schauffler
- 415-538-2274
- richard.schauffler@calbar.ca.gov

The State Bar of California

Sub-entity Review: CCAJ and LSFTC

Fall 2018 Proposed Stakeholder Engagement Process and Timeline

Donna S. Hershkowitz, Chief of Programs

CCAJ Proposed Stakeholder Engagement Process

- Stakeholder Working Group
  - Co-Chaired by CCAJ appointee and State Bar BOT appointee
  - 9 members; 2 liaisons
- Meeting Content
  - Review of OGC Opinions re: CCAJ Operational Autonomy
  - Consideration of options for structure of CCAJ
    - Remain in Bar w/operational autonomy
    - Remain in Bar w/o operational autonomy
    - “Hybrid” approaches
    - Separate from Bar

CCAJ Proposed Stakeholder Engagement Process

- Membership
  - CCAJ Appointments: 3 CCAJ members + Co-chair
  - Legislative Appointments: 1 by SJUD; 1 by AJUD
  - State Bar Board of Trustees: 1 + Co-chair
  - Judicial Council Appointment: 1
  - Liaisons: 1 Supreme Court, 1 State Bar staff
- Meeting Structure
  - Plan for 3 Noticed, Open Meetings (add'l meeting as needed)
  - To conclude by 12/31/2018

CCAJ Proposed Stakeholder Engagement Process

- End Product
  - Report to BOT January 2019
  - Majority and Minority reports, if necessary

LSTFC Proposed Stakeholder Engagement Process

- Stakeholder Working Group
  - Co-Chaired by LSTFC appointee and State Bar BOT appointee
  - 15/14 members; 2 liaisons
- Meeting Content
  - Current Process for Distributing Legal Services Funding (LSTFC role, BOT role, staff role)
  - Review of IOLTA formula
    - Considerations for funding (goals)
    - Evaluating Equity and Impact of Funding
    - Other States' Approaches

LSTFC Proposed Stakeholder Engagement Process

- Membership
  - LSTFC Appointments
    - 3 LSTFC members + Co-chair
    - 3 IOLTA grantees
  - Legislative Appointments: 1 by SJUD; 1 by AJUD
  - State Bar Appointments
    - 1 BOT appointment + Co-chair
    - 3/2 non-grantee legal services providers selected by staff
  - Judicial Council Appointment: 1
  - Legal Aid Association of CA Appointment: 1
  - Liaisons: 1 Supreme Court, 1 State Bar staff

LSTFC Proposed Stakeholder Engagement Process

- Meeting Structure
  - Develop survey for legal services organization feedback/input
    - results to be discussed by working group
  - Plan for 5 Noticed, Open Meetings (add'l meetings as needed)
  - To conclude by 12/31/2018
- End Product
  - Report to BOT January 2019
  - Majority and Minority reports, if necessary

CCAJ and LSTFC Fall 2018 Proposed Stakeholder Engagement Process

Attachment D

RESOLVED that the Programs Committee directs staff to move forward with the Stakeholder Engagement Process related to the **California Commission on Access to Justice** as proposed by staff and presented to the Programs Committee this day, with the following membership :

- CCAJ Appointments: 3 CCAJ members + Co-chair
- State Bar Board of Trustees: 1 + Co-chair
- Legislative Appointments: 1 by Senate Judiciary Committee; 1 by Assembly Judiciary Committee
- Judicial Council Appointment: 1
- Liaisons: 1 Supreme Court, 1 State Bar staff ; and it is

EITHER

FURTHER RESOLVED that the Programs Committee directs staff to move forward with the Stakeholder Engagement Process related to the **Legal Services Trust Fund Commission** as proposed by staff and presented to the Programs Committee this day, with the following membership:

- LSTFC Appointments: 3 LSTFC members + Co-chair
- LSTFC Appointments: 3 IOLTA grantees
- State Bar Appointments: 1 BOT appointment + Co-chair
- State Bar Appointments: 3 non-grantee legal services providers selected by staff
- Legislative Appointments: 1 by Senate Judiciary Committee; 1 by Assembly Judiciary Committee
- Judicial Council Appointment: 1
- Legal Aid Association of CA Appointment: 1
- Liaisons: 1 Supreme Court, 1 State Bar staff

OR

FURTHER RESOLVED that the Programs Committee directs staff to move forward with the Stakeholder Engagement Process related to the **Legal Services Trust Fund Commission** as proposed by staff and presented to the Programs Committee this day, with the following membership:

