

## BACKGROUND<sup>[A2]</sup>

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."<sup>1</sup> 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

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<sup>[A3]</sup>. ~~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.~~

## 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 <sup>[A4]</sup>

- ~~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<sup>†</sup>.~~

- ~~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).~~

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<sup>†</sup> 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.

~~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 <sup>[AS]</sup>)

~~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. ALTERNATIVE: The Working Group strongly objects to pursuing statutory changes.

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

~~2.1.~~ 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.

[ELIMINATE<sup>\[A6\]</sup>. OR ALTERNATIVE PROPOSED: The Working Group determined that collection of complete and concrete data 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.](#)

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<sup>[A7]</sup>.

[2a. The LSTFC Working Group does not recommend that any changes be made to the size or composition of the LSTFC at this time. \(Minority\)](#)

[Further study of LSTFC size should be pursued<sup>\[A8\]</sup>.](#)

3. The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately<sup>2</sup><sub>[A9]</sub>.
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. ALTERNATIVE: 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 being considered 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 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<sub>[A10]</sub>).

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.

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<sup>2</sup> 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

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)

- ~~1. 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.~~

- ~~2. The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately<sup>3</sup>.~~

- ~~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 (Appendix K(A11)).~~

~~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 heard some information suggesting that a review and reduction to writing of grant-making policies and practices 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 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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<sup>3</sup> 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

~~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.~~

DRAFT

yellow = no agreement

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	
<b>IOLTA/EAF/Justice Gap/Licensee Fee Statement Grants</b>											
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		Unclear 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 prepares agenda item for Commission review and approval reflecting eligibility determination recommendations with ability to place some or all recommendations on consent calendar.	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 constitute 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 participate for educational purposes only.	Yes			None	None	No consensus reached regarding role of participating LSTFC members in participation 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 participating LSTFC members in participation in site visits and finalization of monitoring reports.

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 codified in either guidelines or rules.	
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%	Same	Same	No		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%	Same	Same	No		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 be codified in rules or	
15	Appeal staff determinations	New	New	None	Commission hears "appeals" of staff determinations	Yes	X		None	None	
<b>Partnership Grants</b>											
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%	Same	Same	No		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 or rules.	
6	Review/approve carryover requests	Staff reviews/approves requests between 10% and 25% of total award	Commission reviews/approves requests in excess of 25%	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	Notes
Bank Grants											
1	Develop policy regarding how funds will be distributed	Joint Staff and Commission Effort	Joint Staff and Commission Effort; Commission approved terms of RFP	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 25% of total award	Commission reviews/approves revisions in excess of 25%	Same	Same	No		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%	Same	Same	No		X	None	None	