

From: Yvonne Mariajimenez [<mailto:YMariajimenez@nlsla.org>]

Sent: Friday, January 18, 2019 4:59 PM

To: Wilson, Leah; Richard Reinis

Subject: Re: Draft Report and Functional Matrix

Importance: High

Dear Leah and Rich,

My apologies for the delay, it has been an incredibly busy week. Attached you will find my comments to the Draft Report sent by Leah. In summary, I found the report extremely confusing in its layout and did not understand the rationale around setting forth "Consensus", "Majority" and "Minority" sections. My view is that there were two: Majority and Minority. In addition, I list the following issues which are reflected in my comments embedded in the draft. The LSTFC SWG voted on very explicit matters, all of which were identified on the board during the meeting of January 9:

1. One of those matters is the overwhelming, majority recommendation that there be no statutory changes to the IOLTA statute as this time;
2. That the LSTFC continue to exist; and
3. That there be no changes to the make up of the membership of the LSTFC at all and that vacancies be immediately filled. In addition, the SWG made it clear that the size and make-up of the LSTFC was not raised until January 9 and it is disingenuous to represent the matter as though the SWG considered and deliberated on the matter throughout its meetings.

Please refer to the attached document which includes my more extensive comments on these and the remainder of the items voted upon on January 9. I also propose that we not add the matrix to the report; it is very confusing addressing the matter of roles of the staff, LSTFC and BOT in the report and then referencing the matrix which, in my opinion, provides far more information than is necessary and does not correspond/align with the report.

Thank you for your consideration, and again my apologies for the delay.

Yvonne

Yvonne Mariajimenez, Esq.

Deputy Director

50 years of changing lives and transforming communities

Neighborhood Legal Services of Los Angeles County

1104 East Chevy Chase Drive, Glendale, CA 91205

818.834.7531

ymariajimenez@nlsla.org

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^[YM1] 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.^[YM2]

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^[YM3]. Vacancies on the LSTFC resulting from term limits would ordinarily have been reviewed at the September meeting of the Board of Trustees. Instead, the Board, acting on staff recommendations, did not renew appointments to the LSTFC given the initiation of a separate stakeholder engagement process. This has resulted in the LSTFC currently having 14 of 21 voting members.

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.

RECOMMENDATIONS (CONSENSUS)^[YM4]

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.^[YM5]

NON-STATUTORY CHANGES TO GRANT ADMINISTRATION AND/OR ALLOCATION^[A6]

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.^[YM7]

GOVERNANCE

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

The LSTFC 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 immediately¹.^[YM8]

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.

The Working Group heard extensive presentations on the functions of the LSTFC, the hours of volunteer time required to perform its various grant making functions, and the value of a diversified Commission, including lawyers, non-lawyers, non-voting judicial advisors, client representatives, and representatives of rural and urban communities of California, augmented by ethnic diversity. |

[YM9]

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).

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 members of the Board of Trustees have 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. |

[YM10]

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 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 [A11][YM12]

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. However, the LSTFC Working Group did receive information about many other states' comparable, although smaller, programs, which are administered by commissions with an average size of approximately 19. [YM13]

3. The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately².

The Working Group heard extensive presentations on the functions of the LSTFC, the hours of volunteer time required to perform its various grant making functions, and the value of a diversified Commission, including lawyers, non-lawyers, non-voting judicial advisors, client representatives, and representatives of rural and urban communities of California, augmented by ethnic diversity. [YM14]

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 regarding size and composition prior to any related changes being considered by the Board [YM15].

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 and that Board members commit more time to oversight of the IOLTA/EAF program.

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

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

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 [A16][YM17]

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 immediately³.

The Working Group heard extensive presentations on the functions of the LSTFC, the hours of volunteer time required to perform its various grant making functions, and the value of a diversified Commission, including lawyers, non-lawyers, non-voting judicial advisors, client representatives, and representatives of rural and urban communities of California, augmented by ethnic diversity.

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_[A18])._[YM19]

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.

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

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.

7. 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.