- LSTFC Appointments: 3 LSTFC members + Co-chair
- LSTFC Appointments: 3 IOLTA grantees
- State Bar Appointments: 1 BOT appointment + Co-chair
- State Bar Appointments: 2 non-grantee legal services providers selected by staff
- Legislative Appointments: 1 by Senate Judiciary Committee; 1 by Assembly Judiciary Committee
- Judicial Council Appointment: 1
- Legal Aid Association of CA Appointment: 1
- Liaisons: 1 Supreme Court, 1 State Bar staff

LSTFC STAKEHOLDER PROCESS
ROSTER
2018

Co-Chair LSTFC	**Richard Reinis** Thompson Coburn LLP 2029 Century Park East, 19th Floor Los Angeles, CA 90067 Tel: (310) 282-9411 Tel: (213) 300-2830 (cell) RReinis@thompsoncoburn.com	Co-Chair Board of Trustees	**Debbie Manning** 4600 Euclid Avenue Sacramento, CA 95822 Tel: (916) 708-5965 (cell) Tel: (916) 706-2248 (home) Dymanning4@gmail.com
Member LSTFC	**Corey Friedman** The Division of Occupational Safety & Health (Cal/OSHA) 455 Golden Gate Ave, 9th Floor San Francisco, CA 94102 Tel: (510) 286-0516 CFriedman@dir.ca.gov	Member LSTFC	**Chris Schreiber** **OLIVIER SCHREIBER & CHAO LLP** 201 Filbert Street, Suite 201 San Francisco, CA 94133 Tel: (415) 484-0161 Christian@osclegal.com
Member LSTFC	**Hon. Brad Seligman** Superior Court of California County of Alameda 24405 Amador Street, Dept 504 Hayward, CA 94544 bseligman@alameda.courts.ca.gov	Member Grantee	**Margaret Morrow** Public Counsel 610 South Ardmore Avenue Los Angeles, CA 90005 mmorrow@publiccounsel.org
Member Grantee	**Lynn Martinez** Legal Services of Northern California 123 Third Street Eureka, CA 95501 lynnmartinez@lsnc.net	Member Grantee	**Yvonne Mariajimenez** Neighborhood Legal Services of Los Angeles ymariajimenez@nlsla.org
Member Non-Grantee	**Norma Chávez-Peterson** Executive Director ACLU San Diego & Imperial Counties Tel: (619) 398-4488 norma@aclusandiego.org	Member Non-Grantee	**Kaylon Hammond** Leadership Council for Justice and Accountability 764 P Street, Suite 012 Fresno, CA 93721 khammond@leadershipcounsel.org

Revised 10/24/2018

LSTFC STAKEHOLDER PROCESS
ROSTER
2018

Member Assembly Judiciary Committee	**Leora Gershenzon** Deputy Chief Counsel CA State Assembly Assembly Judiciary Committee 1020 N St #104 Sacramento, CA 95814 Tel: (916) 319-2334 leora.gershenzon@asm.ca.gov	Member Senate Judiciary Committee	**Margie Estrada** Chief Counsel Senate Judiciary Committee Tel: (916) 651-4113 Tel: (916) 651-4170 Margie.estrada@sen.ca.gov
Member Board of Trustees	**Sean SeLegue** Arnold & Porter 3 Embarcadero Center, 10th Floor San Francisco CA 94111-4024 Tel: (415) 471-3169 Sean.SeLegue@arnoldporter.com	Member Judicial Council	**Presiding Justice Vance Raye** California Court of Appeal, Third Appellate District Stanley Mosk Library and Courts Building 914 Capitol Mall Sacramento, CA 95814 Tel: (916) 653-0312 vance.raye@jud.ca.gov
Member LAAC	**Salena Copeland** Executive Director Legal Aid Association of California Tel: (510) 893-3000, ext. 106 scopeland@laaconline.org		
State Bar Staff Liaison	**Leah Wilson** Executive Director State Bar of California 180 Howard Street San Francisco, CA 94105 Tel: (415) 538-2257 Leah.Wilson@calbar.ca.gov	Supreme Court Liaison	**Greg Fortescue** Senior Staff Attorney Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797 Tel: (415) 865-7126 Gregory.Fortescue@jud.ca.gov

LSTFC STAKEHOLDER MEETING DATES:

Monday, October 15 - Sacramento, State Capitol, Rm 4203, 4th Floor
Monday, November 19 – Los Angeles, State Bar, 845 South Figueroa Street
Monday, December 3 – San Francisco, State Bar, 180 Howard Street
Wednesday, December 19 – Los Angeles, State Bar, 845 South Figueroa Street

Revised 10/24/2018

The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Stakeholder Process
Monday, October 15, 2018
10:00 a.m. - 3:00 p.m.

State Capitol
1315 10th Street, Room 4203, 4th Floor
Sacramento, CA 95814

Phone: 1-855-520-7605
Pass Code: 917-907-6340#

Questions regarding any agenda item should be directed to staff to the Stakeholder Process, Ellen Louie, at 415-538-2549, 180 Howard Street, San Francisco, CA 94105.

The order of business is approximate and subject to change.

AGENDA

A. Welcome

B. Attendance / Roll Call

C. Business

1. Overview of Stakeholder Process and Introductions (Reinis/Manning) (10 minutes)

2. Overview of IOLTA Governing Authorities (State Bar Staff) (60 minutes)

3. Overview of Process for Funding Decisions and Administration (30 minutes)

    a. LSTFC Role (Friedman/Reinis)
    b. Staff Role (State Bar Staff)

4. Overview of CA Process for Evaluating Equity and Impact of Funding (60 minutes)

    a. Data Review (State Bar Staff)
    b. Impact Report (Professor Meeker/State Bar Staff)

5. Values Discussion (60 minutes)

    a. What are we trying to accomplish with the funding?
    b. What are the components of effective grant administration?
    c. How can we best measure and document equity and effectiveness of funding?

D. Review of Upcoming Meeting Agendas (Reinis/Manning)

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Ellen Louie at 415-538-2549. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

The notice and agenda is available at http://board.calbar.ca.gov/committees.aspx

Additional call-in locations:

- 180 Howard Street, San Francisco, CA 94105
- 766 P Street, Suite 012, Fresno, CA 93721

The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Stakeholder Process
Monday, November 19, 2018
10:00 a.m. - 3:00 p.m.

The State Bar of California
845 South Figueroa Street
Conference Rooms 2C-G, 2nd Floor
Los Angeles, CA 90017-2515

Phone: 1-855-520-7605
Pass Code: 917-907-6340#

Questions regarding any agenda item should be directed to staff to the Stakeholder Process, Ellen Louie, at 415-538-2549, 180 Howard Street, San Francisco, CA 94105.

The order of business is approximate and subject to change.

AGENDA

A. Welcome and Attendance

B. Public Comment

C. Business

1. Values Discussion

    a. What are we trying to accomplish with the funding?
    b. What are the components of effective grant administration?
    c. How can we best measure and document equity and effectiveness of funding?

2. Other State Approaches to Grantmaking

    a. Minnesota Legal Services Grant Program
    (Ms. Bridget Gernander, Minnesota Judicial Branch Legal Services Grant Manager, Minnesota IOLTA Program Director)

3. Foundation Approaches to Grantmaking

    a. California Endowment
    (Ms. Sabina Gonzalez-Eraña – Program Manager-Fresno, The California Endowment)

4. Data Dive

    a. Follow Up from Meeting One:
    - Geographic and Demographic Analyses
    - Funding Allocation and Grant Administration Cost History
    - Available Information, Unfunded Programs

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Additional call-in locations:

- 180 Howard Street, San Francisco, CA 94105

The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Stakeholder Process
Monday, December 3, 2018
10:00 a.m. - 3:00 p.m.

The State Bar of California
180 Howard Street
Conference Rooms 4A-C, 4th Floor
San Francisco, CA 94105

Phone: 1-855-520-7605
Pass Code: 917-907-6340#

Questions regarding any agenda item should be directed to staff to the Stakeholder Process, Ellen Louie, at 415-538-2549, 180 Howard Street, San Francisco, CA 94105.

The order of business is approximate and subject to change.

AGENDA

A. Welcome and Attendance

B. Extended Grantee and Non-Grantee Public Comment Period Soliciting Ideas and Feedback on Issues Including:

1. Key Values for IOLTA and EAF Grantmaking
2. Strengths and Weaknesses of the Status Quo
3. Potential Changes to Statutory Formula
4. Enhanced Data Collection to Support Impact and Equity Analyses
5. Governance Approaches Including Role of the LSTFC and the Board of Trustees
6. Other

C. Business

1. Review of What We Are Trying to Accomplish, What We Have Learned So Far, and Options for Consideration (Staff, Working Group Members)

    a. Key Values for IOLTA and EAF Grantmaking
    b. Strengths and Weaknesses of the Status Quo

c. Potential Changes to Statutory Formula
d. Enhanced Data Collection to Support Impact and Equity Analyses
e. Governance Approaches Including Role of the LSTFC and the Board of Trustees
f. Other

2. Data Review (Staff)

3. Identification of Additional Information Needs (Working Group Members)

   a. Possible Survey Questions for Grantees and Non-Grantees

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Ellen Louie at 415-538-2549. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

The notice and agenda is available at http://board.calbar.ca.gov/committees.aspx

Additional call-in locations:

- 1020 N Street, Suite 104, Sacramento, CA 95814

The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Stakeholder Process Working Group
Wednesday, December 19, 2018
10:00 a.m. - 3:00 p.m.

The State Bar of California
845 South Figueroa Street
Conference Rooms 2C-E, 2nd Floor
Los Angeles, CA 90017-2515

Phone: 1-855-520-7605
Pass Code: 917-907-6340#

Questions regarding any agenda item should be directed to staff to the Stakeholder Process, Ellen Louie, at 415-538-2549, 180 Howard Street, San Francisco, CA 94105.

The order of business is approximate and subject to change.

AGENDA

A. Welcome

B. Attendance / Roll Call

C. Business

1. Overview of Reboot Committee

    a. Formation
    b. Charge
    c. Results

2. Governance

    a. Overview of BOT governance principles
    b. Review of grant-making and grant administration functions
    c. Review of State Bar legal services funding streams
    d. Discussion: functions best performed by staff, the Commission, and/or the Board

3. Potential Non-Statutory Changes for Future Consideration

    a. Data Collection
    b. Extended Monitoring Visit Schedule
    c. % of Client Base Required to be at Poverty Level to Qualify
    d. Types of Services Determined to be Qualifying Legal Services
    e. Differentiated Application Process: Long-Term vs Newer Grantees
    f. Reconciliation of Rules and Guidelines with Statute

4. Additional Measures State Bar Can Take to Support Legal Services

    a. Advocacy for increased funding
    b. Research and analysis
        - California Justice Gap Study
    c. Foster innovation
        - Access Through Innovation and Technology Taskforce

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Ellen Louie at 415-538-2549. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

The notice and agenda is available at http://board.calbar.ca.gov/committees.aspx

Additional call-in locations:

- 180 Howard Street, San Francisco, CA 94105
- 201 Filbert Street, Suite 201, San Francisco, CA 94133
- 1020 N Street, Suite 104, Sacramento, CA 95814

The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Stakeholder Process Working Group
Wednesday, January 9, 2019
10:00 a.m. - 3:00 p.m.

The State Bar of California
180 Howard Street
Conference Rooms 4A-C, 4th Floor
San Francisco, CA 94105

Phone: 1-855-520-7605
Pass Code: 917-907-6340#

Questions regarding any agenda item should be directed to staff to the Stakeholder Process, Ellen Louie, at 415-538-2549, 180 Howard Street, San Francisco, CA 94105.

The order of business is approximate and subject to change.

AGENDA

A. Welcome

B. Attendance / Roll Call

C. Business

1. Governance

    a. Discussion: Functions best performed by staff, the Commission, and/or the Board
    b. Discussion: LSTFC size and membership

2. Stakeholder Working Group Reflections and Board Recommendations

    a. Staff, Commission, Board roles and responsibilities
    b. Non-Statutory Changes to allocation methodology and/or grant administration

3. Additional Measures State Bar Can Take to Support Legal Services

    a. Advocacy for increased funding
    b. Research and analysis
        - California Justice Gap Study
    c. Foster innovation
        - Access Through Innovation and Technology Taskforce

D. Public Comment

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Ellen Louie at 415-538-2549. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

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Functional Outline

Attachment K

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	January 9, 2019, Clarificiation
IOLTA/EAF/Justice Gap/Licensee Fee Statement Grants											
1	Development of policy/guidelines/statutory change	Propose rule and guideline changes	Commission role has been inconsistent	Propose rule and guideline changes; identify "gray areas" and bring to Commission for review	Approve rule and guideline changes, identify need for new rules and guidelines to address "gray areas"; address "gray areas" through guideline or rule revision proposals annually	Yes	X		Unlcear as related to guidelines	Approve all rule and guideline changes	Grant determination and allocation polcies and practices to be codified soley in rules or guidelines. This will result in the need for practices developed and sustained through oral tradition as well as staff notes to be codified as either guidelines or rules. Examples provided as meeting handout.
2	Determine total amount available for distribution	Staff develops options and recommendations based on evaluation of current interest revenue and projection for future	Commission (vote on staff identified options)	Same	Same	No	X (determination of overall reserve balance to maintain)	X (determination of actual dollar amount available once policy decision made)	Approve	Same	
3	Review application and audit to determine eligibility	Staff determines eligibility for most programs, subject to final Commission approval	Commission determines eligibility (If staff review reveals substantive issues.) Final vote on all eligible programs.	See * below	See * below	Yes			None	None	Distinction between current and proposed process reflects the fact that initial eligibility determinations will be made by staff pursuant to documented rules and guidelines, with the LSTFC only weighing in on those applications that staff has brought forward to the Commission because there is an issue presented that is not adequatley addressed by guidelines or rules.
	*Determination of primary purpose as the provision of legal services to the indigent for QLSPs and as the provision of legal support services to the legal aid community for Support Centers.	Staff determines whether programs have met the primary purpose requirement for most programs, and where determination is not apparent, Staff elevates to Commission for determination.	Commission determines whether programs havve met primary purpose (If staff review reveals substantive issues.)	Staff makes final determinations for all applications within estblished policy / guidelines	Commission makes determination for all applications presenting novel issues or issues not clearly identified within established policy / gudelines	Yes	X (Commission)	X (Staff)	None	None	Distinction between current and proposed process reflects the fact that initial eligibility determinations will be made by staff pursuant to documented rules and guidelines, with the LSTFC only weighing in on those applications that staff has brought forward to the Commission because there is an issue presented that is not adequatley addressed by guidelines or rules.
	*Review of qualified expenditures to meet presumption of "primary purpose"	Staff determines whether programs have properly reported qualified expenditures. If activities are questionable, Commission makes final determination.	Commission determines if expenditures are properly deducted if there are questionable activties.	Staff makes final determinations for all applications within estblished policy / guidelines	Commission makes determination for all applications presenting novel issues or issues not clearly identified within established policy / gudelines	Yes	X (Commission)	X (Staff)	None	None	Distinction between current and proposed process reflects the fact that initial eligibility determinations will be made by staff pursuant to documented rules and guidelines, with the LSTFC only weighing in on those applications that staff has brought forward to the Commission because there is an issue presented that is not adequatley addressed by guidelines or rules.

Functional Outline

Attachment K

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	January 9, 2019, Clarificiation
	* Review to determine if meet definition of "legal services"	Staff determines whether reported activities qualify as legal services. If activities questionable, Commission makes final determination.	Commission determines if activties meet definition of "legal services" if there are questionable activities.	Staff makes final determinations for all applications within estblished policy / guidelines	Commission makes determination for all applications presenting novel issues or issues not clearly identified within established policy / gudelines	Yes	X (Commission)	X (Staff)	None	None	Distinction between current and proposed process reflects the fact that initial eligibility determinations will be made by staff pursuant to documented rules and guidelines, with the LSTFC only weighing in on those applications that staff has brought forward to the Commission because there is an issue presented that is not adequatley addressed by guidelines or rules.
	* eligibility conferences	1 staff participates in eligibility conference when Commission cannot determine eligibility on the face of the application	2 Commission members participate in eligibility conference with staff person	Same	Same	No	X		None	None	
4	Determination of program level allocations	Staff runs the formula	Commission approval of full list of programs and allocations	Staff	Commission approval of full list of programs and allocations	No		X	None	Informational item to BOT	
5	Review of program submitted budgets (regarding how grant funds will be used)	Staff reviews budget for consistency with guidelines/rules, e.g. excess overhead, % to personnel, EAF for an identified project	Commission approves budgeting of the allocation (in rare circumstances, elevate to conference with staff & Commission)	Same	Commission reviews elevated items only	Yes		X	None	None	
6	Triennial Site / Monitoring Visits	Staff conducts monitoring site visits (@30 per year) to ensure compliance with funding requirements and provide technical assistance	Commission requested to attend by staff if staff have concerns/probs re: certain activities &/or expenditures), or for educational piurposes	Same	LSTFC members particpate for educational purposes only.	Yes			None	None	Three year history of LSTFC member participation in site visits: 2018: 4 visits (Eric Isken, Christina Vanarelli, Jim Meeker, Amin Al-Sarraf) 2017: 5 visits (Bob Planthold, Corey Friedman, Jim Meeker, LaQuitta Robbins) 2016: 3 visits (LaQuita Robbins, Justice Murray, Kim Savage)
7	Monitoring visit guidelines (incl. review of conflict check system; income eligibility, Board governance, etc)	Staff drafts	Commission approves	Same	Same	No		X	None	None	
8	Monitoring visit findings / recommendations letters to programs	Staff drafts	None	Same	Same	No		X	None	None	

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	January 9, 2019, Clarificiation
9	Establish data reporting requirements	Staff	Commission approval of changes inconsistent	Staff may implement technical changes to data reporting requirements	Commission approval of all non-technical changes to data reporting requirements	Yes	X (non-technical changes)	X (technical changes)	None	Approve all non-technical changes to data reporting requirements	Will be approved by BOT as part of guideline/rule approval process. Currently data reporting requirements not captured in rules or guidelines. Examples of technical: improving language for clarity or modifying due dates. Examples of substantive: collecting any new data such as number of attorneys with active law school debt or enhanced reporting requirements intended to ensure accurate and comprehensive capture of client demographic information.
10	Review of submitted data	Staff review of submitted evaluations (Case Summary Report; main & economic benefits; impact & advocacy report; EAF evaluation)	No formal role	Same	Same	No		X	None	None	
11	Review of program quarterly expenditure reports	Staff	None	Same	Same	No		X	None	None	
12	Carryover requests										
	* review/revise carryover policy	Staff proposes	Commission approves	Same	Same	No	X		None	Approve changes to carryover policy	Will be approved by BOT as part of guideline/rule approval process.
	*review of carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	Review/approve all carryover requests greater than 10%	None	Yes		X	None	None	
13	Review / approval of budget revision	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%	Review/approve all budget revisions greater than 10%	None	Yes		X	None	None	
14	Deeming process										
	* review/revise deeming process/policy	Staff proposes	Commission approves	Staff proposes	Commission approves	No	X		None	Approve	Will be approved by BOT as part of guideline approval process.
	*implement deeming process/policy	Staff conducts process	None	Same	Same	No		X	None	None	
15	Appeal of staff determinations	New	New	None	Commission hears "appeals" of staff determinations	Yes	X		None	None	

Functional Outline

Attachment K

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	January 9, 2019, Clarificiation
Partnership Grants											
1	Establish evaluation, selection, and funding level criteria	Unclear	Unclear	Staff recommends	Commission approves	Yes	X			Approve (Judicial Council may also need to approve)	Will be approved by BOT as part of guideline approval process.
2	Review application (including prior year evaluation and financials)	Team of Staff and Commission	Team of Staff and Commission	Same	Same	No			None	None	
3	Review proposed budgets	Team of Staff and Commission	Team of Staff and Commission	Same	Same	No			None	None	
4	Recommendations for project approval and funding amount	Team of Staff and Commission	Team of Staff and Commission	Same	Same	No			None	Informational item to the BOT	
5	Review/approval of budget revisions	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%	Review/approve all carryover requests greater than 10%	None	Yes		X	None	None	
6	Carryover Requests										
	* review/revise carryover policy	Staff proposes	Commission approves	Same	Same	No	X		None	Approve changes to carryover policy	Will be approved by BOT as part of guideline approval process.
	*review/approval of carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	Review/approve all budget revisions greater than 10%	None	Yes		X	None	None	
Bank Grants											
1	Develop policy regarding how funds will be distributed	Staff proposes	Commission approves	Same	Same	No	X		None	Board approval of policy regarding how funds will be distributed	
2	Develop RFP	Staff develops/distributes	None	Same	Commission reviews and approves	Yes		X	None	None	
3	Review of applications	Team of Staff and Commission	Team of Staff and Commission	Same	Same	No			None	None	

Functional Outline

Attachment K

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	January 9, 2019, Clarificiation
4	Approval of budget revisions	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%	Review/approve all budget revisions over 10%	None	Yes		X	None	None	
5	Carryover requests										
	* review/revise carryover policy	Staff proposes	Commission approves	Same	Same	No	X		None	Approve changes to carryover policy	
	*review/approval of carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	Review/approve all carryover requests over 10%	None	Yes		X	None	None	
6	Review of annual reports										
	* program evaluation	Staff	Commission reviews program evalauation only when part of application review	Same	Same	No		X	None	None	
	* expense reports	Staff	None	Same	Same	No		X	None	None	

Functional Changes

Attachment K

yellow = no agreeement

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	Notes
IOLTA/EAF/Justice Gap/Licensee Fee Statement Grants											
1	Development of policy/guidelines/statutory change	Propose rule and guideline changes	Commission role has been inconsistent	Propose rule and guideline changes; identify "gray areas" and bring to Commission for review	Approve rule and guideline changes, identify need for new rules and guidelines to address "gray areas"; address "gray areas" through guideline or rule revision proposals annually	Yes	X		Unlcear as related to guidelines	Approve all rule and guideline changes	
3	Review application and audit to determine eligibility	Staff determines eligibility for most programs, subject to final Commission approval	Commission determines eligibility (If staff review reveals substantive issues.) Final vote on all eligible programs.	Staff determines whether programs have met the primary purpose requirement for most programs, and where determination is not apparent, staff elevates to Commission for determination. Staff	Commission determines eligibility (If staff review reveals substantive issues.) Final vote on all eligible programs.	No*			None	None	* No substantive change from current process though use of consent calendar would consistute a different approach.
4	Determination of program level allocations	Staff runs the formula	Commission approval of full list of programs and allocations	Staff	Approve full list of programs and allocations	No		X	None	Informational item to BOT	
5	Review of program submitted budgets (regarding how grant funds will be used)	Staff reviews budget for consistency with guidelines/rules, e.g. excess overhead, % to personnel, EAF for an identified project	Commission approves budgeting of the allocation (in rare circumstances, elevate to conference with staff & Commission)	Same	Commission reviews elevated items only	Yes		X	None	None	No consensus reached regarding LSTFC role in budget review.
6	Triennial Site / Monitoring Visits	Staff conducts monitoring site visits (@30 per year) to ensure compliance with funding requirements and provide technical assistance	Commission requested to attend by staff if staff have concerns/probs re: certain activities &/or expenditures), or for educational purposes	Same	LSTFC members particpate for educational purposes only.	Yes			None	None	No consensus reached regarding role of particiapting LSTFC members in particiaption in site visits and finalization of monitoring reports.
8	Monitoring visit findings / recommendations letters to programs	Staff drafts	None	Same	Same	No		X	None	None	No consensus reached regarding role of particiapting LSTFC members in particiaption in site visits and finalization of monitoring reports.

Functional Changes

Attachment K

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	Notes
9	Establish data reporting requirements	Staff	Commission approval of changes inconsistent	Staff may propose changes to data reporting requirements.	Commission approves all changes to data reporting requirements.	Yes	X (non-technical changes)	X (technical changes)	None	Approve data reporting requirements which will be	
12	Review/revise carryover policy	Staff proposes	Commission approves	Same	Same	No	X		None	Approve changes to carryover policy which will be codified in either guidelines or rules	
12	Review of carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	Review/make recommendations regarding all carryover requests greater than 10%	Approve requests greater than 10%	Yes		X	None	None	
13	Review/approve budget revision	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%	Review/make recommendations regarding all budget revision requests	Approve requests greater than 10%	Yes		X	None	None	
14	Review/revise deeming process/policy	Staff proposes	Commission approves	Staff proposes	Commission approves	No	X		None	Approve changes to deeming process which will	
15	Appeal staff determinations	New	New	None	Commission hears "appeals" of staff determinations	Yes	X		None	None	
Partnership Grants											
1	Establish evaluation, selection, and funding level criteria	Unclear	Unclear	Staff recommends	Commission approves	Yes	X		None	Approve (Judicial Council may also need to approve)	
4	Recommendations for project approval and funding amount	Team of Staff and Commission	Team of Staff and Commission	Same	Same	No			None	Informational item to the BOT	
5	Review/approval of budget revisions	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves revisions in excess of 25%	Review/make recommendations regarding all budget revision requests	Approve revisions in excess of 10%	Yes		X	None	None	
6	Review/revise carryover policy	Staff proposes	Commission approves	Same	Same	No	X		None	Approve changes to carryover policy which will be codified in either guidelines	
6	Review/approve carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	Review/make recommendations regarding all	Approve revisions in excess of 10%	Yes		X	None	None	

Functional Changes

Attachment K

Key Grant Approval and Administration Functions by Grant Type		Current Staff Role	Current Commission Role	Proposed Staff Role	Proposed Commission Role	Change from Current?	Policy?	Administrative?	Current BOT Role?	Proposed BOT Role	Notes
Bank Grants											
1	Develop policy regarding how funds will be distributed	Staff proposes	Commission approves	Same	Same	No	X		None	Board approval of policy regarding how funds will be distributed	
4	Approval of budget revisions	Staff reviews/approves requests between 10% and	Commission reviews/approves revisions	Review/make recommendations	Approve revisions in excess of 10%	Yes		X	None	None	
5	Review/revise carryover policy	Staff proposes	Commission approves	Same	Same	No	X		None	Approve changes to carryover policy	
5	Review/approve of carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	Review/make recommendations regarding all carryover requests	Approve revisions in excess of 10%	Yes		X	None	None	

Comments Received in Response to Draft Report sent on January 11, 2019

1) No new recommendations should be introduced beyond those discussed at the January 9 meeting; new data collection recommendation should be stricken on procedural grounds.
2) In addition to procedural concerns, there is no agreement that any data presented to the Working Group suggested that some populations are under-served. Further, additional data collection requirements would be onerous for programs and should not be imposed absent a thorough cost benefit analysis including the availability of requisite data.
3) Majority and minority recommendations are confusing and votes for each should be provided.
4) Matrix needs to be corrected as re carry-over and budget revision processes; the Working Group did not agree to any changes to the status quo with respect to either. In addition, a correction is needed to the bank grant policy row; policy was jointly established by staff and the Commission.
5) Only those matrix elements that were agreed upon should be presented in the report; yellow highlighted rows should be eliminated.
6) A formal correction to the geographic distribution chart developed and presented by State Bar staff should be made and concerns raised by Working Group members regarding the demographic distribution chart should be formally documented.
7) Under Majority, Governance, paragraph 4, the recommendation should read: "The LSTFC Working Group recommends that any proposed changes to LSTFC size or composition should be considered by the Working Group and the LSTFC prior to consideration by the Board of Trustees."
8) Under Consensus #3, “no changes be made” is not a consensus view. Instead, it should be framed as there is consensus regarding certain sections of the matrix. A minority wants the “at this time” qualification.
9) Under Minority #2, delete the second sentence and replace with Further study of LSTFC size should be pursued.
10) Minority #3 should be deleted.
11) New recommendation requested. Clarify that relevant community/neighborhood/area level economic data can satisfy income eligibility for programs and services that provide community-wide representation and services, in line with the relevant income level threshold and, related, that diverse data can be used to demonstrate income status including surveys conducted by third party service providers as well as free or reduced school lunch data.
12) New recommendation requested. Clarify that services that have been considered legal services including community education and policy advocacy remain as such.

13) The report contains background information that was not presented or reviewed by the working presented or reviewed by the Working Group. It should be removed.
14) Some of that background information speaks to LSTFC size. the Working Group was not fully informed about the status of the Commission in terms of size and vacancy. Failure to provide this important information circumvented the Working Group's goal of transparency and accountability, leaving the Working Group to operate with a deficit in all meetings prior to January 9, 2019.
15) The report structure is confusing. There should be majority and minority reports only, with vote counts included. Explanatory information should be provided as related to each recommendation.
16) The recommendation: "No recommended statutory changes at this time." should be listed as a majority, not consensus, recommendation. Further, it should be re-written to say “the Working Group strongly objects to pursuing any statutory changes at this time."
17) The data collection recommendation should be revised to state: The Working Group determined that collection of complete and correct data is necessary to support an accurate analysis of the demographic composition of clients served by IOLTA and EAF to ensure that services are equitably provided to all indigent populations.
18) The recommendation: “The LSTFC Working Group recommends that the LSTFC continue to exist” was a majority recommendation, not a consensus one.
19) The recommendation: The LSTFC Working Group recommends no changes to the size or composition of the LSTFC should be amended to include:

    The Working Group learned that it was the intention of the State Bar to leave vacancies unfilled in order to reach a pre-determined size of seven members. The Working Group determined that the size of the LSTFC is statutory and subject to legislative oversight, and the size of the Commission should not be changed.

20) With regard to the recommendation to fill all LSTFC vacancies immediately the following language should be included:

    The Working Group determined that full membership of the LSTFC is statutory and subject to legislative oversight. Moreover, the Working Group did not accept the determination of State Bar General Counsel that vacancies could simply remain unfilled for long periods of time without violation of the statute. Finally, the duties and responsibilities of the Commission {made of volunteer members) and its staff require a fully filled and functional Commission.

21) With regard to the recommendation that any recommended changes to the size or composition be brought back to the Working Group for consideration, the following language should be included:

    While the Working Group was presented with information that other state volunteer boards may have a reduced membership level, it was not fully informed of the State Bar's informal goal to reduce the LSTF Commission from 21 voting members to seven members. Indeed, no formal proposal or policy to reduce the Commission size or composition exists. Therefore, the Working Group could not discuss any particular size {other than 21 voting members). Accordingly, after review of the statutory requirements and the responsibilities and duties of the Commission and staff, the Working Group concluded that all vacancies must immediately be filled. Due to the lack of information on any formal proposal regarding size, any future proposed changes to the size and composition must be brought back to the Working Group for additional analysis and recommendation(s).

22) Extraneous recommendations, statements and representations that were not part of the Working Group discussions should not be included in the report.